

Christine Lafleur

From: Mary Bernard
Sent: Tuesday, September 07, 2010 11:04 AM
To: Derek Leung
Cc: Mark Dodick
Subject: FW: SWGTA-OGS / Issues-Briefing Note - Revised
Attachments: Southwest GTA - Oakville Generating Station (sc).doc

Importance: High

Derek – we haven't heard back from you on this item and need to finalize. Can you please review and provide comments soonest? We are ensuring we are prepared because TransCanada is planning to hold a media briefing on Thursday at 10:00 a.m. to release the results of a third-party safety audit they had done on their plans for the OGS.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Mark Dodick
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To: Mary Bernard
Subject: FW: SWGTA-OGS / Issues-Briefing Note - Revised
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Thanks,
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From: Shawn Cronkwright
Sent: August 23, 2010 9:24 AM
To: Mark Dodick; Derek Leung
Subject: RE: SWGTA-OGS / Issues-Briefing Note - Revised

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My minor comments attached.

Shawn

From: Mark Dodick
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To: Derek Leung; Shawn Cronkwright
Subject: FW: SWGTA-OGS / Issues-Briefing Note - Revised
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In the interest of reducing e-mail clutter, please assume my thanks for your response.

Mark Dodick | Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Ste. 1600 | Toronto | Ontario | M5H 1T1 | (416) 969-6083 | www.powerauthority.on.ca | mark.dodick@powerauthority.on.ca

Southwest GTA – Oakville Generating Station

July 27, 2010 (sc edits Aug 23)

Overview

As directed by the Ministry of Energy and Infrastructure, the Ontario Power Authority (OPA) is competitively ~~procuring~~ **procured** a new 900-MW gas-fired generating station to supply the rapidly growing Southwest GTA. It will support local electricity needs and Ontario's transition to renewable but intermittent sources of energy. TransCanada is building and operating the Oakville Generating Station (OGS), which is to begin operating at the end of 2013. The project has been opposed by the local community, specifically through C4CA (Citizens for Clean Air) for a variety of reasons, and the local MPP, who is seeking to legislate a buffer zone around gas-fired plants. Oakville and Mississauga have passed zoning bylaws and local environmental controls to thwart the project. An alternative location at Nanticoke has been proposed by activists from several communities. An air quality task force appointed by the Ministry of the Environment has delivered recommendations that, if accepted, may affect the facility's viability. Legal action brought by TransCanada to override local impediments is being adjudicated.

The project has been and will be subject to public and media scrutiny throughout its entire development lifecycle. The OPA must be prepared to communicate effectively on an ongoing basis in the face of continuing local opposition and other sources of uncertainty.

Background

- In November 2006, the Southwest GTA generation project was first presented in series of IPSP discussion papers. The first IPSP was filed in August 2007 and stated clearly an urgent requirement to address new supply needs for SWGTA.
- Although aggressive conservation measures are envisioned as part of the solution, alone they cannot address the supply needs of an area that is growing much faster than others in the province, particularly given the closure of the Lakeview coal-fired generating plant.
- The electrical boundary of the SWGTA is basically defined as southern Mississauga, southeast Oakville and southwest Toronto, near the transmission corridor from the Oakville to Manby stations.
- Throughout 2008 and 2009, the OPA engaged in extensive public outreach to communicate about the need and potential plans for providing new supply for the SWGTA. On August 18, 2008, Minister of Energy and Infrastructure George Smitherman issued a directive to the OPA to procure a new gas-fired generating plant of about 850 MW for the Southwest GTA. It is to be operational at the end of December 2013.
- March 30, 2009, Town of Oakville council approved an ICBL to grant itself additional discretionary powers over the possibility of a new generating station being situated within its jurisdiction.

- After delaying the announcement of the winning proponent (to address environmental concerns), the OPA announced on September 30, 2009 that it had chosen TransCanada to build the new Oakville Generating Station (OGS). TransCanada plans to situate the facility on industrial land owned by Ford on Royal Windsor Drive, just east of the Queen Elizabeth Way (QEW) in Oakville.
- October 6, 2009, C4CA (Citizens for Clean Air) is formed and becomes the leading Oakville-based activist organization to oppose the OGS. It is supported by MIRANET, the Mississauga Ratepayers Network as well as other local ratepayer organizations. C4CA has organized various protest / information / fund raising events and maintains a website to co-ordinate its activities (<http://www.c4ca.org/>). C4CA opposition focuses on proximity and safety issues, and health and environmental impact.
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- Groups opposed to the OGS, Mayors of the affected communities and the Mayor of Haldimand County propose Nanticoke (which is scheduled to close) as a willing alternative site for hosting the SWGTA power facility. The OPA does not endorse this alternative as it will not address the compelling supply needs for the area and is likely to generate additional pollution given its distance from load centres.
- June 25, 2010, Dr. Balsillie issues his final report and action plan. Two recommendations may have a direct impact on the OGS; however, their implications have not been addressed by the Ministry of Energy and Infrastructure or by the OPA as of this note.
- While the intensity of coverage about the OGS has diminished as summer progressed, C4CA is likely to garner local media notice for its activities. Attention to the matter is likely to resume in the fall (if not sooner) as the legislature resumes sitting, a response is prepared to the Balsillie report, and a decision is rendered on the project by the Ministry and in the courts on TransCanada's case for moving forward.

Key Messages

The Ontario Power Authority continues to support its procurement decision as it remains the best option for meeting the future electricity supply needs of the Southwest GTA.

When all facts are examined, the Oakville Generating Station is the best solution to the electricity needs for the Southwest GTA, and for enabling Ontario as a whole to get off dirty coal-fired generation. Nanticoke is not a viable alternative. It will cost much more and produce more pollution. Our original analysis of other alternatives – e.g., long transmission lines – is

valid: they are disruptive, costly and won't provide the value that ratepayers are seeking. Gas-fired generation is a clean option that has worked in other jurisdictions and is the optimal answer for SWGTA's electricity supply needs.

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The Oakville Generating Station will not only provide supply to the Southwest GTA but will also help us turn off all coal-fired generation – that cleans the air for all Ontarians. The Oakville Generating Station is a key part of the solution to local supply needs and Ontario's plans to stop all coal-fired electricity generation by the end of 2014. We are making progress towards getting off coal and will see a total of four units in two facilities stop running this fall. Ontario's closure of its coal-fired plants is the single largest climate change initiative in [North America]. The OGS will support the clean, renewable but intermittent energy coming on line through Ontario's path-breaking Feed-in Tariff program. It is part of an integrated approach to creating a sustainable electricity future for the province.

Questions & Answers

The directive calls for the new generating station to be in service by December 31, 2013; however, the TransCanada website states that it will be operational in February 2014. Is this permitted? What is the impact on Ontario's electricity planning from this delay?

ANSWER TO COME

[Contract Management to provide answer – Derek Leung]

What is the status of the court case brought by TransCanada seeking to remove Town of Oakville bylaws that are frustrating its ability to proceed with construction?

ANSWER TO COME

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If there are significant further delays in proceeding with the OGS, will it cause a failure to meet the closure of all coal-fired generation by the 2014 deadline?

ANSWER TO COME – To incorporate Key Message Number Three

####

Corporate Communications:	Mary Bernard, Kristin Jenkins
Subject Matter Expert:	Derek Leung and Shawn Cronkwright

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Importance: High

Michael – I see that Derek is away this week. Can you or someone else in your group look at this and help to provide some answers? Many thanks.

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Hi Mary: I have added my inputs for your consideration.

Derek Leung, P.Eng., C.Eng., PMP
Manager - Contract Management
Electricity Resources
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON, Canada M5H 1T1
T: 416-969-6388

From: Mary Bernard
Sent: 13 September 2010 08:23
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Hey Guys,

Didn't hear back from you on this note, per Mary's request below. I'm trying to tie up loose ends in advance of her return on Monday.

Do you have comments and answers to the questions you can share before she returns? We need to keep moving this forward.

Thanks,
Mark

From: Mary Bernard
Sent: August 13, 2010 4:43 PM
To: Derek Leung; Shawn Cronkwright
Cc: Mark Dodick

Subject: FW: SWGTA-OGS / Issues-Briefing Note - Revised
Importance: High

Derek and Shawn – attached for your review is an updated version of our issues note on SWGTA.

Can you please review and get back to Mark Dodick next week as I'm not in the office.

Your help in answering the Qs would be appreciated.

Many thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Mark Dodick
Sent: July 27, 2010 11:00 AM
To: Mary Bernard
Subject: SWGTA-OGS / Issues-Briefing Note - Revised
Importance: High

Mary,

As promised. I've greatly simplified and abbreviated the overview to hit on only the essential elements. I've also introduced a refinement from the NYR-YEC note to make the chronology of events easier to digest.

Please let me know what else you need on this file.

Thanks,
Mark

In the interest of reducing e-mail clutter, please assume my thanks for your response.

Mark Dodick | Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Ste. 1600 | Toronto | Ontario | M5H 1T1 | (416) 969-6083 | www.powerauthority.on.ca | mark.dodick@powerauthority.on.ca



Southwest GTA – Oakville Generating Station

July 27, 2010 (sc edits Aug 23) (Derek Sept 13)

Overview

As directed by the Ministry of Energy and Infrastructure, the Ontario Power Authority (OPA) is competitively ~~procuring~~ procured a new 900-MW gas-fired generating station to supply the rapidly growing Southwest GTA. It will support local electricity needs and Ontario's transition to renewable but intermittent sources of energy. TransCanada ~~is has been contracted to building and operating~~ operate the Oakville Generating Station (OGS), which is scheduled to begin ~~operating on at the end of 2013~~ in early 2014. The project has been opposed by the local community, specifically through C4CA (Citizens for Clean Air) for a variety of reasons, and the local MPP, who is seeking to legislate a buffer zone around natural gas-fired plants. Oakville and Mississauga have passed zoning bylaws and local environmental controls to thwart the project. An alternative location at Nanticoke has been proposed by activists from several communities. An air quality task force appointed by the Ministry of the Environment has delivered recommendations that, if accepted, may affect the facility's viability. Legal action brought by TransCanada to override local impediments is being adjudicated.

The project has been and will be subject to public and media scrutiny throughout its entire development lifecycle. The OPA must be prepared to communicate effectively on an ongoing basis in the face of continuing local opposition and other sources of uncertainty.

Background

- In November 2006, the Southwest GTA generation project was first presented in series of IPSP discussion papers. The first IPSP was filed in August 2007 and stated clearly an urgent requirement to address new supply needs for SWGTA.
- Although aggressive conservation measures are envisioned as part of the solution, alone they cannot address the supply needs of an area that is growing much faster than others in the province, particularly given the closure of the Lakeview coal-fired generating plant.
- The electrical boundary of the SWGTA is basically defined as southern Mississauga, southeast Oakville and southwest Toronto, near the transmission corridor from the Oakville to Manby stations.
- Throughout 2008 and 2009, the OPA engaged in extensive public outreach to communicate about the need and potential plans for providing new supply for the SWGTA. On August 18, 2008, Minister of Energy and Infrastructure George Smitherman issued a directive to the OPA to procure a new gas-fired generating plant of about 850 MW for the Southwest GTA. It is to be operational at the end of December 2013.

Southwest GTA - Oakville Generating Station (sc)(Derek)Southwest GTA – Oakville Generating Station
(sc)Southwest GTA – Oakville Generating Station

- March 30, 2009, Town of Oakville council approved an ICBL to grant itself additional discretionary powers over the possibility of a new generating station being situated within its jurisdiction.
- After delaying the announcement of the winning proponent (to address environmental concerns), the OPA announced on September 30, 2009 that it had chosen TransCanada to build the new Oakville Generating Station (OGS). TransCanada plans to situate the facility on industrial land owned by Ford on Royal Windsor Drive, just east of the Queen Elizabeth Way (QEW) in Oakville.
- October 6, 2009, C4CA (Citizens for Clean Air) is formed and becomes the leading Oakville-based activist organization to oppose the OGS. It is supported by MIRANET, the Mississauga Ratepayers Network as well as other local ratepayer organizations. C4CA has organized various protest / information / fund raising events and maintains a website to coordinate its activities (<http://www.c4ca.org/>). C4CA opposition focuses on proximity and safety issues, and health and environmental impact.
- November 24, 2009, in response to local concerns about the environmental impact of the new facility, the Ministry of the Environment appoints Dr. David Balsillie to lead a one-person task force on air quality and to report on his findings and recommendations by Jun 30, 2010.
- February 7, 2010, a natural gas-fired power plant under testing and construction commissioning in Middletown, CT explodes. The event is cited to by C4CA as a reason why its siting close to railroad tracks, homes, schools and other structures is "illogical."
- Both Oakville and Mississauga pass bylaws in 2010 intended to restrict the location of generation facilities within their jurisdictions; both pass bylaws placing controls on PM 2.5 that would affect the OGS. Oakville has also organized a series of open houses in support of its own planning initiative: "Land Use Policy for Power Generation & Cogeneration Facilities." No conclusion has been reached or made public yet on this initiative.
- March 22, 2010, Oakville MPP Kevin Flynn introduced a private member's bill (Bill 8 – Separation Distances for Natural Gas Power Plants Act) to place limits on the siting of the OGS. The bill received support from all parties and was referred to the Committee of General Government following its second reading on April 22nd; it has not advanced since.
- Groups opposed to the OGS, Mayors of the affected communities and the Mayor of Haldimand County propose Nanticoke (which is scheduled to close) as a willing alternative site for hosting the SWGTA power facility. The OPA does not endorse this alternative as it will not address the compelling supply needs for the area and is likely to generate additional pollution given its distance from load centres.
- June 25, 2010, Dr. Balsillie issues his final report and action plan. Two recommendations may have a direct impact on the OGS; however, their implications have not been addressed by the Ministry of Energy and Infrastructure or by the OPA as of this note.
- While the intensity of coverage about the OGS has diminished as summer progressed, C4CA is likely to garner local media notice for its activities. Attention to the matter is likely to resume in the fall (if not sooner) as the legislature resumes sitting, a response is prepared to the Balsillie report, and a decision is rendered on the project by the Ministry and in the courts on TransCanada's case for moving forward.

Key Messages

The Ontario Power Authority continues to support its procurement decision as it remains the best option for meeting the future electricity supply needs of the Southwest GTA.

Southwest GTA - Oakville Generating Station (sc)(Derek)Southwest GTA - Oakville Generating Station
(sc)Southwest GTA - Oakville Generating Station

When all facts are examined, the Oakville Generating Station is the best solution to the electricity needs for the Southwest GTA, and for enabling Ontario as a whole to get off dirty coal-fired generation. Nanticoke is not a viable alternative. It will cost much more and produce more pollution. Our original analysis of other alternatives – e.g., long transmission lines – is valid: they are disruptive, costly and won't provide the value that ratepayers are seeking. ~~Gas~~**Natural gas**-fired generation is a clean option that has worked in other jurisdictions and is the optimal answer for SWGTA's electricity supply needs.

Comment (DL): You may want to add supply reliability is reduced because of dependency on transmission. Local supply is always more reliable.

We believe Dr. Balsillie's recommendations can be implemented while proceeding with this much needed source of new supply. We will work with all parties to find solutions. Only two of Dr. Balsillie's 35 recommendations affect the Oakville Generating Station. We are confident that the OGS can still provide the new source of electricity supply that is badly needed by the Southwest GTA and that is required to help Ontario get rid of dirty coal-fired generation. Our original announcement of the OGS included a commitment to invest up to \$30 million over five years on a new industrial energy efficiency program to reduce both electricity and **natural** gas consumption in the southwest GTA. We are committed to work with all involved parties to find solutions to the local electricity need that respect Dr. Balsillie's recommendations.

The Oakville Generating Station will not only provide supply to the Southwest GTA but will also help us turn off all coal-fired generation – that cleans the air for all Ontarians. The Oakville Generating Station is a key part of the solution to local supply needs and Ontario's plans to stop all coal-fired electricity generation by the end of 2014. We are making progress towards getting off coal and will see a total of four units in two facilities stop running this fall. Ontario's closure of its coal-fired plants is the single largest climate change initiative in [North America.] The OGS will support the clean, renewable but intermittent energy coming on line through Ontario's path-breaking Feed-in Tariff program. It is part of an integrated approach to creating a sustainable electricity future for the province.

Questions & Answers

The directive calls for the new generating station to be in service by December 31, 2013; however, the TransCanada website states that it will be operational in February 2014. Is this permitted? What is the impact on Ontario's electricity planning from this delay?

ANSWER TO COME

~~Contract Management to provide answer – Derek Leung~~ This delay is permitted because of delays in contract execution. The current plan to shut down all dirty coal-fired plants is end of 2014 therefore if the project is proceed as planned, we do not expect any impact on the Ontario electricity system. However, if further delays are anticipated, we will need to assess the situation again.

What is the status of the court case brought by TransCanada seeking to remove Town of Oakville bylaws that are frustrating its ability to proceed with construction?

ANSWER TO COME

~~Contract Management to provide answer – Derek Leung~~

TransCanada filed a Quash Application related to Liveable Oakville on June 22 as the Town of Oakville has not amended Liveable Oakville to remove the Official Plan Amendment No. 296 language that was overturned by the OMB on December 4, 2009

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TransCanada filed a Quash Application for the Interim Control Bylaw No. 2009-065 (ICBL) on March 29 and another Quash Application for the Health Protection Bylaw on June 18; court has ruled that the applications regarding the ICBL and Health Protection Bylaw will be heard together later in 2010, currently scheduled to start on December 21

TransCanada received a letter from the Town of Oakville on June 30 in connection with the 1952 Agreement between Ford and the Town regarding the use of water intake and outflow pipes from the lake; the Town of Oakville contends that the proposed use is contrary to the Agreement; TransCanada is reviewing the letter

Comment [DL2]: These 3 bullets are lifted from the Q2 report you may want to change the way that they are presented

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Why doesn't the OPA just walk away from this project and find an alternative solution that is less problematic?

We continue to support our procurement decision as it is the best option for meeting the future electricity supply needs of the Southwest GTA. When all facts are examined, the Oakville Generating Station is the best solution to the electricity needs for the Southwest GTA, and for enabling Ontario as a whole to get off dirty coal-fired generation. Nanticoke is not a viable alternative. It will cost much more and produce more pollution. Our original analysis of other alternatives – e.g., long transmission lines – is valid: they are disruptive, costly and won't provide the value that ratepayers are seeking. Gas-fired generation is a clean option that has worked in other jurisdictions and is the optimal answer for SWGTA's electricity supply needs.

Comment [DL3]: You may want to consider adding the same comment as mentioned above in DL1

Two of the recommendations made by Dr. Balsillie seem to apply to the OGS. What are their exact implications for the project? Could they stop it entirely in its tracks?

We believe Dr. Balsillie's recommendations can be implemented while proceeding with this much needed source of new supply. We will work with all parties to find solutions. Only two of Dr. Balsillie's 35 recommendations affect the Oakville Generating Station. We are confident that the OGS can still provide the new source of electricity supply that is badly needed by the Southwest GTA and that is required to help Ontario get rid of dirty coal-fired generation. Our original announcement of the OGS included a commitment to invest up to \$30 million over five years on a new industrial energy efficiency program to reduce both electricity and gas consumption in the southwest GTA. We are committed to work with all involved parties to find solutions to the local electricity need that respect Dr. Balsillie's recommendations.

When do you expect to get clear direction from the Ministries of the Environment and of Energy and Infrastructure on if you should proceed and how? What are the implications of a delay in getting a decision?

ANSWER TO COME

There are regular dialogues between the OPA and these ministries and at this moment we are still working on the matter. Further delays might contribute to the need of temporary alternate solutions including but not limited to replacement power. The cost of the temporary solutions would have to be paid for by the Ontario electricity ratepayers.

Southwest GTA - Oakville Generating Station (sc)(Derek)Southwest GTA - Oakville Generating Station (sc)Southwest GTA - Oakville Generating Station

If the OPA was directed to find an alternative to the OGS, what are the cost implications of having to shut down this project and start a new one? How much compensation would TransCanada get?

ANSWER TO COME

At this moment, there is no indication that we will be directed to find an alternative therefore we have not assessed the cost implications. Since OGS is the best and most economical solution for Ontario electricity ratepayers any alternatives will just add costs to our ratepayers.

If the government reconsidered and gave the OPA a directive to put the plant somewhere else or find another solution, what would be your second and third choices?

We continue to support our procurement decision as it is the best option for meeting the local electricity supply needs of the Southwest GTA. When all facts are examined, the Oakville Generating Station is the best solution to the electricity needs for the Southwest GTA, and for enabling Ontario as a whole to get off dirty coal-fired generation. It is a given that we would respond to a change in direction on any matter for which the government has ultimately responsibility to the people of Ontario. We cannot speculate on alternatives as we continue to support the existing solution as the optimal option for the benefit of ratepayers.

What implications does the Balsillie report have for other OPA projects that require natural gas-fired electricity generation—e.g., York Energy Centre, CHP, CESOP, etc., and for the next IPSP?

ANSWER TO COME Derek hasn't read the report therefore cannot provide any input. It might be better for Communications to draft an answer.

Was the explosion at the Manby transmission station this summer a consequence of supply issues in the SWGTA? Would the OGS prevent it from happening again?

ANSWER TO COME

Hydro One is investigating the matter therefore it is inappropriate for the OPA to provide any comments at this moment

If there are significant further delays in proceeding with the OGS, will it cause a failure to meet the closure of all coal-fired generation by the 2014 deadline?

ANSWER TO COME To incorporate Key Message Number Three

The government is committed to close all coal-fired power plants to improve the quality of life of the Ontarians. Closing of these plants will proceed as planned. If there are further delays, the OPA will develop temporary solutions to meet the near-term needs.

####

Corporate Communications:	Mary Bernard, Kristin Jenkins
Subject Matter Expert:	Derek Leung and Shawn Cronkwright

Southwest GTA - Oakville Generating Station (sc)(Derek)Southwest GTA - Oakville Generating Station
(sc)Southwest GTA - Oakville Generating Station

Christine Lafleur

From: Mary Bernard
Sent: Tuesday, September 21, 2010 11:17 AM
To: Kristin Jenkins
Subject: FW: Current issues note on SWGTA
Attachments: Southwest GTA - Oakville Generating Station Sept. 20.doc

To avoid any confusion, this is the note I sent to you yesterday that requires your review.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Mary Bernard
Sent: September 20, 2010 2:41 PM
To: Kristin Jenkins
Cc: Mark Dodick
Subject: Current issues note on SWGTA

Kristin – for your review, attached is the current issues note on SWGTA.

It has been reviewed by Sean Cronkwright and Derek Leung, and their revisions have been incorporated.

We didn't see any media coverage of the TransCanada third-party report on the safety of the plant, so if that report was released, please advise and we will update accordingly.

Also, please advise if this requires any further review, e.g., by Ben or Colin.

Many thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

Southwest GTA – Oakville Generating Station

For internal use only

September 20, 2010

Overview

As directed by the Ministry of Energy and Infrastructure, the Ontario Power Authority (OPA) competitively procured a new 900-MW gas-fired generating station to supply the rapidly growing Southwest GTA. It will support local electricity needs and Ontario's transition to renewable but intermittent sources of energy. TransCanada has been contracted to build and operate the Oakville Generating Station (OGS), which is scheduled to begin operation in early 2014.

The project has been opposed by the local community, specifically through Citizens for Clean Air (C4CA) for a variety of reasons, as well as the local MPP, who is seeking to legislate a buffer zone around natural gas-fired plants. Oakville and Mississauga have passed zoning bylaws and local environmental controls to thwart the project. An alternative location at Nanticoke has been proposed by activists from several communities. An air quality task force appointed by the Ministry of the Environment has delivered recommendations that, if accepted, may affect the facility's viability. Legal action brought by TransCanada to override local impediments is being adjudicated.

The project has been and will be subject to public and media scrutiny throughout its entire development lifecycle. The OPA must be prepared to communicate effectively on an ongoing basis in the face of continuing local opposition and other sources of uncertainty.

Key Messages

The Ontario Power Authority continues to support its procurement decision as it remains the best option for meeting the future electricity supply needs of the Southwest GTA.

- When all facts are examined, the Oakville Generating Station is the best solution to the electricity needs for the Southwest GTA, and for enabling Ontario as a whole to get off dirty coal-fired generation.
- Nanticoke is not a viable alternative. It will cost much more and produce more pollution. Our original analysis of other alternatives – e.g., long transmission lines – is valid: they are disruptive, costly and won't provide the value that ratepayers are seeking. Local supply is always more reliable – supply reliability is reduced with dependency on transmission.
- Natural gas-fired generation is a clean option that has worked in other jurisdictions and is the optimal answer for SWGTA's electricity supply needs.

We believe Dr. Balsillie's recommendations can be implemented while proceeding with this much needed source of new supply. We will work with all parties to find solutions.

- Only two of Dr. Balsillie's 35 recommendations affect the Oakville Generating Station.
- We are confident that the OGS can still provide the new source of electricity supply that is badly needed by the Southwest GTA and that is required to help Ontario get rid of dirty coal-fired generation.
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- We are making progress towards getting off coal and will see a total of four units in two facilities stop running this fall.
- Ontario's closure of its coal-fired plants is the single largest climate-change initiative in North America.
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- This delay is permitted because of delays in contract execution.
- The current plan to shut down all dirty coal-fired plants is end of 2014 therefore if the project proceeds as planned, we do not expect any impact on the Ontario electricity system.
- However, if further delays are anticipated, we will need to assess the situation again.

What is the status of the court case brought by TransCanada seeking to remove Town of Oakville bylaws that are frustrating its ability to proceed with construction?

As we have reported in the OPA's Q2 progress report on electricity supply:

- TransCanada filed a Quash Application related to Liveable Oakville on June 22 as the Town of Oakville has not amended Liveable Oakville to remove the Official Plan Amendment No. 296 language that was overturned by the OMB on December 4, 2009.
- TransCanada filed a Quash Application for the Interim Control Bylaw No. 2009-065 (ICBL) on March 29 and another Quash Application for the Health Protection Bylaw on June 18; the court has ruled that the applications regarding the ICBL and Health

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- Since OGS is the best and most economical solution for Ontario electricity ratepayers any alternatives will just add costs to our ratepayers.

If the government reconsidered and gave the OPA a directive to put the plant somewhere else or find another solution, what would be your second and third choices?

- We cannot speculate on alternatives as we continue to support the existing solution as the optimal option for the benefit of ratepayers.
- Of course, we would respond to a change in direction on any matter for which the government has ultimately responsibility to the people of Ontario.

Was the explosion at the Manby transmission station this summer a consequence of supply issues in the SWGTA? Would the OGS prevent it from happening again?

- Hydro One is investigating the matter therefore it is inappropriate for the OPA to provide any comments at this moment.

If there are significant further delays in proceeding with the OGS, will it cause a failure to meet the closure of all coal-fired generation by the 2014 deadline?

- The government is committed to close all coal-fired power plants to improve the quality of life of the Ontarians.
- Closing of these plants will proceed as planned. If there are further delays, the OPA will develop temporary solutions to meet the near-term needs.

Background

- In November 2006, the Southwest GTA generation project was first presented in series of IPSP discussion papers. The first IPSP was filed in August 2007 and stated clearly an urgent requirement to address new supply needs for SWGTA.
- Although aggressive conservation measures are envisioned as part of the solution, alone they cannot address the supply needs of an area that is growing much faster than others in the province, particularly given the closure of the Lakeview coal-fired generating plant.
- The electrical boundary of the SWGTA is basically defined as southern Mississauga, southeast Oakville and southwest Toronto, near the transmission corridor from the Oakville to Manby stations.
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###

Corporate Communications:	Mary Bernard, Kristin Jenkins
Subject Matter Expert:	Derek Leung and Shawn Cronkwright

Christine Lafleur

From: Ben Chin
Sent: Thursday, October 07, 2010 12:14 PM
To: Tim Butters; Michael Lyle; Kristin Jenkins; Mary Bernard
Subject: Re: Toronto Star - Worried Liberals pull plug on Oakville gas plant

And obviously no calls back to media or comments until after minister finishes speaking

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

From: Tim Butters
To: Ben Chin; Michael Lyle; Kristin Jenkins
Sent: Thu Oct 07 12:10:39 2010
Subject: Toronto Star - Worried Liberals pull plug on Oakville gas plant

<http://www.thestar.com/news/canada/article/872042--worried-liberals-pull-plug-on-oakville-gas-plant>

Worried Liberals pull plug on Oakville gas plant

Sources say the Ontario government is backing down from plans to build a controversial gas-fired power plant in Oakville, which faced determined opposition from the community.

Energy Minister Brad Duguid will make the announcement Thursday at 1 p.m. with Oakville Liberal MPP Kevin Flynn, whose seat is in jeopardy in next October's provincial election if the plant goes ahead.

But the government's climb-down could cost taxpayers plenty.

"If the government or OPA kills the project they will be on the hook for hundreds of millions of dollars for incurred expenses and lost profits," warned one insider.

Another source told The Star there's a legal opinion that TransCanada, the private company under contract to build the plant, could sue the province for \$1 billion.

To justify its retreat, the Liberals are expected to say the plant was approved at a time when there "was a need to replace coal and to address needs of local reliability" for the electricity supply.

"This is no longer the case and there is no need for a gas plant in the southwest GTA" and electricity to meet the area's needs can now be carried in on transmission lines from elsewhere, a government insider said.

Another source called it a "that was then, this is now" scenario.

Ironically, the Oakville plant is being stalled while the government presses ahead with a controversial gas-fired plant in York Region on the environmentally sensitive Holland Marsh in a riding now held by the Progressive Conservatives.

The flip-flop on the Oakville plant should help Flynn and neighbouring Liberal MPP Charles Sousa (Mississauga South) - who is also expected for the announcement at an Oakville banquet hall near the proposed site - in the election next Oct. 6.

Oakville Mayor Rob Burton went on Twitter on Thursday morning to say: "I'm confident province will do the right thing on powerplant. Council and public used best steps w/ real evidence & consulting w/ Province."

Residents opposed to the plant got a lot of attention earlier this week when they paid famed California activist Erin Brockovich, who successfully fought a polluting California power company and became the subject of a movie, to attend several fundraising events to fight the plant.

The province announced the 900-megawatt natural gas power plant last year, saying it was part of Ontario's plan to phase out coal-fired electricity production

But residents complained the plant, next door to the Ford Motor Co. factory, would be too close - within a kilometre - of homes and schools and a threat to local air quality. Flynn the MPP fought his own government to take the side of the residents who formed a coalition called Citizens for Clean Air. He introduced a private members' bill to stop the plant.

Oakville resident Corina Van Sluytman said she is pleased the Liberals are backing off.

"This would mean my family and friends will be safer," said Van Sluytman, who lives 2.5 kilometres from the proposed site. "It's a crazy idea - to put a gas power plant across from a school. Anyone who likes clean air should celebrate this."

Brockovich called the scenario of having a plant so close to schools and homes "dangerous" and urged residents to keep fighting.

The plant was slated to open in 2014. Construction has been delayed by Oakville council amendments and bylaws. Citizens for Clean Air and the town of Oakville have suggested other locations like Nanticoke, near Lake Erie, where Haldimand Mayor Marie Trainer has said it would be welcomed.

Until now, the Ontario Power Authority had not budged and TransCanada has challenged the construction delays in court. The company maintains its project meets all safety standards.

The Citizens for Clean Air group lists 90 businesses and 18 community groups as supporters. Its board of directors would rival that of any major corporation: a former president of Microsoft Canada, a founder of the Weather Network, and a risk manager at a Canadian financial institution.

On its website <<http://www.c4ca.org/>> , the coalition asked residents to contribute between five and 10 per cent of their annual Oakville taxes to the fight. "If you pay \$6,000 in taxes, a \$600 donation works out to about two hours of work for the type of specialists that we need."

After her speech, Brockovich said the citizens of Oakville may "have more flat screens than the average person" but "they shouldn't be told to shut up because they have money."

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Confidential

Background

Trans Canada was awarded a 900 MW gas-fired generating facility (OGS) through an OPA competitive procurement in 2009. The OPA has described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Local reliability in the SWGTA remains a priority, and can now be addressed with significant transmission work that needs to be completed by 2017-2018. The other three needs in the list are more dependent on provincial demand and supply and the situation has changed since the 2007 IPSP. Provincial demand is lower than forecasted due to the success of conservation programs and the economic downturn, as well; the supply picture has changed with the significant uptake of new renewables through FIT and the growing potential of distributed generation in parts of the GTA. In total since 2005, some 8,000 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required in order to meet the 2014 coal closure date.

The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability. There is time to do further work to determine what if any generating facilities are required in the future.

Key Messages

The changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Communities in Southwest GTA still face local reliability issues, and they can be addressed with transmission work in the region.

The Ontario Power Authority works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.

Supporting Messages

Circumstances are different now compared to when the plant was first contemplated, and we have a responsibility to respond to changes that have happened since the 2007 IPSP.

Provincial demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy.

The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.

Since 2005, working with others the OPA has made good progress on restoring system reliability: generation capacity in Ontario has increased by 8000 MW and a more than 10,000 MW are under development.

That's the equivalent of adding the entire generating capacity of Alberta and Saskatchewan.

OGS was originally tasked with addressing local reliability, as well as three province-wide objectives: 2014 coal closure, restoring a balance of supply and demand in the GTA, and to provide a partner for intermittent renewables.

We have time, and the Minister's Long-Term Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

The needs of the Southwest GTA communities that we identified in 2007 still exist today.

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

The public will be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

The work of planning is done on a continuous basis at the Power Authority -- we constantly test our assumptions and monitor developments to respond to changing circumstances.

The Ontario Power Authority designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.

The OPA's procurements are designed to get the best competition and the best results for ratepayers -- both on cost and the environment.

Questions and Answers

1. The OPA has always said a gas plant in SWGTA is required, so what's changed?

As you know, the Minister of Energy today announced that the Oakville Generating Station will not be proceeding.

The changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Communities in Southwest GTA still face local reliability issues, and they can be addressed with transmission work in the area.

Provincial demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy.

The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.

Since 2005, working with others the OPA has made good progress on restoring system reliability: generation capacity in Ontario has increased by 8000 MW and a more than 10,000 MW are under development.

We have time, and the Minister's Long-Term Energy Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

2. What went wrong with OPA's procurement for SWGTA?

I'm proud of the work of our procurement division. They had a job to do and they designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.

The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.

Keep in mind, the need we identified in the Southwest GTA in 2007 still exists today. There is a system reliability issue that can be addressed with transmission work.

3. Did the OPA pick the wrong project?

The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment. The selection of the proponent was done based on clear and defined criteria, and by an independently-chaired panel.

Our procurement process did the job it was tasked to do, but circumstances have changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.

4. Does this mean Toronto needs a Third Line?

There is the potential for additional transmission requirements but this decision does not advance the case for a third transmission line into Toronto.

5. Where will a new plant go? North Oakville? Nanticoke? Kitchener-Waterloo?

We have time, and the Minister's Long-Term Energy Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

6. How come you've cancelled the plant in Oakville but not in Northern York Region?

Those are two different situations. As I've said, Southwest GTA's local reliability issues can be addressed through building transmission.

Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.

7. What's the cost of this decision to Ontario ratepayers/ How much more will this alternative cost?

We've said before that the cost of the transmission alternative is approximately \$200 M. Much of that would have been required at some future date. This project is not proceeding, but there will be other projects needed in the future to address different system requirements.

The costs of those projects will depend on the electricity needs. The Minister of Energy's Long Term Energy Plan will address those needs and projects. We are advising that process, and will subsequently be filing an Integrated Power System Plan with the Ontario Energy Board.

8. How much will the transmission project cost?

The cost of transmission project is estimated at \$200 M.

9. When will the transmission project start?

There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.

10. What's the route of the new transmission work?

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

11. How many homes will be affected?

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

12. Is Trans Canada being compensated for the cancellation of a billion dollar project?

TransCanada has long been an important part of Ontario's electricity sector, and we are in discussions with them. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

13. Is Trans Canada getting a backroom deal for another project later?

TransCanada has long been an important part of Ontario's electricity sector, and we are in discussions with them. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

14. Is the cancellation of this project being caused by Trans Canada's inability to win community/OMB/court approval?

No. It's fair to say the circumstances have changed since the 2007 IPSP, when we identified a local need in SWGTA for a generating facility and also provincial needs for coal closure and other system benefits.

Local area needs still have to be addressed, and transmission work can meet that need.

However, the provincial energy landscape has changed, partially because of reduced demand through conservation, and global economic conditions, and partially through the success of our Feed-In Tariff program for renewable energy, and the work we've done to help add 8,000 MW of supply since 2005.

Considered together, it means the plant is no longer required to ensure coal closure in the province by 2014.

The plant was also contemplated to help balance supply and demand in the GTA, but we see greater prospects for district energy in the region than we did before the Green Energy and Green Economy Act.

It means there is time and opportunity to make the best choices that will address real needs today and tomorrow.

15. Why not let Trans Canada's competitors try to build a plant in SWGTA?

Communities in the SWGTA do have a need for local reliability. We identified it in the 2007 IPSP, and it is still true today. We believe those needs can be addressed through transmission work.

16. Will the losing proponents from the SWGTA procurement be compensated for their time and money?

No, the procurement process has run its course and has been completed.

17. Is the OPA bowing to local opposition to the gas plant?

No. The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

Let's go back to first principles, of why and how we plan for generating facilities. OGS was originally tasked with addressing local reliability, as well as three province-wide objectives: 2014 coal closure, restoring a balance of supply and demand in the GTA, and to provide a partner for intermittent renewables.

Demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy, and because of the work undertaken since 2005 to add 8,000 MW of generating capacity in Ontario.

As well, there are alternatives in balancing supply and demand in the GTA. For instance, the prospects for district energy are much greater today than before the Green Energy and Green Economy Act.

We identified the need for local reliability in the Southwest GTA in 2007, and that need still exists today.

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

18. Is this a case of a wealthy, well-funded opposition group getting what it wants?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

19. Are you compromising reliability for political expediency?

No. The Minister of Energy today announced that the Oakville Generating Station will not be progressing because of changing circumstances identified in the Long Term Energy Plan process.

Our evidence supports that view.

20. Is the OPA bowing to political pressure from the government?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

21. Are you conceding that gas plants are not safe?

Gas plants are safe, and have demonstrated a strong safety record in Ontario. The gas fleet in Ontario is a good source of cleaner electricity as we close down coal plants and add renewable energy resources.

22. How many more gas plants are required in Ontario?

The Minister's Long-Term Energy Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

22. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

Communities in the SWGTA still have needs in terms of local reliability, and we believe that transmission projects can meet those needs.

In terms of provincial needs, the changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Provincial demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy.

The prospects for district energy in the GTA are more promising today than before the Green Energy Act.

Since 2005, working with others the OPA has made good progress on restoring system reliability: generation capacity in Ontario has increased by 8000 MW and a more than 10,000 MW are under development.

That's the equivalent of adding the entire generating capacity of Alberta and Saskatchewan.

All of that progress means, the Ontario is in good shape and has time to consider alternatives through the planning process initiated by the Minister of Energy.

Christine Lafleur

From: Ben Chin
Sent: Thursday, October 07, 2010 1:01 PM
To: Kristin Jenkins; Mary Bernard; Tim Butters
Subject: FW: URGENT - Review needed by NOON TODAY - SW GTA docs
Attachments: SWGTA_NR_Oct6_10am_MO_CLEAN.doc; SWGTA_NR_V6 - 503 PO_Aj_markup.doc; SWGTA_Qs_Oct6_10am_AJ.doc; SWGTA remarks - 20101006_10am - AJ.doc

Importance: High

I guess these are ministry finals



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From: Lewyckyj, Maryanna (MEI) [mailto:Maryanna.Lewyckyj@ontario.ca]
Sent: October 6, 2010 10:43 AM
To: McKeever, Garry (MEI); Jennings, Rick (MEI); Perun, Halyna N. (MEI); Calwell, Carolyn (MEI); Amir Shalaby; Colin Andersen
Cc: Ben Chin; Powers, Kevin (MEI); Cooper, Linda (MEI); Kulendran, Jesse (MEI)
Subject: URGENT - Review needed by NOON TODAY - SW GTA docs
Importance: High

Attached are a news release (clean and marked up) as well as Q&As and remarks that need to be reviewed by **NOON TODAY**.

Please flag any errors in fact or messaging.

I'm also sending the news release and QAs as straight text to assist with any reviews that must be done on BlackBerry.

Maryanna Lewyckyj
Senior Communications Advisor
Ministries of Energy and Infrastructure

Tel: 416-327-0390
Cell: 416-705-9736

Oakville Power Plant Not Moving Forward
McGuinty Government to Invest in Transmission to Meet Local Power Demands

Ontario is taking action to keep the lights on in Southwest Greater Toronto Area homes and businesses without the construction of a proposed natural gas plant in Oakville.

When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the area. Since then changes in demand and supply – including 8,000 MW of new, cleaner power and successful conservation efforts – have made it clear this proposed natural gas plant is no longer required. Transmission investments are being proposed to ensure that the growing region will have enough electricity to meet future needs of homes, hospitals, schools and businesses.

The government is currently updating Ontario's Long-Term Energy Plan to ensure a strong, reliable, clean and cost-effective electricity system that eliminates reliance on dirty coal.

QUOTES

"As we're putting together an update to our Long-Term Energy Plan, it has become clear we no longer need this plant in Oakville. With transmission investments we can keep the lights on and still shut down all dirty coal-fired generation."

- Hon. Brad Duguid, Minister of Energy

"I'm delighted to share this news with the community...."

-Kevin Flynn

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty smog-producing coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

Key Messages:

- Ontario is taking action to keep the lights on in Ontario homes and businesses. We've brought over 8,000 MW of new cleaner power online and upgraded over 5000km of transmission and distribution. We just shut down four more units of dirty coal-fired generation, four years ahead of schedule.
- Our plan in working to build a more reliable and cleaner energy system.
- We are in the process of updating our Long-Term Energy Plan, to be released later this fall.
- Today, I am here to announce that, at this point in the development of the new Energy Plan, I am confident that the province no longer needs a 900 MW gas plant in Oakville.
- The proposed Oakville gas plant will not proceed and will not be relocated elsewhere in the GTA.

- The Long-Term Energy Plan will show that changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources have all strengthened overall supply.
- Ontario's electricity system is cleaner and more reliable than it was four years ago when the need for this plant was first identified
- As a result, local power needs can be accommodated by investments in transmission, rather than building a new gas plant.
- We look forward to delivering an updated Long-Term Energy Plan that will ensure that Ontario continue to build a strong, reliable and clean energy system that will keep the lights on here in Oakville and in communities across Ontario.

Questions and Answers

Q1. Are you moving this gas plant because of health and safety concerns raised by the community?

No. The main reason we are not moving ahead with the construction of this plant is because circumstances have changed and we no longer need the power it would have provided to ensure local system reliability. The need for reliability continues to exist and we believe this can be met with a transmission solution.

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation, in Ontario's electricity supply mix.

Q2. How much will this cost ratepayers? How much will this increase the electricity bill of an average ratepayer?

We are here today to convey to the community that we are not moving forward with a gas plant to meet the energy requirements of the area.

We recognize how important this issue is to the people of this community, which is why we are making this announcement today.

This plant is not required anymore – it was going to cost over \$1 billion.

Our Long Term Energy Plan will provide a costing of the necessary investments to keep the lights on in communities like Oakville and phase out dirty coal generation.

I will be presenting our updated Plan later this fall.

Q3. What is the status of the contract with TransCanada? Are you terminating it today?

We no longer need a gas plant in the South-West GTA. We are discussing the effect of that determination with TransCanada.

TransCanada has long been an important part of Ontario's electricity sector. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

Q4. Do you expect to be sued by TransCanada?

We have a very positive working relationship with TransCanada and look forward to continuing to work with TransCanada. We continue to be in discussion with them.

Q5. Does this mean you are going to sole-source a new gas plant to TransCanada?

There are a number of alternative ways of meeting the energy needs that would have been supplied by the Oakville Plant. The LTEP will have more to say on the role of gas and other types of generation in Ontario's supply mix.

Q6. Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?

No. There are no plans to locate the plant in Mississauga or elsewhere in the GTA. We are currently in the process of developing our Long Term Energy Plan and details about generation and transmission decisions will be forthcoming in that plan.

Q7. Can you confirm the plant will be located in Nanticoke? Will you run an open competition for the site?

There are a number of alternative ways of meeting the energy needs that would have been supplied by the Oakville Plant. We are in the process of examining those alternatives through our Long Term Energy Planning process.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

Q8. Does this mean you will need to build more transmission in the GTA?

Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - more information will be forthcoming shortly.

Q9. Will you start a new procurement process to site a new plant?

Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - more information will be forthcoming shortly.

Q10. The OPA has always said a gas plant in SWGTA is required, so what's changed? As recently as this spring your government was talking about how this plant was critically needed. Now you are backing away?

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources have all strengthened overall supply. As a result, local power needs can be accommodated by investing in transmission, rather than building a new gas plant.

Q11. Is the government bowing to local opposition to the gas plant?

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

We can meet reliability needs and close coal plants in Ontario by 2014, without building a generating facility in this area. The Long-Term Energy Plan will show that since this proposed plant was first contemplated there have been changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources. As a result, local power needs can be accommodated by transmission investments, rather than building a new gas plant.

Q12. Is this a case of a wealthy, well-funded opposition group getting what it wants?

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area. We will be able to meet the energy needs of the region through other alternatives.

Q13. How many more gas plants are required in Ontario?

The Long-term Energy Plan will have more to say on the role of natural gas – and other types of generation in Ontario's supply mix. I am here today to provide certainty to the community that this proposed plant is no longer needed because of the progress we have made.

Q14. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

Our government will ensure that long-term reliability is achieved in this region and across Ontario. We've already brought online more than 8,000 MW of new cleaner power. Local power needs for this area can be accommodated through transmission investments, rather than building a new gas plant.

Q15. Weren't transmission improvements an option in 2007? Have things really changed that much?

Demand for power has changed significantly in the past four years. In addition the supply picture has improved because of the work undertaken since 2003 to add more than 8,000 MW of generating capacity in Ontario. We've also had a tremendous response to our Feed-In Tariff program for renewable energy.

Our government will ensure that long-term reliability is achieved in this region. Local power needs can be accommodated through transmission investments, rather than building a new gas plant.

Q16. Does this mean Toronto needs a Third Line?

The Long-term Energy Plan will have more to say about transmission needs. Today's announcement does not advance the case for a third transmission line into Toronto.

Q17. How come you've cancelled the plant in Oakville but not in Northern York Region?

These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission.

The need for new reliable electricity generation in northern York Region has been an issue for several years. Any interruption in the supply or distribution could have serious and widespread impacts and affect power supply to residences, businesses and institutions like hospitals and schools.

Q18. What exactly would the transmission work involve? Are these upgrades? Additional lines? A smarter grid?

No decisions have been made yet. We will review local needs as part of the Long-Term Energy Plan review.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

There are existing transmission corridors into the area. There are a number of options available for transmission investments that could meet future needs of the area. I'm here today to say that the gas plant is not moving forward.

Q19. If new lines are required, where will they go?

No decisions have been made yet.

And we have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA. The substantial investments we have made in the past seven years to bring new generation online has given us that time.

The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and as much as is feasible, along existing transmission corridors.

Q20. Why are you announcing this now while consultations are ongoing for your so-called plan?

We'll be presenting our updated Long-Term Energy Plan later this year. The plan will speak to how we will continue to ensure there is enough power to keep the lights on in Ontario homes and businesses. Our government is listening to Ontarians as we develop this plan.

I'm here today to provide certainty that this proposed plant will not be moving forward.

Oakville Power Plant Not Moving Forward

McGuinty Government to Invest in Transmission to Meet Local Power Demands

NEWS

October 7, 2010

Ontario is taking action to keep the lights on in Southwest Greater Toronto Area homes and businesses without the construction of a proposed natural gas plant in Oakville.

When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the area. Since then changes in demand and supply – including 8,000 MW of new, cleaner power and successful conservation efforts – have made it clear this proposed natural gas plant is no longer required. Transmission investments are being proposed to ensure that the growing region will have enough electricity to meet future needs of homes, hospitals, schools and businesses.

The government is currently updating Ontario's Long-Term Energy Plan to ensure a strong, reliable, clean and cost-effective electricity system that eliminates reliance on dirty coal.

QUOTES

"As we're putting together an update to our Long-Term Energy Plan, it has become clear we no longer need this plant in Oakville. With transmission investments we can keep the lights on and still shut down all dirty coal-fired generation."

- Hon. Brad Duguid, Minister of Energy

"I'm delighted to share this news with the community...."

-Kevin Flynn

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty smog-producing coal-fired generation on October 4, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

Read about the update to [Ontario's Long-Term Energy Plan](#) and [how to offer your views](#).

[Learn more about renewable energy in Ontario.](#)

[Find out about how Ontario is phasing out coal-fired generation.](#)

Key Messages:

- Ontario is taking action to keep the lights on in Ontario homes and businesses. We've brought over 8,000 MW of new cleaner power online and upgraded over 5000km of transmission and distribution. We just shut down four more units of dirty coal-fired generation, four years ahead of schedule.
- Our plan is working to build a more reliable and cleaner energy system.
- ~~As many of you may have heard, the province is in the~~ We are in the process of updating ~~its~~ our Long-Term Energy Plan. ~~It is the intention of the government to release this revised plan later this Fall, to be released later this fall.~~ ← -- -- Formatted: Bullets and Numbering
- Today, I am here to announce that, at this point in the development of the new Energy Plan, I am confident that the province no longer needs a 900 MW gas plant in ~~the South-West GTA.~~ Oakville.
- ~~Accordingly,~~ The proposed Oakville gas plant will not proceed and will not be relocated elsewhere in the GTA.
- The Long-Term Energy Plan will show that ~~since the last IPSP,~~ changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources have all strengthened overall supply.
- Ontario's electricity system is cleaner and more reliable than it was four years ago when the need for this plant was first identified ← -- -- Formatted: Bullets and Numbering
- ~~We've brought over 8,000 MW of new cleaner power online.~~ As a result, local power needs can be accommodated by ~~reinforcing investments in~~ transmission, rather than building a new gas plant. ← -- -- Formatted: Bullets and Numbering
- We look forward to delivering an Further details will be included in the updated Long-Term Energy Plan that will ensure that Ontario continue to build a strong, reliable and clean energy system that will keep the lights on here in Oakville and in communities across Ontario, but suffice to say that the Ontario electricity system is cleaner and more reliable than it was four years ago when the need for this plant was first identified.

Questions and Answers

Q1. —Are you moving this gas plant because of health and safety concerns raised by the community?

No. The main reason we are not moving ahead with the construction of this plant is because circumstances have changed and we no longer need the power it would have provided to ensure local system reliability. The need for reliability continues to exist and we believe this can be met with. The primary rationale is that the power this plant was to provide is no longer needed to ensure local system reliability. We believe the local reliability needs can be met through a transmission solution.

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation, in Ontario's electricity supply mix.

Q2. —How much will this cost ~~tax-rate~~ payers? How much will this increase the electricity bill of an average ratepayer?

~~We will have further details when we announce our Long Term Energy Plan. We are here today to convey to the community that we are not moving forward with a gas plant to meet the energy requirements of the area.~~

~~We will include a full costing of the Long Term Energy Plan when it is released. This change is an important part of the updated plan.~~

~~We recognize how important and topical this issue is to the people of this community, which is why we are making this announcement today.~~

~~This plant is not required anymore — it was going to cost over \$1 billion.~~

Our Long Term Energy Plan will provide a costing of the necessary investments to keep the lights on in communities like Oakville and phase out dirty coal generation.

I will be presenting our updated Plan later this fall.

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Q3. —What is the status of the contract with TransCanada? Are you terminating it today?

We no longer need a gas plant in the South-West GTA. We are discussing the effect of that determination with TransCanada.

TransCanada has long been an important part of Ontario's electricity sector. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

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Q4. —Do you expect to be sued by TransCanada?

We ~~enjoy~~ have a very positive working relationship with TransCanada and look forward to continuing to work with TransCanada. We continue to be in discussion with them.

Q5. —Does this mean you are going to sole-source a new gas plant to TransCanada?

There are a number of alternative ways of meeting the -energy needs that would have been supplied by the Oakville Plant. The LTEP will have more to say on the role of gas and other types of generation in Ontario's supply mix.

Q6. —Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?

No. There are no plans to locate the plant in Mississauga or elsewhere in the GTA. We are currently in the process of developing our Long Term Energy Plan and details ~~around whereabout~~ generation and transmission decisions will be forthcoming in that plan.

Q7. Can you confirm the plant will be located in Nanticoke? Will you run an open competition for the site?

There are a number of alternative- ways of meeting the- energy needs that would have been supplied by the -Oakville Plant. We are in the process of examining those alternatives -through our Long Term Energy Planning process.

—Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

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Q8. Does this mean you will need to build more transmission in the GTA?

Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - ~~these sorts of details~~ more information will be forthcoming shortly.

Q9. Will you start a new procurement process to site a new plant?

—Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - more information will be forthcoming shortly.

~~We are examining a number of alternative ways to meet the energy needs that would have been met by the Oakville plant.~~

Q10. The OPA has always said a gas plant in SWGTA is required, so what's changed? As recently as this spring your government was talking about how this plant was critically needed. Now you are backing away?

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In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources have all strengthened overall supply. As a result, local power needs can be accommodated by reinforcing investing in transmission, rather than building a new gas plant.

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Q11. Is the government bowing to local opposition to the gas plant?

In the process of updating our Long-Term Energy plan it is has become clear that conditions have changed anding circumstances no longer require a gas plant is no longer required in the area.

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Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

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We can meet reliability needs and close coal plants in Ontario by 2014, without building a generating facility in this area. The Long-Term Energy Plan will show that since this proposed plant was first contemplated there have been changes in regional demand, greater uptake of our conservation programs and increased supply from other generation sources. As a result, local power needs can be accommodated by transmission investments, rather than building a new gas plant.

Q12. Is this a case of a wealthy, well-funded opposition group getting what it wants?

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area. We will be able to meet the energy needs of the region through other alternatives.
~~As we update our Long-Term Energy plan it is clear that changing circumstances no longer require a gas plant in the area.~~

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Q13. How many more gas plants are required in Ontario?

The Long-term Energy Plan will have more to say on the role of natural gas – and other types of generation in Ontario's supply mix. I am here today to provide certainty to the community that this proposed plant is no longer needed because of the progress we have made.

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Q14. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

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Our government will ensure that long-term reliability is achieved in this region and across Ontario. We've already brought online more than 8,000 MW of new cleaner power. Local power needs for this area can be accommodated through transmission investments, rather than building a new gas plant.

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Q15. Weren't transmission improvements an option in 2007? Have things really changed that much?

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Demand for power has changed significantly in the past four years. In addition the supply picture has changed because improved because of the work undertaken since 2003 to add more than 8,000 MW of generating capacity in Ontario. We've also had a tremendous response to our Feed-In Tariff program for renewable energy.

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Our government will ensure that long-term reliability is achieved in this region. Local power needs can be accommodated through transmission investments, rather than building a new gas plant.

Q16. __Does this mean Toronto needs a Third Line?

The Long-term Energy Plan will have more to say about transmission needs. Today's announcement does not advance the case for a third transmission line into Toronto.

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Q17. __How come you've cancelled the plant in Oakville but not in Northern York Region?

These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission. ~~Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability~~ The need for new reliable electricity generation in northern York Region has been an issue for several years. Any interruption in the supply or distribution could have serious and widespread impacts and affect power supply to residences, businesses and institutions like hospitals and schools.

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Q18. __What exactly would the transmission work involve? Are these upgrades? Additional lines? A smarter grid?

No decisions have been made yet. We will review local needs as part of the Long-Term Energy Plan review.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

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There are existing transmission corridors into the area. There are a number of options available for transmission investments that could meet future needs of the area. I'm here today to say that the gas plant is not moving forward.

Q19. __~~What's the route of the new transmission work?~~ If new lines are required, where will they go?

No decisions have been made yet.

And we have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA, ~~because we have made~~ The substantial investments we have made in the past seven years to bring new generation online over the past 7 years has given us that time.

The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and ~~as much as is feasible~~, along existing transmission corridors.

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Q20. _Why are you announcing this now while consultations are ongoing for your so-called plan?

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We'll be presenting our updated Long-Term Energy Plan later this year. that The plan will speak to how we will continue to ensure there is enough power to keep the lights on in Ontario homes and businesses. Our government is listening to Ontarians as we develop this plan.

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I'm here today to provide certainty that this proposed plant will not be moving forward.

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Proposed Oakville Power Plant Not Moving Forward

McGuinty Government to Invest in Transmission to Meet Local Power Demands

NEWS

October 26, 2010

Ontario is taking action to keep the lights on in Southwest Greater Toronto Area homes and businesses without the construction of a proposed natural gas plant in Oakville.

~~Ontario's electricity system is cleaner and more reliable than it was four years ago. When the need for this plant was first identified four years ago, there were higher demand projections was a higher demand for electricity in the area. Since then changes in demand and supply – including 8,000 MW of new, cleaner power and successful conservation efforts – have made it clear this proposed natural gas plant is no longer required, and new capacity has since come online throughout the province. Today, to meet objectives like meeting local demands for electricity and Ontario's electricity system is more reliable with 8,000 MW of cleaner power, shutting down all dirty coal-fired generation by 2014 local demands for electricity. Furthermore, IT New transmission investments into the area are being proposed to ensure that the growing region will have enough electricity to meet future needs of area area Ontarians homes, hospitals, schools and businesses, while ensuring that all dirty coal-fired generation is shutdown by the end of 2014.~~

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The government is currently updating Ontario's

~~This announcement comes as As part of Open Ontario, Ontario is preparing and consulting on an updated Long-Term Energy Plan, which will update changes in demand forecasts, supply from new generation brought online, reflect improved enhanced conservation efforts and other factors that impact power planning decisions, an update to Ontario's Long-Term Energy Plan is being developed to ensure a strong, reliable, clean and cost-effective electricity system that eliminates reliance on dirty coal.~~

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QUOTES

~~"As we're putting together an update to our Long-Term Energy Plan, it has become clear we no longer need this plant in Oakville. With some transmission investments we can keep the lights on and still close the dirty coal plants shutdown all dirty coal-fired generation. It's a win-win for families in Oakville and across Ontario." Ontario families can count on the McGuinty government to keep the lights on today and into the future whether they live in Oakville or Kenora, because our plan has delivered results by bringing online over 8,000 megawatts of new cleaner power. I'm confident that wAs we are in the process of hen we present our updatinge ourd Long-Term Electricity Energy Plan to reflect changes in supply and demand it has become clear that the province no longer needs this proposed natural gas plant. later this year we will lay out a responsible and cost-effective plan. I'm confident that when we present our updated Long Term Energy Plan later this fall, transmission investments will help us meet local power needs in southwest GTA and achieve the phase-out of dirty coal-generation that does not include a new natural gas plant in the Southwest GTA."~~

~~—Hon. Brad Duguid, Minister of Energy~~

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| "I'm delighted to share this news with the community...."

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-Kevin Flynn

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty smog-producing coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

Read about the update to [Ontario's Long-Term Energy Plan](#) and [how to offer your views](#).
[Learn more about renewable energy in Ontario.](#)
[Find out about how Ontario is phasing out coal-fired generation.](#)

Andrew Block, Minister's Office, 416-327-6747
Anne Smith, Communications Branch 416-327-7226

ontario.ca/energy-news
Disponible en français

DRAFT SPEAKING NOTES FOR BRAD DUGUID
MINISTER OF ENERGY
SWGTA GAS PLANT, OAKVILLE, OCTOBER 6, 2010

WORD COUNT: 603

Thank you, Kevin [*Flynn, MPP for Oakville*] ...

Not only for that introduction and for welcoming me into your community today...

But for all you have done over the past few years on behalf of your constituents.

It's an understatement to say that Kevin has worked tirelessly to make sure the voices of Oakville residents are heard in the Ontario Legislature.

As many of you may have heard, the province is in the process of updating its Long-Term Energy Plan ...

Our first plan helped us build more than 8000 megawatts of new cleaner power. It helped us upgrade over 5000 kms of transmission

and distribution. Our plan has taken our energy system from a state of distress to one that is stronger and cleaner.

We're working hard, in consultation with our stakeholders in the energy sector and Ontarians across the province, to release our updated plan later this fall.

Our updated Plan will lay out a vision for Ontario's energy future, and the steps we need to take to get there.

The new document will reflect changes in supply and demand over the last few years. As we have been undergoing this process, it has become clear that the province no longer needs this proposed natural gas plant in Oakville.

Four years ago, when the need for this plant was first identified, we were working to address issues like local demand and the need to build cleaner supply as we phase out dirty, coal-fired generation by 2014.

I'm pleased to share with you that because of changes in regional demand and the progress of our Plan - which include greater uptake of our conservation programs and increased supply from other clean and renewable generation sources we have strengthened regional reliability.

As Kevin has just announced...construction of the proposed gas plant in Oakville will not move forward...

Nor will this plant move forward elsewhere in the GTA.

Our Energy Plan will show that local power needs of homes, hospitals, schools and businesses can be accommodated through investments in transmission, rather than building a new gas plant in the community.

Today, Ontario families are able to count on a system that is cleaner and more reliable.

Just seven years ago our electricity system was quite the opposite.

Ontarians weren't sure that when they went to flick the switch...that there would be enough power for the lights to come on. Five coal plants across the province were running on full-tilt and polluting the air that our kids breathe. Because of poor planning and without enough power, diesel generators were deployed in GTA neighbourhoods.

We're in a much stronger position today – we can rely on our electricity system and we can literally breathe easier knowing that our air is cleaner for our kids. Just last week we shut down four more units of dirty coal-fired generation.

There is more work to do ...and we're going to keep building a cleaner, stronger and even more reliable electricity system ...

By making continued investments in transmission and distribution to modernize our system...

By helping Ontario families and businesses to conserve energy...

And by bringing cleaner power into our energy mix ...

A mix that will continue to include a safe and secure supply of gas-fired generation.

But, there will not be a new gas plant in Oakville.

Our Plan will meet local power needs in southwest GTA and outline our path to phase-out of dirty coal-generation...

It will be a Plan that Ontario families can get behind to ensure a brighter, cleaner future for our kids and grandkids and a stronger economy for our businesses.

Once again, I'd like to thank Kevin Flynn for his leadership and his tenacity.

I believe Oakville residents are tremendously fortunate to have him advocating on their behalf.

Kevin has always put the priorities of his community first ... and I know he will continue to do so.

I want to wish Kevin, the residents of Oakville and the south-west
GTA area, C4CA, Mayor Burton and Councillors a happy

Thanksgiving.

I look forward to continuing to work with all of you to deliver a
strong, reliable and cleaner electricity system we can all be proud
of.

Thank you.

-30-

Christine Lafleur

From: Mary Bernard
Sent: Friday, April 15, 2011 11:50 AM
To: Patricia Phillips
Cc: Tim Butters
Subject: Briefing note on OGS settlement
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB).doc

Pat – as requested by Kristin earlier this week, attached is a briefing note on the OGS settlement with TCE.

May need to be updated based on Kristin's meeting this morning.

Please review and advise if you have any revisions.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084



OPA Briefing Note

TransCanada/ OPA Settlement Negotiations for Oakville Generating Station (OGS)

April 14, 2011

For internal use only

ISSUE:

- Following almost six months of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have been unable to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).
- Colin Andersen has sent a letter to the chief executive officer of TCE to suggest that third-party mediation may be the best way to settle this commercial dispute.
- The key objective for the OPA is to reach an agreement that is in best interest of the ratepayer. The OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.

BACKGROUND:

Planning and Procurement Process:

The 2007 Integrated Power System Plan (IPSP) planning document looked at the issue of local area supply. Natural gas generation was identified as a resource with the flexibility to respond to situations when demand is high — acting as peak source providing local and system reliability.

A subsequent 2009 directive from the Minister of Energy authorized the OPA to undertake a competitive procurement process for a new generation facility in the Southwest GTA to address local area supply inadequacy issues.

A request for qualifications (RFQ) identified four companies with the financial resources, technical expertise and track record necessary to build the new plant. Bids

from these companies were evaluated by an independent chaired panel made up of representatives from the OPA, the IESO and the OEB. The panel's activities were overseen by a Fairness Advisor.

On Tuesday, August 29, 2009, the OPA announced a contract with TransCanada Corporation to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville

The OPA described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Cancellation of OGS:

On October 7, 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.

While the reliability needs of the Southwest GTA that were identified in 2007 still exist today, the OPA identified several reasons why a transmission solution could address local supply issues:

- Provincial demand was lower than projected due to the global economic downturn and the contribution of provincial conservation programs.
- There had been a significant uptake of new renewable energy capacity through the Feed-in Tariff program, which was launched after the initial supply need assessment was conducted in the 2007 IPSP.
- The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.
- In total since 2005, some 8,400 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required to meet the 2014 coal closure date.
- The flexibility in the supply picture gives the province time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA. Likewise, there is time to do further work to determine what, if any, generating facilities are required in the future.

- The LTEP initiative gives the province an opportunity to consider the best alternatives to address some of the province-wide needs.

OPA/ TCE public statements on compensation:

The latest media reports pertaining to the negotiation process between the OPA and TransCanada have focused on the possibility that the province might give TCE the rights to develop a local area peaking plant in Cambridge as compensation for the cancelled OGS project.

Both TransCanada and the OPA have avoided speculating on the potential outcome of the negotiations. The most recent news story on this theme appeared in the Toronto Star on February 18, 2011. In the article, Chris Breen from TransCanada is asked about speculation that TransCanada will be "handed" the Cambridge plant, he responded:

- We haven't been guaranteed a power plant by the OPA
- If and when that power plant is offered, we would go to the mayor of the city of Cambridge and consult him on the best location for a power plant.
- He identified that TransCanada owns a site in Cambridge that was purchased in anticipation of an RFP.
- He said that other firms with an interest in developing a power plant have also acquired sites in the Kitchener-Cambridge area.
- Many competitors have sites there too, as it's a standard operating procedure for power developers.

In the same article, Colin Andersen was asked about the cancellation of the Oakville Generating Station and current negotiations with TransCanada.

He responded as follows:

- 2007 IPSP identified need for gas plant in the Cambridge area.
- OPA and TransCanada are currently in discussions to mutually terminate the OGS contract.
- Discussions are going well – the key objective is to reach agreement that is in best interest of the ratepayer
- This does include looking at the option of another project for TransCanada. LTEP identified a project in Cambridge.
- Can't comment on specifics of what is being negotiated
- TransCanada is an established, respected, part of Ontario's electricity sector and elsewhere in Canada. OPA wants to continue to work with TransCanada
- Transmission options for SWGTA being looked at now. In not too distant future will be able to discuss those options. Process will require collaboration with area LDCs and community consultation.

APPROVED KEY MESSAGES:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
5. OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

QUESTIONS AND ANSWERS:

What is the status of the negotiations with TransCanada?

- OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
- While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
- OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
- OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

What went wrong with OPA's procurement for SWGTA?

- The OPA designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.
- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Our procurement process did the job it was tasked to do, but circumstances changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.
- The OPA works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.
- The OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

Do you expect to be sued by TransCanada?

- The OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
- The OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

How many more gas plants are required in Ontario?

- To ensure reliability, the strategic use of natural gas generation will support the increase in renewable sources over time and supplement the modernization of nuclear generators.
- The 2007 projected that some 12,000 MW of natural gas would be needed by 2015. Since then, changes in demand and supply — including about 8,400 MW of new, cleaner power across the system and successful conservation efforts — means that less capacity will be required.
- Because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003, the outlook has changed and two of the three plants — including the proposed plant in Oakville — are no longer required.

However, a transmission solution to maintain reliable supply in the southwest GTA will be required.

- As indicated in 2007 Plan and in the LTEP, the procurement of a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area is still necessary to ensure regional electricity supply.

How much will the SWGTA transmission project cost?

- The cost of the transmission alternative is estimated at \$200 M.
- There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.
- The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

What does this mean for future need in the area?

- A transmission solution to maintain reliable supply in the southwest GTA will be required.
- The public will be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.
- The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability.
- We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

Christine Lafleur

From: Patricia Phillips
Sent: Friday, April 15, 2011 2:04 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

Hi Mary – This is good. I made a couple of changes but I also realize that my changes deviate a bit from the messages we were given. My issue is that the choice of words sound a bit negative and dire. Unless that's the objective, it seems like we're not doing our job. Pat.

From: Mary Bernard
Sent: April 15, 2011 11:50 AM
To: Patricia Phillips
Cc: Tim Butters
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OPA Briefing Note

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April 14, 2011

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- Provincial demand was lower than projected due to the global economic downturn and the contribution of provincial conservation programs.
- There had been a significant uptake of new renewable energy capacity through the Feed-in Tariff program, which was launched after the initial supply need assessment was conducted in the 2007 IPSP.
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- In total since 2005, some 8,400 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required to meet the 2014 coal closure date.
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- This does include looking at the option of another project for TransCanada. LTEP identified a project in Cambridge.
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APPROVED KEY MESSAGES:

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2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
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- The OPA designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.
- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Our procurement process did the job it was tasked to do, but circumstances changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.
- The OPA works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.
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- The 2007 projected that some 12,000 MW of natural gas would be needed by 2015. Since then, changes in demand and supply — including about 8,400 MW of new, cleaner power across the system and successful conservation efforts — means that less capacity will be required.
- Because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003, the outlook has changed and two of the three plants — including the proposed plant in Oakville — are no longer required.

However, a transmission solution to maintain reliable supply in the southwest GTA will be required.

- As indicated in 2007 Plan and in the LTEP, the procurement of a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area is still necessary to ensure regional electricity supply.

How much will the SWGTA transmission project cost?

- The cost of the transmission alternative is estimated at \$200 M.
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- The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

What does this mean for future need in the area?

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- The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability.
- We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

Christine Lafleur

From: Patricia Phillips
Sent: Monday, April 18, 2011 2:07 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

You can send her the one I changed. Thanks

From: Mary Bernard
Sent: April 18, 2011 2:06 PM
To: Patricia Phillips
Subject: Re: Briefing note on OGS settlement

Oakville Generating Station
Mary Bernard
Communications
Ontario Power Authority
416-969-6084

From: Patricia Phillips
Sent: Monday, April 18, 2011 01:33 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

What is OGS?

From: Mary Bernard
Sent: April 18, 2011 12:02 PM
To: Patricia Phillips
Subject: RE: Briefing note on OGS settlement

Pat – just to close the loop on this – is your version okay to send to Kristin? Or did you want to make suggestions about revising the key messages?

Please confirm.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Patricia Phillips
Sent: April 15, 2011 2:04 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

Hi Mary – This is good. I made a couple of changes but I also realize that my changes deviate a bit from the messages we were given. My issue is that the choice of words sound a bit negative and dire. Unless that's the objective, it seems like we're not doing our job. Pat.

From: Mary Bernard
Sent: April 15, 2011 11:50 AM
To: Patricia Phillips

Cc: Tim Butters

Subject: Briefing note on OGS settlement

Pat – as requested by Kristin earlier this week, attached is a briefing note on the OGS settlement with TCE.

May need to be updated based on Kristin's meeting this morning.

Please review and advise if you have any revisions.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

Christine Lafleur

From: Tim Butters
Sent: Monday, April 18, 2011 2:35 PM
To: Mary Bernard
Subject: FW: Briefing note on OGS/Transcanada negotiations
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

I just spotted a typo. Should we flag for Kristin?

Following a series of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have not yet been able to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).

From: Mary Bernard
Sent: April 18, 2011 2:29 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Tim Butters
Subject: Briefing note on OGS/Transcanada negotiations

Kristin – as per your request last week, Tim prepared the attached.

Pat and I have both reviewed.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084



OPA Briefing Note

TransCanada/ OPA Settlement Negotiations for Oakville Generating Station (OGS)

April 14, 2011

For internal use only

ISSUE:

- Following a series of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have not yet been able to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).
- Colin Andersen has sent a letter to the chief executive officer of TCE to suggest that third-party mediation may be the best way to settle this commercial dispute.
- The key objective for the OPA is to reach an agreement that is in the best interest of the ratepayer. The OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.

BACKGROUND:

Planning and Procurement Process:

The 2007 Integrated Power System Plan (IPSP) planning document looked at the issue of local area supply. Natural gas generation was identified as a resource with the flexibility to respond to situations when demand is high — acting as peak source providing local and system reliability.

A subsequent 2009 directive from the Minister of Energy authorized the OPA to undertake a competitive procurement process for a new generation facility in the Southwest GTA to address local area supply inadequacy issues.

A request for qualifications (RFQ) identified four companies with the financial resources, technical expertise and track record necessary to build the new plant. Bids

from these companies were evaluated by an independent chaired panel made up of representatives from the OPA, the IESO and the OEB. The panel's activities were overseen by a Fairness Advisor.

On Tuesday, August 29, 2009, the OPA announced a contract with TransCanada Corporation to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville

The OPA described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
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Cancellation of OGS:

On October 7, 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.

While the reliability needs of the Southwest GTA that were identified in 2007 still exist today, the OPA identified several reasons why a transmission solution could address local supply issues:

- Provincial demand was lower than projected due to the global economic downturn and the contribution of provincial conservation programs.
- There had been a significant uptake of new renewable energy capacity through the Feed-in Tariff program, which was launched after the initial supply need assessment was conducted in the 2007 IPSP.
- The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.
- In total since 2005, some 8,400 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required to meet the 2014 coal closure date.
- The flexibility in the supply picture gives the province time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA. Likewise, there is time to do further work to determine what, if any, generating facilities are required in the future.

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From: Mary Bernard
Sent: Monday, April 18, 2011 2:45 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Tim Butters
Subject: RE: Briefing note on OGS/Transcanada negotiations
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

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OPA Briefing Note

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April 14, 2011

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Christine Lafleur

From: Chuck Farmer
Sent: Tuesday, May 03, 2011 1:19 PM
To: Mark Dodick
Cc: Mary Bernard; Joe Toneguzzo
Subject: FW: TCE Matter - IPSP Q&A Document

Here is the balance of the SWGTA question

Chuck Farmer

From: Barbara Ellard
Sent: May 3, 2011 1:18 PM
To: Chuck Farmer
Subject: Fw: TCE Matter - IPSP Q&A Document

Please see below.

From: Michael Killeavy
Sent: Tuesday, May 03, 2011 11:47 AM
To: Barbara Ellard
Subject: Fw: TCE Matter - IPSP Q&A Document

Here you go.

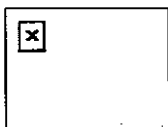
Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, May 03, 2011 11:10 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Susan Kennedy; Smith, Elliot : <ESmith@osler.com>
Subject: RE: TCE Matter - IPSP Q&A Document

Michael,

Please see our revised suggested wording below.

"TransCanada and the OPA are currently discussing the disposition of the SWGTA contract. Costs, if any, associated with the disposition of the SWGTA contract are undetermined at this time."



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]

Sent: Friday, April 29, 2011 9:59 PM

To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy

Cc: Deborah Langelaan; JoAnne Butler

Subject: TCE Matter - IPSP Q&A Document

Importance: High

*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

I have been asked to help answer the following question that will be included in a Q&A document for the IPSP consultations. The question and my proposed answer are below. Can you please review my answer and advise if it poses any problems vis-a-vis any defences we might have in any arbitration or litigation?

Question: "We haven't heard yet what the cost will be for the failed Oakville Generating Station. Whether or not its covered by the IPSP, what financial impact will cleaning up that mess and building the transmission that the Southwest GTA now needs have on ratepayers?"

Proposed Answer: "TransCanada and the OPA are currently discussing the termination of the SWGTA contract. The costs associated with the termination of the contract are still being discussed and have not yet been finalized." [NTD: Others will answer whether the OGS is in the IPSP and the Tx part of the question]

Thank you,
Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
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Michael.killeavy@powerauthority.on.ca

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de le divulguer sans autorisation.

Christine Lafleur

From: Mary Bernard
Sent: Tuesday, July 05, 2011 3:14 PM
To: Tim Butters
Subject: RE: Critical Issues List - TC entry

I would shorten and go directly to the cancellation, as the audience (the Board) will know it had a contract.

I don't know what to suggest for status – was going to suggest negotiations continue but I don't know if that is true.

I suggest you send to Pat to fill in.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Tim Butters
Sent: July 5, 2011 3:06 PM
To: Mary Bernard
Subject: Critical Issues List - TC entry

I think we may still need Derek's input. Here is what I have so far...

TransCanada – Settlement Negotiations for Oakville Generating Station

Description:

~~In August 2009, the OPA announced a contract with TransCanada Corporation to build and operate a 900-MW natural gas-fired generating station in Oakville to address a host of system needs in the area. In October 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.~~

The cancellation by the government of the Oakville Generating Station in October 2010 triggered ~~a commercial dispute between the TransCanada Energy Ltd. and the OPA. The two parties are currently in discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO, Colin Andersen, has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute. From the OPA's perspective, it is not reasonable for the ratepayers of Ontario to incur a \$1 billion compensation for the cancellation of the generation supply contract.~~

Impact:

Both organizations have avoided speculating on the potential outcome of the negotiations, however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.


Status:

Tim Butters | Media Relations Specialist

Ontario Power Authority

120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1

Phone: 416.969.6249 | Fax: 416.967.1947 | Email: tim.butters@powerauthority.on.ca

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Christine Lafleur

From: Tim Butters
Sent: Tuesday, July 05, 2011 3:20 PM
To: Mary Bernard; Patricia Phillips
Subject: RE: Greenfield South issue for critical issues list

Hi Pat,

Below is what I propose we provide for the TransCanada section of the list. Wondering if you have any new information to provide in the status section, or if you would like me to talk to Derek to get more information.

Description:

The cancellation by the government of the Oakville Generating Station (OGS) in October 2010 triggered discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO, Colin Andersen, has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute.

Impact:

Both organizations have avoided speculating on the potential outcome of the negotiations, however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.

Status:

From: Mary Bernard
Sent: July 5, 2011 1:27 PM
To: Patricia Phillips
Cc: Tim Butters
Subject: Greenfield South issue for critical issues list

Pat – for your review. I thought I would let you see what I've written on the Greenfield South issue before Tim incorporates it into the list.

I've tried to keep it short and sweet.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

Christine Lafleur

From: Kristin Jenkins
Sent: Tuesday, October 18, 2011 12:54 PM
To: Patricia Phillips; Mary Bernard
Subject: FW: Freedom of Information and Protection of Privacy Act Request 2011-024 (New Democratic Party - Costs of SWGTA and Mississauga Plant Cancellations)
Attachments: Request 2011-024.pdf; Request 2010-020 - Letter from Ontario NDP Caucus - October 14, 2010.pdf

This one obviously needs to be closely tracked.

From: John Zych
Sent: October 18, 2011 12:44 PM
To: JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Amir Shalaby; Michael Lyle; Kim Marshall; Andrew Pride; Kristin Jenkins; Patricia Phillips; Mary Bernard; Mark Dodick; Susan Kennedy; Irene Mauricette (LOA)
Subject: Freedom of Information and Protection of Privacy Act Request 2011-024 (New Democratic Party - Costs of SWGTA and Mississauga Plant Cancellations)

The OPA received this request with the filing fee last Friday.

It is my expectation (although not yet a conclusion) that any OPA records that are responsive to this request will be exempt from disclosure on the basis of section 18 of the Freedom of Information and Protection of Privacy Act, as,

- information where the disclosure could reasonably be expected to prejudice the economic interests of an institution,
- information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario,
- information as to positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario,
- information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in undue financial benefit or loss to a person;

or, under section 19, subject to solicitor-client privilege or prepared by or for our counsel for use in giving legal advice or in contemplation of or for use in litigation.

Let me think about this first before we start the search for records.

We had a similar request from the NDP before – request 2010-020 – the second attachment. That request was for records that described TransCanada's "recourse should the Oakville project be cancelled". No records were released except for a redacted version of the agreement between TransCanada and the OPA (as redacted by TransCanada). The NDP did not appeal.


John Zych
Corporate Secretary
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120 Adelaide Street West
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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.

F01 2011-024

October 11, 2011

Mr. John Zych 
Freedom of Information Officer
Ontario Power Authority
Suite 1600, 120 Adelaide Street West
Toronto, ON M5H 1T1

10/14/11

To Whom It May Concern:

Pursuant to the Freedom of Information and Protection of Privacy Act, I am requesting the following information from the Ontario Power Authority:

- Any documents, including emails, that discuss the possible costs associated with last year's decision to cancel the gas-fired plant in Oakville and the most recent promise to cancel the gas fired-plant in Mississauga.

I am attaching the \$5.00 application fee payable to the Ontario Power Authority.

Sincerely,



Michael Rosenstock
Researcher
Ontario NDP Caucus
Rm 469, Main Legislative Building
Queen's Park M7A 1A5
416-325-2427
rosenstockm@ndp.on.ca

October 14, 2010

Mr. John Zych
Freedom of Information Officer
Ontario Power Authority
Suite 1600, 120 Adelaide Street West
Toronto, ON M5H 1T1

To Whom It May Concern:

Pursuant to the Freedom of Information and Protection of Privacy Act, I am requesting the following information from the Ontario Power Authority:

- A copy of the OPA's agreement with TransCanada Corporation to build the Oakville Generating Station.
- Any supplementary documents that describe TransCanada Corporation's recourse should the Oakville project be cancelled.

I am attaching the \$5.00 application fee payable to the Ontario Power Authority.

Sincerely,

Michael Rosenstock
Researcher
Ontario NDP Caucus
Rm 469, Main Legislative Building
Queen's Park M7A 1A5
416-325-2427
rosenstockm@ndp.on.ca

Christine Lafleur

From: Kristin Jenkins
Sent: Monday, October 24, 2011 6:00 PM
To: 'rula.sharkawi@ontario.ca'; 'Sylvia.Kovesfalvi@ontario.ca'
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Proposed Responses to Greenfield Inquiries

Third one requires more info but deadline not until Wed.

- John Spears, Toronto Star (mechanics of cancelling the contract - how it's done, has it been done)

Recommended response:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

- Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

Recommended response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

- Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

Recommended response:

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.

Christine Lafleur

From: Sharkawi, Rula (ENERGY) [Rula.Sharkawi@ontario.ca]
Sent: Monday, October 24, 2011 7:08 PM
To: Kristin Jenkins; Kovesfalvi, Sylvia (ENERGY)
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

Kristin - its approved with "committed to relocating" language as per our MO.

Thanks for your patience.

Rula

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

From: Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>
To: Kovesfalvi, Sylvia (ENERGY); Sharkawi, Rula (ENERGY)
Cc: Patricia Phillips <Patricia.Phillips@powerauthority.on.ca>; Mary Bernard
<Mary.Bernard@powerauthority.on.ca>; Tim Butters <Tim.Butters@powerauthority.on.ca>
Sent: Mon Oct 24 19:03:34 2011
Subject: Re: Proposed Responses to Greenfield Inquiries

Assuming this is approved we will send to Star aand Post. Please confirm asap. Thanks.

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

From: Kristin Jenkins
Sent: Monday, October 24, 2011 06:41 PM
To: 'Sylvia.Kovesfalvi@ontario.ca' <Sylvia.Kovesfalvi@ontario.ca>; 'rula.sharkawi@ontario.ca' <rula.sharkawi@ontario.ca>
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

With that change do we have ministry approval?

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

From: Kovesfalvi, Sylvia (ENERGY) [<mailto:Sylvia.Kovesfalvi@ontario.ca>]
Sent: Monday, October 24, 2011 06:34 PM
To: Kristin Jenkins; Sharkawi, Rula (ENERGY) <Rula.Sharkawi@ontario.ca>
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

OK - one change. Pls say: 'committed to having discussions about relocating' rather than 'committed to relocating'.

(Know you and rula had another discussion about who is responding - I'm not exactly sure ... can you confirm?)

Sent from my BlackBerry Wireless Handheld

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

From: Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>
To: Sharkawi, Rula (ENERGY); Kovesfalvi, Sylvia (ENERGY)
Cc: Patricia Phillips <Patricia.Phillips@powerauthority.on.ca>; Mary Bernard
<Mary.Bernard@powerauthority.on.ca>; Tim Butters <Tim.Butters@powerauthority.on.ca>

Sent: Mon Oct 24 18:00:16 2011
Subject: Proposed Responses to Greenfield Inquiries

Third one requires more info but deadline not until Wed.

• John Spears, Toronto Star (mechanics of cancelling the contract – how it's done, has it been done)

Recommended response:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

• Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

Recommended response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

• Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

Recommended response:

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 30, 2011 11:20 AM
To: JoAnne Butler
Cc: Amir Shalaby; Colin Andersen
Subject: Consultation for KWCG Regional Planning

Hi JoAnne. Planning in the region is at point where consultation is required. OPA group has started internal discussions on what this would look like and had wanted to meet with the LDC members of the study group Oct 13 to discuss. Amir and I agree that we should hit the pause button, for two reasons. First, because of OPA discussions with Cambridge CAO and TCE discussions with mayor's office on gas plant in Cambridge, we are going to need to do some outreach with them in advance. Second, and bigger picture, it sounds like whoever forms the next government is going to want to formalize a process for siting gas plants beyond what's now required regulation wise which means we are going to need to engage government on the consultation process. Communications with input from PSP and ER will put together a piece for discussion at ETM Oct 12. Can you let me know who you would like Pat Phillips to follow-up with for ER input, Kevin?

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

Crystal Pritchard

From: Mary Bernard
Sent: Tuesday, April 12, 2011 3:11 PM
To: Patricia Phillips
Subject: FW: Final Oakville Materials
Attachments: Ministry News Release.doc; Ministry Qs & As.doc; Minister's Remarks.doc; OPA Q & A.doc

For background to this afternoon's meeting, thought you might be interested in these materials from the announcement of the cancellation of the plant from last Oct.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Kristin Jenkins
Sent: October 7, 2010 1:10 PM
To: Colin Andersen; Amir Shalaby; JoAnne Butler; Michael Lyle; Kim Marshall; Vipin Prasad; Ben Chin; Nimi Visram; John Zych
Cc: Tim Butters; Mary Bernard
Subject: Final Oakville Materials

Attached are the ministry news release, Qs and As and the minister's remarks as well as OPA's Qs & As and key messages.

Kristin

Kristin Jenkins | Director Media & Stakeholder Relations | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6326 | fax. 416.967.1947 | www.powerauthority.on.ca

Oakville Power Plant Not Moving Forward

McGuinty Government to Invest in Transmission to Meet Local Power Demands

NEWS

October 7, 2010

Ontario is taking action to keep the lights on in Southwest Greater Toronto Area homes and businesses without the construction of a proposed natural gas plant in Oakville.

When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the area. Since then changes in demand and supply – including more than 8,000 megawatts of new, cleaner power and successful conservation efforts – have made it clear that this proposed natural gas plant is no longer required. A transmission solution can ensure that the growing region will have enough electricity to meet future needs of homes, hospitals, schools and businesses.

The government is currently updating Ontario's Long-Term Energy Plan to ensure a strong, reliable, clean and cost-effective electricity system that eliminates reliance on dirty coal.

QUOTES

"As we're putting together an update to our Long-Term Energy Plan, it has become clear we no longer need this plant in Oakville. With transmission investments we can keep the lights on and still shut down all dirty coal-fired generation."

— Hon. Brad Duguid, Minister of Energy

"My duty as MPP has always been to put the priorities of Oakville first, and together, our voice was heard. I am tremendously pleased that this power plant will not be built anywhere in Oakville. I would like to thank my constituents for their support, and Premier McGuinty and Minister Duguid for their willingness to listen."

— Kevin Flynn, MPP, Oakville

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty, smog-producing, coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

[Read about the update to Ontario's Long-Term Energy Plan and how to offer your views.](#)

[Learn more about renewable energy in Ontario.](#)

[Find out about how Ontario is phasing out coal-fired generation.](#)

MINISTRY OF ENERGY

Key Messages:

- Ontario is taking action to keep the lights on in Ontario homes and businesses. We've brought over 8000 MW of new cleaner power online and upgraded over 5000km of transmission and distribution. We just shut down four more units of dirty coal-fired generation, four years ahead of schedule.
- Our plan is working to build a stronger, more reliable and cleaner energy system.
- We are currently updating our Long-Term Energy Plan, to be released later this fall.
- Today, I am here to announce that, as we develop our new Energy Plan, I am confident that the province no longer needs a 900 MW gas plant in Oakville.
- The proposed Oakville gas plant will not proceed and will not be relocated elsewhere in the GTA.
- The Long-Term Energy Plan will highlight that changes in demand, successful conservation programs and increased supply from other generation sources have all strengthened overall supply.
- As a result, local power needs can be accommodated by investments in transmission, rather than building a new gas plant.
- We look forward to delivering an updated Long-Term Energy Plan that will ensure that Ontario continues to build a strong, reliable and clean energy system that will keep the lights on here in Oakville and in communities across Ontario.

Questions and Answers

Q1. Are you moving this gas plant because of health and safety concerns raised by the community?

No. The main reason we are not moving ahead with the construction of this plant is because circumstances have changed and we no longer need the power it would have provided. The need for reliability continues to exist and we believe this can be met with a transmission solution.

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation.

Q2. How much will this cost ratepayers? How much will this increase the electricity bill of an average ratepayer?

A transmission solution to meet the power needs in this area will form part of the Long Term Energy Plan

This change will be but one aspect of our comprehensive Long Term Energy Plan that will meet reliability needs throughout the province.

MINISTRY OF ENERGY

I will have more to say when we release that updated plan.

There would have been a cost to building this plant, and we have assessed that we can meet the needs for the region through alternative means.

We are here today to convey to the community that we are not moving forward with a gas plant to meet the energy requirements of the area.

We recognize how important this issue is to the people of this community, which is why we are making this announcement today.

If Pressed:

This plant is not required anymore. TransCanada said it was going to cost over \$1 billion.

Q3. What is the status of the contract with TransCanada? Are you terminating it today?

We no longer need a gas plant in the South-West GTA and, as a result, this plant will no longer proceed.

We enjoy a very positive working relationship with TransCanada and look forward to continuing to work with them. The OPA will continue ongoing discussions with TransCanada regarding the status of their contract.

TransCanada has long been an important part of Ontario's electricity sector. We value the role TransCanada plays and, as the government finalizes its LTEP, we expect that TransCanada will play an important role in Ontario energy future.

Q4. Do you expect to be sued by TransCanada?

We enjoy a very positive working relationship with TransCanada and look forward to continuing to work with TransCanada.

Q5. Does this mean you are going to sole-source a new gas plant to TransCanada?

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation, in Ontario's electricity supply mix.

Q6. Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?

No. There are no plans to locate the plant in Mississauga or elsewhere in the GTA. We are currently in the process of developing our Long Term Energy Plan and details about generation and transmission decisions will be forthcoming in that plan.

MINISTRY OF ENERGY

- Q7. Can you confirm the plant will be located in Nanticoke? Will you run an open competition for the site?**

There are a number of alternative ways of meeting the energy needs that would have been supplied by the Oakville Plant. We are in the process of examining those alternatives through our Long Term Energy Planning process.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

- Q8. Will you start a new procurement process to site a new plant?**

Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - more information will be forthcoming shortly.

- Q9. The OPA has always said a gas plant in SWGTA is required, so what's changed? As recently as this spring your government was talking about how this plant was critically needed. Now you are backing away?**

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Changes in demand, successful conservation programs and increased supply from other generation sources have all strengthened overall supply. As a result, local power needs can be accommodated by investing in transmission, rather than building a new gas plant.

- Q10. Is the government bowing to local opposition to the gas plant?**

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

We can meet reliability needs and close coal plants in Ontario by 2014, without building a generating facility in this area. The Long-Term Energy Plan will show that since this proposed plant was first contemplated there have been changes in demand, successful conservation programs and increased supply from other generation sources. As a result, local power needs can be accommodated by transmission investments, rather than building a new gas plant.

- Q11. Is this a case of a wealthy, well-funded opposition group getting what it wants?**

MINISTRY OF ENERGY

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area. We will be able to meet the energy needs of the region through other alternatives. We will have more to say on that when we release the Long Term Energy Plan later this fall.

Q12. How many more gas plants are required in Ontario?

The Long-term Energy Plan will address the role of natural gas – and other types of generation in Ontario's supply mix. I am here today to provide certainty to the community that this proposed plant is no longer needed because of the progress we have made.

Q13. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

Our government will ensure that long-term reliability is achieved in this region and across Ontario. We've already brought online more than 8000 MW of new cleaner power. Power needs for this area can be accommodated through transmission investments, rather than building a new gas plant.

Q14. Weren't transmission improvements an option in 2007? Have things really changed that much?

Demand for power has changed significantly in the past four years. In addition the supply picture has improved because of the work undertaken since 2003 to add more than 8,000 MW of generating capacity in Ontario. We've also had a tremendous response to our Feed-In Tariff program for renewable energy.

Our government will ensure that long-term reliability is achieved in this region. Local power needs can be accommodated through transmission investments, rather than building a new gas plant.

Q15. Does this mean Toronto needs a Third Line?

The Long-term Energy Plan will have more to say about transmission needs. Today's announcement does not advance the case for a third transmission line into Toronto.

Q16. How come you've cancelled the plant in Oakville but not in Northern York Region?

These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission.

The need for new reliable electricity generation in northern York Region has been an issue for several years. Any interruption in the supply or distribution could have serious and widespread impacts and affect power supply to residences, businesses and institutions like hospitals and schools.

MINISTRY OF ENERGY

Q17. Why are you announcing this now while consultations are ongoing for your so-called plan?

We'll be presenting our updated Long-Term Energy Plan later this year. The plan will speak to how we will continue to ensure there is enough power to keep the lights on in Ontario homes and businesses. Our government is listening to Ontarians as we develop this plan.

I'm here today to provide certainty that this proposed plant will not be moving forward.

Q18. Does this mean you will need to build more transmission into Oakville ?

Circumstances have changed and we no longer need this plant. A transmission solution can meet future reliability needs of the area.

We are keeping the lights on today and into the future - here in Oakville and in all communities across Ontario . We are generating electricity and putting in place the infrastructure to get that power to our homes and businesses. That's what we've been doing and that's what we're planning for the future.

Q.19 What is this transmission solution?

A new transmission line into Oakville is needed before the end of the decade. Transmission into this growing region will ensure that there is enough electricity to keep the lights on in Oakville and area homes and businesses long into the future.

Q20. Where is the transmission going?

We are presenting our Long-Term Energy Plan later this fall that will speak to our future transmission requirements throughout the province. But suffice to say, there are existing lands into Oakville that are set aside as a transmission corridor.

Q21. Will you be burying the lines?

I'm here today with Kevin to say that we no longer need this plant - and a transmission solution can meet the electricity needs of Oakville into the future. There is time to allow for a full process to work with our partners and with the community. We will ensure that this infrastructure is planned and built in a cost-effective way that best meets the requirements of the community and the region. I will expect that all options will be considered for the new line, including below-ground lines.

DRAFT SPEAKING NOTES FOR BRAD DUGUID
MINISTER OF ENERGY
SWGTA GAS PLANT, OAKVILLE, OCTOBER 6, 2010

WORD COUNT: 603

Thank you, Kevin [*Flynn, MPP for Oakville*] ...

Not only for that introduction and for welcoming me into your community today...

But for all you have done over the past few years on behalf of your constituents.

It's an understatement to say that Kevin has worked tirelessly to make sure the voices of Oakville residents are heard in the Ontario Legislature.

As many of you may have heard, the province is in the process of updating its Long-Term Energy Plan ...

Our first plan helped us build more than 8000 megawatts of new cleaner power. It helped us upgrade over 5000 kms of transmission

and distribution. Our plan has taken our energy system from a state of distress to one that is stronger and cleaner.

We're working hard, in consultation with our stakeholders in the energy sector and Ontarians across the province, to release our updated plan later this fall.

Our updated Plan will lay out a vision for Ontario's energy future, and the steps we need to take to get there.

The new document will reflect changes in supply and demand over the last few years. As we have been undergoing this process, it has become clear that the province no longer needs this proposed natural gas plant in Oakville.

Four years ago, when the need for this plant was first identified, we were working to address issues like local demand and the need to build cleaner supply as we phase out dirty, coal-fired generation by 2014.

I'm pleased to share with you that because of changes in regional demand and the progress of our Plan - which include greater uptake of our conservation programs and increased supply from other clean and renewable generation sources we have strengthened regional reliability.

As Kevin has just announced... construction of the proposed gas plant in Oakville will not move forward...

Nor will this plant move forward elsewhere in the GTA.

Our Energy Plan will show that local power needs of homes, hospitals, schools and businesses can be accommodated through investments in transmission, rather than building a new gas plant in the community.

Today, Ontario families are able to count on a system that is cleaner and more reliable.

Just seven years ago our electricity system was quite the opposite.

Ontarians weren't sure that when they went to flick the switch...that there would be enough power for the lights to come on. Five coal plants across the province were running on full-tilt and polluting the air that our kids breathe. Because of poor planning and without enough power, diesel generators were deployed in GTA neighbourhoods.

We're in a much stronger position today – we can rely on our electricity system and we can literally breathe easier knowing that our air is cleaner for our kids. Just last week we shut down four more units of dirty coal-fired generation.

There is more work to do ...and we're going to keep building a cleaner, stronger and even more reliable electricity system ...

By making continued investments in transmission and distribution to modernize our system...

By helping Ontario families and businesses to conserve energy...

And by bringing cleaner power into our energy mix ...

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Today, Ontario families are able to count on a system that is cleaner and more reliable.

Just seven years ago our electricity system was quite the opposite.

A mix that will continue to include a safe and secure supply of gas-fired generation.

But, there will not be a new gas plant in Oakville.

Our Plan will meet local power needs in southwest GTA and outline our path to phase-out of dirty coal-generation...

It will be a Plan that Ontario families can get behind to ensure a brighter, cleaner future for our kids and grandkids and a stronger economy for our businesses.

Once again, I'd like to thank Kevin Flynn for his leadership and his tenacity.

I believe Oakville residents are tremendously fortunate to have him advocating on their behalf.

Kevin has always put the priorities of his community first ... and I know he will continue to do so.

I want to wish Kevin, the residents of Oakville and the south-west
GTA area, C4CA, Mayor Burton and Councillors a happy
Thanksgiving.

I look forward to continuing to work with all of you to deliver a
strong, reliable and cleaner electricity system we can all be proud
of.

Thank you.

-30-

Ontario Power Authority

Background

Trans Canada was awarded a 900 MW gas-fired generating facility (OGS) through an OPA competitive procurement in 2009. The OPA has described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Local reliability in the SWGTA remains a priority, and can now be addressed with significant transmission work that needs to be completed by 2017-2018. The other three needs in the list are more dependent on provincial demand and supply and the situation has changed since the 2007 IPSP. Provincial demand is lower than forecasted due to the success of conservation programs and the economic downturn, as well; the supply picture has changed with the significant uptake of new renewables through FIT and the growing potential of distributed generation in parts of the GTA. In total since 2005, some 8,000 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required in order to meet the 2014 coal closure date.

The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability. There is time to do further work to determine what if any generating facilities are required in the future.

Key Messages

The changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Communities in Southwest GTA still face local reliability issues, and they can be addressed with transmission work in the region.

The Ontario Power Authority works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.

Supporting Messages

Ontario Power Authority

Circumstances are different now compared to when the plant was first contemplated, and we have a responsibility to respond to changes that have happened since the 2007 IPSP.

Provincial demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy.

The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.

Since 2005, working with others the OPA has made good progress on restoring system reliability: generation capacity in Ontario has increased by 8000 MW and a more than 10,000 MW are under development.

That's the equivalent of adding the entire generating capacity of Alberta and Saskatchewan.

OGS was originally tasked with addressing local reliability, as well as three province-wide objectives: 2014 coal closure, restoring a balance of supply and demand in the GTA, and to provide a partner for intermittent renewables.

We have time, and the Minister's Long-Term Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

The needs of the Southwest GTA communities that we identified in 2007 still exist today.

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

The public will be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

The work of planning is done on a continuous basis at the Power Authority -- we constantly test our assumptions and monitor developments to respond to changing circumstances.

The Ontario Power Authority designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.

The OPA's procurements are designed to get the best competition and the best results for ratepayers -- both on cost and the environment.

Ontario Power Authority

Questions and Answers

1. The OPA has always said a gas plant in SWGTA is required, so what's changed?

As you know, the Minister of Energy today announced that the Oakville Generating Station will not be proceeding.

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2. What went wrong with OPA's procurement for SWGTA?

I'm proud of the work of our procurement division. They had a job to do and they designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.

The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.

Ontario Power Authority

Keep in mind, the need we identified in the Southwest GTA in 2007 still exists today. There is a system reliability issue that can be addressed with transmission work.

3. Did the OPA pick the wrong project?

The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment. The selection of the proponent was done based on clear and defined criteria, and by an independently-chaired panel.

Our procurement process did the job it was tasked to do, but circumstances have changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.

4. Does this mean Toronto needs a Third Line?

There is the potential for additional transmission requirements but this decision does not advance the case for a third transmission line into Toronto.

5. Where will a new plant go? North Oakville? Nanticoke? Kitchener-Waterloo?

We have time, and the Minister's Long-Term Energy Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

6. How come you've cancelled the plant in Oakville but not in Northern York Region?

Those are two different situations. As I've said, Southwest GTA's local reliability issues can be addressed through building transmission.

Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.

7. What's the cost of this decision to Ontario ratepayers/ How much more will this alternative cost?

We've said before that the cost of the transmission alternative is approximately \$200 M. Much of that would have been required at some future date. This project is not proceeding, but there will be other projects needed in the future to address different system requirements.

Ontario Power Authority

The costs of those projects will depend on the electricity needs. The Minister of Energy's Long Term Energy Plan will address those needs and projects. We are advising that process, and will subsequently be filing an Integrated Power System Plan with the Ontario Energy Board.

8. How much will the transmission project cost?

The cost of transmission project is estimated at \$200 M.

9. When will the transmission project start?

There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.

10. What's the route of the new transmission work?

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

11. How many homes will be affected?

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The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

12. Is Trans Canada being compensated for the cancellation of a billion dollar project?

TransCanada has long been an important part of Ontario's electricity sector, and we are in discussions with them. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

13. Is Trans Canada getting a backroom deal for another project later?

Ontario Power Authority

TransCanada has long been an important part of Ontario's electricity sector, and we are in discussions with them. We value the role TransCanada plays and as the government finalizes its LTEP we expect that TransCanada will continue to play an important role.

14. Is the cancellation of this project being caused by Trans Canada's inability to win community/OMB/court approval?

No. It's fair to say the circumstances have changed since the 2007 IPSP, when we identified a local need in SWGTA for a generating facility and also provincial needs for coal closure and other system benefits.

Local area needs still have to be addressed, and transmission work can meet that need.

However, the provincial energy landscape has changed, partially because of reduced demand through conservation, and global economic conditions, and partially through the success of our Feed-In Tariff program for renewable energy, and the work we've done to help add 8,000 MW of supply since 2005.

Considered together, it means the plant is no longer required to ensure coal closure in the province by 2014.

The plant was also contemplated to help balance supply and demand in the GTA, but we see greater prospects for district energy in the region than we did before the Green Energy and Green Economy Act.

It means there is time and opportunity to make the best choices that will address real needs today and tomorrow.

15. Why not let Trans Canada's competitors try to build a plant in SWGTA?

Communities in the SWGTA do have a need for local reliability. We identified it in the 2007 IPSP, and it is still true today. We believe those needs can be addressed through transmission work.

16. Will the losing proponents from the SWGTA procurement be compensated for their time and money?

No, the procurement process has run its course and has been completed.

17. Is the OPA bowing to local opposition to the gas plant?

Ontario Power Authority

No. The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

Let's go back to first principles, of why and how we plan for generating facilities. OGS was originally tasked with addressing local reliability, as well as three province-wide objectives: 2014 coal closure, restoring a balance of supply and demand in the GTA, and to provide a partner for intermittent renewables.

Demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy, and because of the work undertaken since 2005 to add 8,000 MW of generating capacity in Ontario.

As well, there are alternatives in balancing supply and demand in the GTA. For instance, the prospects for district energy are much greater today than before the Green Energy and Green Economy Act.

We identified the need for local reliability in the Southwest GTA in 2007, and that need still exists today.

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

18. Is this a case of a wealthy, well-funded opposition group getting what it wants?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

19. Are you compromising reliability for political expediency?

No. The Minister of Energy today announced that the Oakville Generating Station will not be progressing because of changing circumstances identified in the Long Term Energy Plan process.

Our evidence supports that view.

20. Is the OPA bowing to political pressure from the government?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

Christine Lafleur

From: Ben Chin
Sent: Thursday, October 07, 2010 12:14 PM
To: Tim Butters; Michael Lyle; Kristin Jenkins; Mary Bernard
Subject: Re: Toronto Star - Worried Liberals pull plug on Oakville gas plant

And obviously no calls back to media or comments until after minister finishes speaking

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

From: Tim Butters
To: Ben Chin; Michael Lyle; Kristin Jenkins
Sent: Thu Oct 07 12:10:39 2010
Subject: Toronto Star - Worried Liberals pull plug on Oakville gas plant

<http://www.thestar.com/news/canada/article/872042--worried-liberals-pull-plug-on-oakville-gas-plant>

Worried Liberals pull plug on Oakville gas plant

Sources say the Ontario government is backing down from plans to build a controversial gas-fired power plant in Oakville, which faced determined opposition from the community.

Energy Minister Brad Duguid will make the announcement Thursday at 1 p.m. with Oakville Liberal MPP Kevin Flynn, whose seat is in jeopardy in next October's provincial election if the plant goes ahead.

But the government's climb-down could cost taxpayers plenty.

"If the government or OPA kills the project they will be on the hook for hundreds of millions of dollars for incurred expenses and lost profits," warned one insider.

Another source told The Star there's a legal opinion that TransCanada, the private company under contract to build the plant, could sue the province for \$1 billion.

To justify its retreat, the Liberals are expected to say the plant was approved at a time when there "was a need to replace coal and to address needs of local reliability" for the electricity supply.

"This is no longer the case and there is no need for a gas plant in the southwest GTA" and electricity to meet the area's needs can now be carried in on transmission lines from elsewhere, a government insider said.

Another source called it a "that was then, this is now" scenario.

Ironically, the Oakville plant is being stalled while the government presses ahead with a controversial gas-fired plant in York Region on the environmentally sensitive Holland Marsh in a riding now held by the Progressive Conservatives.

The flip-flop on the Oakville plant should help Flynn and neighbouring Liberal MPP Charles Sousa (Mississauga South) - who is also expected for the announcement at an Oakville banquet hall near the proposed site - in the election next Oct. 6.

Oakville Mayor Rob Burton went on Twitter on Thursday morning to say: "I'm confident province will do the right thing on powerplant. Council and public used best steps w/ real evidence & consulting w/ Province."

Residents opposed to the plant got a lot of attention earlier this week when they paid famed California activist Erin Brockovich, who successfully fought a polluting California power company and became the subject of a movie, to attend several fundraising events to fight the plant.

The province announced the 900-megawatt natural gas power plant last year, saying it was part of Ontario's plan to phase out coal-fired electricity production

But residents complained the plant, next door to the Ford Motor Co. factory, would be too close - within a kilometre - of homes and schools and a threat to local air quality. Flynn the MPP fought his own government to take the side of the residents who formed a coalition called Citizens for Clean Air. He introduced a private members' bill to stop the plant.

Oakville resident Corina Van Sluytman said she is pleased the Liberals are backing off.

"This would mean my family and friends will be safer," said Van Sluytman, who lives 2.5 kilometres from the proposed site. "It's a crazy idea - to put a gas power plant across from a school. Anyone who likes clean air should celebrate this."

Brockovich called the scenario of having a plant so close to schools and homes "dangerous" and urged residents to keep fighting.

The plant was slated to open in 2014. Construction has been delayed by Oakville council amendments and bylaws. Citizens for Clean Air and the town of Oakville have suggested other locations like Nanticoke, near Lake Erie, where Haldimand Mayor Marie Trainer has said it would be welcomed.

Until now, the Ontario Power Authority had not budged and TransCanada has challenged the construction delays in court. The company maintains its project meets all safety standards.

The Citizens for Clean Air group lists 90 businesses and 18 community groups as supporters. Its board of directors would rival that of any major corporation: a former president of Microsoft Canada, a founder of the Weather Network, and a risk manager at a Canadian financial institution.

On its website <<http://www.c4ca.org/>> , the coalition asked residents to contribute between five and 10 per cent of their annual Oakville taxes to the fight. "If you pay \$6,000 in taxes, a \$600 donation works out to about two hours of work for the type of specialists that we need."

After her speech, Brockovich said the citizens of Oakville may "have more flat screens than the average person" but "they shouldn't be told to shut up because they have money."

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Christine Lafleur

From: Kristin Jenkins
Sent: Thursday, October 07, 2010 1:10 PM
To: Colin Andersen; Amir Shalaby; JoAnne Butler; Michael Lyle; Kim Marshall; Vipin Prasad; Ben Chin; Nimi Visram; John Zych
Cc: Tim Butters; Mary Bernard
Subject: Final Oakville Materials
Attachments: Ministry News Release.doc; Ministry Qs & As.doc; Minister's Remarks.doc; OPA Q & A.doc

Attached are the ministry news release, Qs and As and the minister's remarks as well as OPA's Qs & As and key messages.

Kristin

Kristin Jenkins | Director Media & Stakeholder Relations | **Ontario Power Authority** | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6326 | fax. 416.967.1947 | www.powerauthority.on.ca

Oakville Power Plant Not Moving Forward

McGuinty Government to Invest in Transmission to Meet Local Power Demands

NEWS

October 7, 2010

Ontario is taking action to keep the lights on in Southwest Greater Toronto Area homes and businesses without the construction of a proposed natural gas plant in Oakville.

When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the area. Since then changes in demand and supply – including more than 8,000 megawatts of new, cleaner power and successful conservation efforts – have made it clear that this proposed natural gas plant is no longer required. A transmission solution can ensure that the growing region will have enough electricity to meet future needs of homes, hospitals, schools and businesses.

The government is currently updating Ontario's Long-Term Energy Plan to ensure a strong, reliable, clean and cost-effective electricity system that eliminates reliance on dirty coal.

QUOTES

"As we're putting together an update to our Long-Term Energy Plan, it has become clear we no longer need this plant in Oakville. With transmission investments we can keep the lights on and still shut down all dirty coal-fired generation."

— Hon. Brad Duguid, Minister of Energy

"My duty as MPP has always been to put the priorities of Oakville first, and together, our voice was heard. I am tremendously pleased that this power plant will not be built anywhere in Oakville. I would like to thank my constituents for their support, and Premier McGuinty and Minister Duguid for their willingness to listen."

— Kevin Flynn, MPP, Oakville

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty, smog-producing, coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

Read about the update to [Ontario's Long-Term Energy Plan](#) and [how to offer your views](#).

[Learn more about renewable energy in Ontario.](#)

[Find out about how Ontario is phasing out coal-fired generation.](#)

Ontario Power Authority

Background

Trans Canada was awarded a 900 MW gas-fired generating facility (OGS) through an OPA competitive procurement in 2009. The OPA has described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Local reliability in the SWGTA remains a priority, and can now be addressed with significant transmission work that needs to be completed by 2017-2018. The other three needs in the list are more dependent on provincial demand and supply and the situation has changed since the 2007 IPSP. Provincial demand is lower than forecasted due to the success of conservation programs and the economic downturn, as well; the supply picture has changed with the significant uptake of new renewables through FIT and the growing potential of distributed generation in parts of the GTA. In total since 2005, some 8,000 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required in order to meet the 2014 coal closure date.

The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability. There is time to do further work to determine what if any generating facilities are required in the future.

Key Messages

The changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Communities in Southwest GTA still face local reliability issues, and they can be addressed with transmission work in the region.

The Ontario Power Authority works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.

Supporting Messages

Ontario Power Authority

Circumstances are different now compared to when the plant was first contemplated, and we have a responsibility to respond to changes that have happened since the 2007 IPSP.

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Ontario Power Authority

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Ontario Power Authority

Keep in mind, the need we identified in the Southwest GTA in 2007 still exists today. There is a system reliability issue that can be addressed with transmission work.

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Transmission projects were rejected by the people of Northern York Region, and a generating facility is required immediately in the region to meet North American standards for reliability.

7. What's the cost of this decision to Ontario ratepayers/ How much more will this alternative cost?

We've said before that the cost of the transmission alternative is approximately \$200 M. Much of that would have been required at some future date. This project is not proceeding, but there will be other projects needed in the future to address different system requirements.

Ontario Power Authority

The costs of those projects will depend on the electricity needs. The Minister of Energy's Long Term Energy Plan will address those needs and projects. We are advising that process, and will subsequently be filing an Integrated Power System Plan with the Ontario Energy Board.

8. How much will the transmission project cost?

The cost of transmission project is estimated at \$200 M.

9. When will the transmission project start?

There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.

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Local area needs still have to be addressed, and transmission work can meet that need.

However, the provincial energy landscape has changed, partially because of reduced demand through conservation, and global economic conditions, and partially through the success of our Feed-In Tariff program for renewable energy, and the work we've done to help add 8,000 MW of supply since 2005.

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Ontario Power Authority

No. The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

Let's go back to first principles, of why and how we plan for generating facilities. OGS was originally tasked with addressing local reliability, as well as three province-wide objectives: 2014 coal closure, restoring a balance of supply and demand in the GTA, and to provide a partner for intermittent renewables.

Demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy, and because of the work undertaken since 2005 to add 8,000 MW of generating capacity in Ontario.

As well, there are alternatives in balancing supply and demand in the GTA. For instance, the prospects for district energy are much greater today than before the Green Energy and Green Economy Act.

We identified the need for local reliability in the Southwest GTA in 2007, and that need still exists today.

We have some time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA.

18. Is this a case of a wealthy, well-funded opposition group getting what it wants?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

19. Are you compromising reliability for political expediency?

No. The Minister of Energy today announced that the Oakville Generating Station will not be progressing because of changing circumstances identified in the Long Term Energy Plan process.

Our evidence supports that view.

20. Is the OPA bowing to political pressure from the government?

No. Changing circumstances mean we have an opportunity to close coal plants in Ontario by 2014, without building a generating facility in the SWGTA.

Ontario Power Authority

21. Are you conceding that gas plants are not safe?

Gas plants are safe, and have demonstrated a strong safety record in Ontario. The gas fleet in Ontario is a good source of cleaner electricity as we close down coal plants and add renewable energy resources.

22. How many more gas plants are required in Ontario?

The Minister's Long-Term Energy Plan initiative gives us an opportunity to consider the best alternatives to address some of the province-wide needs.

22. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

Communities in the SWGTA still have needs in terms of local reliability, and we believe that transmission projects can meet those needs.

In terms of provincial needs, the changing energy landscape gives us the opportunity to close and replace Ontario's coal plants by 2014, without building this project.

Provincial demand is lower than forecasted both because of the success of conservation programs in Ontario and due to global economic conditions.

The supply picture has changed significantly because of the tremendous response to the OPA's Feed-In Tariff program for renewable energy.

The prospects for district energy in the GTA are more promising today than before the Green Energy Act.

Since 2005, working with others the OPA has made good progress on restoring system reliability: generation capacity in Ontario has increased by 8000 MW and a more than 10,000 MW are under development.

That's the equivalent of adding the entire generating capacity of Alberta and Saskatchewan.

All of that progress means, the Ontario is in good shape and has time to consider alternatives through the planning process initiated by the Minister of Energy.

MINISTRY OF ENERGY

Key Messages:

- Ontario is taking action to keep the lights on in Ontario homes and businesses. We've brought over 8000 MW of new cleaner power online and upgraded over 5000km of transmission and distribution. We just shut down four more units of dirty coal-fired generation, four years ahead of schedule.
- Our plan is working to build a stronger, more reliable and cleaner energy system.
- We are currently updating our Long-Term Energy Plan, to be released later this fall.
- Today, I am here to announce that, as we develop our new Energy Plan, I am confident that the province no longer needs a 900 MW gas plant in Oakville.
- The proposed Oakville gas plant will not proceed and will not be relocated elsewhere in the GTA.
- The Long-Term Energy Plan will highlight that changes in demand, successful conservation programs and increased supply from other generation sources have all strengthened overall supply.
- As a result, local power needs can be accommodated by investments in transmission, rather than building a new gas plant.
- We look forward to delivering an updated Long-Term Energy Plan that will ensure that Ontario continues to build a strong, reliable and clean energy system that will keep the lights on here in Oakville and in communities across Ontario.

Questions and Answers

- Q1. Are you moving this gas plant because of health and safety concerns raised by the community?**

No. The main reason we are not moving ahead with the construction of this plant is because circumstances have changed and we no longer need the power it would have provided. The need for reliability continues to exist and we believe this can be met with a transmission solution.

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation.

- Q2. How much will this cost ratepayers? How much will this increase the electricity bill of an average ratepayer?**

A transmission solution to meet the power needs in this area will form part of the Long Term Energy Plan

This change will be but one aspect of our comprehensive Long Term Energy Plan that will meet reliability needs throughout the province.

MINISTRY OF ENERGY

I will have more to say when we release that updated plan.

There would have been a cost to building this plant, and we have assessed that we can meet the needs for the region through alternative means.

We are here today to convey to the community that we are not moving forward with a gas plant to meet the energy requirements of the area.

We recognize how important this issue is to the people of this community, which is why we are making this announcement today.

If Pressed:

This plant is not required anymore. TransCanada said it was going to cost over \$1 billion.

Q3. What is the status of the contract with TransCanada? Are you terminating it today?

We no longer need a gas plant in the South-West GTA and, as a result, this plant will no longer proceed.

We enjoy a very positive working relationship with TransCanada and look forward to continuing to work with them. The OPA will continue ongoing discussions with TransCanada regarding the status of their contract.

TransCanada has long been an important part of Ontario's electricity sector. We value the role TransCanada plays and, as the government finalizes its LTEP, we expect that TransCanada will to play an important role in Ontario energy future.

Q4. Do you expect to be sued by TransCanada?

We enjoy a very positive working relationship with TransCanada and look forward to continuing to work with TransCanada.

Q5. Does this mean you are going to sole-source a new gas plant to TransCanada?

The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan will have more to say on the role of gas, and other types of generation, in Ontario's electricity supply mix.

Q6. Are you moving the gas plant back to Mississauga? Or elsewhere in the GTA?

No. There are no plans to locate the plant in Mississauga or elsewhere in the GTA. We are currently in the process of developing our Long Term Energy Plan and details about generation and transmission decisions will be forthcoming in that plan.

MINISTRY OF ENERGY

- Q7. Can you confirm the plant will be located in Nanticoke? Will you run an open competition for the site?**

There are a number of alternative ways of meeting the energy needs that would have been supplied by the Oakville Plant. We are in the process of examining those alternatives through our Long Term Energy Planning process.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

- Q8. Will you start a new procurement process to site a new plant?**

Additional transmission is one of a number of alternative ways of meeting the energy needs in not only Oakville but across the GTA. Addressing aging infrastructure to meet the needs of Ontarians is a key area that we are looking at as we develop our Long Term Energy Plan - more information will be forthcoming shortly.

- Q9. The OPA has always said a gas plant in SWGTA is required, so what's changed? As recently as this spring your government was talking about how this plant was critically needed. Now you are backing away?**

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Changes in demand, successful conservation programs and increased supply from other generation sources have all strengthened overall supply. As a result, local power needs can be accommodated by investing in transmission, rather than building a new gas plant.

- Q10. Is the government bowing to local opposition to the gas plant?**

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area.

Today, we are here to convey to the community that we are not proceeding with the natural gas plant because we have been able to identify alternatives to meet the energy requirements.

We can meet reliability needs and close coal plants in Ontario by 2014, without building a generating facility in this area. The Long-Term Energy Plan will show that since this proposed plant was first contemplated there have been changes in demand, successful conservation programs and increased supply from other generation sources. As a result, local power needs can be accommodated by transmission investments, rather than building a new gas plant.

- Q11. Is this a case of a wealthy, well-funded opposition group getting what it wants?**

MINISTRY OF ENERGY

In the process of updating our Long-Term Energy plan it has become clear that conditions have changed and a gas plant is no longer required in the area. We will be able to meet the energy needs of the region through other alternatives. We will have more to say on that when we release the Long Term Energy Plan later this fall.

Q12. How many more gas plants are required in Ontario?

The Long-term Energy Plan will address the role of natural gas – and other types of generation in Ontario's supply mix. I am here today to provide certainty to the community that this proposed plant is no longer needed because of the progress we have made.

Q13. You've talked about local needs as well as provincial ones. Since this plant was going to address provincial needs, who is going to pick up the slack for Oakville?

Our government will ensure that long-term reliability is achieved in this region and across Ontario. We've already brought online more than 8000 MW of new cleaner power. Power needs for this area can be accommodated through transmission investments, rather than building a new gas plant.

Q14. Weren't transmission improvements an option in 2007? Have things really changed that much?

Demand for power has changed significantly in the past four years. In addition the supply picture has improved because of the work undertaken since 2003 to add more than 8,000 MW of generating capacity in Ontario. We've also had a tremendous response to our Feed-In Tariff program for renewable energy.

Our government will ensure that long-term reliability is achieved in this region. Local power needs can be accommodated through transmission investments, rather than building a new gas plant.

Q15. Does this mean Toronto needs a Third Line?

The Long-term Energy Plan will have more to say about transmission needs. Today's announcement does not advance the case for a third transmission line into Toronto.

Q16. How come you've cancelled the plant in Oakville but not in Northern York Region?

These are two very different situations. Southwest GTA's local reliability issues can be addressed through building transmission.

The need for new reliable electricity generation in northern York Region has been an issue for several years. Any interruption in the supply or distribution could have serious and widespread impacts and affect power supply to residences, businesses and institutions like hospitals and schools.

MINISTRY OF ENERGY

Q17. Why are you announcing this now while consultations are ongoing for your so-called plan?

We'll be presenting our updated Long-Term Energy Plan later this year. The plan will speak to how we will continue to ensure there is enough power to keep the lights on in Ontario homes and businesses. Our government is listening to Ontarians as we develop this plan.

I'm here today to provide certainty that this proposed plant will not be moving forward.

Q18. Does this mean you will need to build more transmission into Oakville ?

Circumstances have changed and we no longer need this plant. A transmission solution can meet future reliability needs of the area.

We are keeping the lights on today and into the future - here in Oakville and in all communities across Ontario . We are generating electricity and putting in place the infrastructure to get that power to our homes and businesses. That's what we've been doing and that's what we're planning for the future.

Q.19 What is this transmission solution?

A new transmission line into Oakville is needed before the end of the decade. Transmission into this growing region will ensure that there is enough electricity to keep the lights on in Oakville and area homes and businesses long into the future.

Q20. Where is the transmission going?

We are presenting our Long-Term Energy Plan later this fall that will speak to our future transmission requirements throughout the province. But suffice to say, there are existing lands into Oakville that are set aside as a transmission corridor.

Q21. Will you be burying the lines?

I'm here today with Kevin to say that we no longer need this plant - and a transmission solution can meet the electricity needs of Oakville into the future. There is time to allow for a full process to work with our partners and with the community. We will ensure that this infrastructure is planned and built in a cost-effective way that best meets the requirements of the community and the region. I will expect that all options will be considered for the new line, including below-ground lines.

DRAFT SPEAKING NOTES FOR BRAD DUGUID
MINISTER OF ENERGY
SWGTA GAS PLANT, OAKVILLE, OCTOBER 6, 2010

WORD COUNT: 603

Thank you, Kevin [*Flynn, MPP for Oakville*] ...

Not only for that introduction and for welcoming me into your community today...

But for all you have done over the past few years on behalf of your constituents.

It's an understatement to say that Kevin has worked tirelessly to make sure the voices of Oakville residents are heard in the Ontario Legislature.

As many of you may have heard, the province is in the process of updating its Long-Term Energy Plan ...

Our first plan helped us build more than 8000 megawatts of new cleaner power. It helped us upgrade over 5000 kms of transmission

and distribution. Our plan has taken our energy system from a state of distress to one that is stronger and cleaner.

We're working hard, in consultation with our stakeholders in the energy sector and Ontarians across the province, to release our updated plan later this fall.

Our updated Plan will lay out a vision for Ontario's energy future, and the steps we need to take to get there.

The new document will reflect changes in supply and demand over the last few years. As we have been undergoing this process, it has become clear that the province no longer needs this proposed natural gas plant in Oakville.

Four years ago, when the need for this plant was first identified, we were working to address issues like local demand and the need to build cleaner supply as we phase out dirty, coal-fired generation by 2014.

I'm pleased to share with you that because of changes in regional demand and the progress of our Plan - which include greater uptake of our conservation programs and increased supply from other clean and renewable generation sources we have strengthened regional reliability.

As Kevin has just announced...construction of the proposed gas plant in Oakville will not move forward...

Nor will this plant move forward elsewhere in the GTA.

Our Energy Plan will show that local power needs of homes, hospitals, schools and businesses can be accommodated through investments in transmission, rather than building a new gas plant in the community.

Today, Ontario families are able to count on a system that is cleaner and more reliable.

Just seven years ago our electricity system was quite the opposite.

Ontarians weren't sure that when they went to flick the switch...that there would be enough power for the lights to come on. Five coal plants across the province were running on full-tilt and polluting the air that our kids breathe. Because of poor planning and without enough power, diesel generators were deployed in GTA neighbourhoods.

We're in a much stronger position today – we can rely on our electricity system and we can literally breathe easier knowing that our air is cleaner for our kids. Just last week we shut down four more units of dirty coal-fired generation.

There is more work to do ...and we're going to keep building a cleaner, stronger and even more reliable electricity system ...

By making continued investments in transmission and distribution to modernize our system...

By helping Ontario families and businesses to conserve energy...

And by bringing cleaner power into our energy mix ...

A mix that will continue to include a safe and secure supply of gas-fired generation.

But, there will not be a new gas plant in Oakville.

Our Plan will meet local power needs in southwest GTA and outline our path to phase-out of dirty coal-generation...

It will be a Plan that Ontario families can get behind to ensure a brighter, cleaner future for our kids and grandkids and a stronger economy for our businesses.

Once again, I'd like to thank Kevin Flynn for his leadership and his tenacity.

I believe Oakville residents are tremendously fortunate to have him advocating on their behalf.

Kevin has always put the priorities of his community first ... and I know he will continue to do so.

I want to wish Kevin, the residents of Oakville and the south-west
GTA area, C4CA, Mayor Burton and Councillors a happy
Thanksgiving.

I look forward to continuing to work with all of you to deliver a
strong, reliable and cleaner electricity system we can all be proud
of.

Thank you.

-30-

Christine Lafleur

From: Mark Dodick
Sent: Thursday, January 27, 2011 12:39 PM
To: Kristin Jenkins
Cc: Tim Butters; Mary Bernard
Subject: RE: Procurement Process
Attachments: SWGTA - Chronology of Key Events.xls

Importance: High

Kristin,

This project page appears to have/link to all the documents they're seeking:

<http://www.powerauthority.on.ca/gp/southwest-greater-toronto-area>

My chronology of events is attached to provide context. Should I still be searching for our messaging on the procurement theme? Tim caught it in essence below, though I have fully formed statements.

Let me know.

Thanks,
Mark

From: Kristin Jenkins
Sent: January 27, 2011 12:35 PM
To: Tim Butters; Mark Dodick
Subject: RE: Procurement Process

I think they want stuff like

- March 2009 issued RFQ
- June 2009 identified shortlist of X proponents and issued RFP
- December 2009 selection panel chaired by independent chair and oversee by fairness advisor selects TransCanada Energy etc

From: Tim Butters
Sent: January 27, 2011 12:31 PM
To: Kristin Jenkins
Subject: Procurement Process

While Mark is looking through his documents, here is the type of stuff I think they'll be looking for – please disregard the verb tense for a couple of them. In the meantime, I'll keep looking through my material. I've also asked Mark to provide information about the initial selection process – how many bids were submitted, by whom, etc.

- The Ontario Power Authority undertook a thorough, conscientious and prudent procurement that began in 2006. We have communicated continuously, honestly and openly. All alternative solutions were subject to honest investigation and probing analysis.
- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Planning since 2006:10 open houses, meetings with MPPs, mayors, municipal staffs, newsletter, Web communication, media, and more.

- Authoritative, third-party expert reviews of project: health, environment, process fairness. OPA role and decision upheld.
- The OPA has met all standards, and has selected a project—not a site—based on an open, public and competitive RFP.



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ess concerns about SWGTA
erns about SWGTA
OTA Supply Directive
affected
Homeowners Association

Electricity Plant

http://lcra.ca/

2008

EB-2007-0707, Exhibit E, Tab 5, Schedule 3

2007

Since 2006, peak demand is reduced by ~150 MW in west GTA
Opportunity to provide feedback; OPA received none (IPSP E-5-3)

session papers

768,800 residents by 2031

2006

tricity system for Ontario

1985: self-sufficient; 2005: 25 percent of GTA generation is local

2005

ity

2004

Comments/Notes

CHRONOLOGY OF KEY EVENTS



2-Sep-08	OPA's VP ER calls
2-Sep-08	OPA sends update
10-Sep-08	OPA meets with Mi
14-Sep-08	Mississauga Mayo
14-Sep-08	Positive Toronto St
17-Sep-08	OPA meets with Mi
22-Sep-08	OPA meets with Mi
22-Sep-08	OPA meets with Ci
23-Sep-08	OPA meets with Pe
30-Sep-08	OPA meets with Ju
2-Oct-08	RFQ Q&A period b
3-Oct-08	OPA meets with Oa
6-Oct-08	OPA meets with Ex
9-Oct-08	Halton Healthcare S
23-Oct-08	Electricity Solutions
28-Oct-08	OPA meets with Dr
28-Oct-08	Town Hall with MEI
31-Oct-08	OPA meets with Et
31-Oct-08	OPA meets with MF
10-Nov-08	PIC in Oakville
17-Nov-08	PIC in Oakville
19-Nov-08	PIC in Etobicoke
20-Nov-08	OPA meets with Mi
20-Nov-08	PIC in Mississuagu
21-Nov-08	OPA meets with MF
24-Nov-08	PIC in Mississuagu
25-Nov-08	PIC in Etobicoke
27-Nov-08	OPA meets with Mi
28-Nov-08	Deadline for submis
18-Dec-08	OPA meets with MF

2009 Jan

Electricity Solutions

SWGTA - Chronology of Key Events

SOUTHWEST GTA - CHRONOLOGY OF KEY EVENTS

Mayors, key Councillors, Regional Chairs of Peel and Halton
letters to municipalities, 9 MPPs, Regional Chairs of Halton and Peel
Mississauga South MPP Charles Sousa
Mayor McCallion holds news conference on concerns about SWGTA
an editorial appears regarding SWGTA entitled: "Win-win on power plant"
Mississauga Board of Trade CEO
Mississauga Mayor Hazel McCallion and Councillors Mullin and Corbasson
City of Toronto staff
Peel Region Chair and CAO
Lise Desjardins, Co-Chair of Clarkson Airshed Study working group
begins; it runs to Oct. 17, 2008
Oakville Mayor Rob Burton and Commissioner of Planning Clohec
Executive of Markland Wood Homeowners Association
Services projects 55,900 more residents in Oakville, 161,700 in Halton in 2021
for Southwest GTA -- Newsletter #1 Issued
Boyd Upper, Clarkson Airshed Study
Smitherman at Living Arts Centre Mississauga
Brimley York District Councillors
MPP Cansfield

<http://www.thestar.com/Opinion/Editorials/article/695118#article>

Mississauga City Manager and staff

MPP Broten

Mississauga Board of Trade Policy Committee
Submission to RFQ
MPP and PA to Minister of Environment Flynn

2009

for Southwest GTA -- Newsletter #1 Issued

14-Sep-09	Mississauga public
24-Sep-09	Knowles Consulta
30-Sep-09	OPA announces it
30-Sep-09	Ontario Unveils Pl
1-Oct-09	Mississauga Mayo
6-Oct-09	C4CA (Citizens fo
8-Oct-09	Power plant video
9-Oct-09	OPA announces it
13-Oct-09	OPA posts the Fa
13-Oct-09	OMB hearing on S
14-Oct-09	MPP Flynn writes
14-Oct-09	TransCanada writ
20-Oct-09	Oakville resolution
20-Oct-09	Final submissions
21-Oct-09	TransCanada writ
23-Oct-09	Oakville Beaver ar
29-Oct-09	Region of Halton p
30-Oct-09	OPA CEO Colin A
2-Nov-09	Oakville resolution
3-Nov-09	Oakville issues ne
4-Nov-09	Oakville Trafalgar
4-Nov-09	Open letter from F
9-Nov-09	Gerry Phillips app
10-Nov-09	MPP Flynn calls fo
10-Nov-09	News release: Ake
12-Nov-09	Oakville issues ne
13-Nov-09	G&M: "Oakville's v
13-Nov-09	C4CA (Citizens fo
13-Nov-09	C4CA (Citizens fo
14-Nov-09	Mississauga resolu
16-Nov-09	News release: HD
19-Nov-09	Mitsubishi Heavy I
20-Nov-09	OPA open letter to
24-Nov-09	TransCanada wor

SWGTA - Chronology of Key Events

CHRONOLOGY OF KEY EVENTS

Study by Jacques Whitford

Final Report

ations

chnical Study Report

ford

(Jacques Whitford)

n the SWGTA RFO

ed to review technical study

lment prohibiting SWGTA plant

rourement

nire

cluded by this month

cut emissions controls

nire

Share design details; share environmental studies; Q&A

"Terminate procurement"

call to stop SWGTA

a through to Nov. 10th

ing arranged by MPP Flynn)

TA power plant

ess to its website

ction

to expand emissions controls

<http://www.omb.gov.on.ca/e-decisions/p1090414-Aug-24-2009.pdf>

Ben Chin quoted. Motion withdrawn within days by Council

SOUTHWEST GTA - CHRONOLOGY OF KEY EVENTS

meeting; OPA's Ben Chin; Mayor McCallion; MPP Sousa participate
 ncy Services Inc. submits its Fairness Review on the SWGTA RFP
 will sign a contract with TransCanada Energy Ltd. for the SWGTA project
 an To Improve Air Quality In Southwest GTA
 r Hazel McCallion expressed disappointment over SWGTA
 r Clean Air) formed
 posted to You Tube by C4CA
 has signed a contract with TransCanada Energy Ltd. for the SWGTA project
 rness Review on the SWGTA RFP to its website
 WGTA matter begins to review Oakville Interim Control Bylaw (runs Oct. 13-16)
 to OPA CEO Colin Andersen re: SWGTA rationale
 es to Oakville Mayor Burton and offers funding for 3rd party environmental review
 passed regarding SWGTA; submitted to OPA for response on Oct. 23
 to OMB re: Oakville Interim Control Bylaw
 es Oakville Mayor Burton; offers to extend environmental review to 75 days
 ticle: MPP Flynn asks why Ford is partnering with TransCanada
 asses resolution on Clarkson Airshed and SWGTA
 ndersen issues response letter to MPP Flynn's letter of Oct. 14
 passed regarding SWGTA; submitted to OPA for response on Nov. 9
 ws release: wants officials, community representatives on clean air task force
 High School protest held; Oakville and Mississauga schools participate
 ord of Canada President and CEO David Mondragon appears in Oakville Beaver
 inted Minister of Energy and Infrastructure, replacing George Smitherman
 r moratorium on SWGTA to consider increasing setback distance
 r Solutions secures major power project for TransCanada in North America
 ws release indicating it has asked MOE for stronger EA of SWGTA
 wealthy fight the power plant" -- Former Microsoft CEO Frank Clegg involved
 Clean Air) 2-page ad appears in Oakville Beaver
 Clean Air) issues FOI requests to multiple organizations, including OPA
 tion passed re: air quality assessment and measures in southwest GTA
 R Secures Major Power Project in Canada
 ndustry (MHI) announces order for two sets of gas turbines and generators
 community (under signature of Colin Andersen) to run in Oakville Beaver
 kship in Oakville; select community representatives invited to attend

28 months of construction will be required

News release posted to City's website

<http://www.c4ca.org/>

<http://www.youtube.com/watch?v=0sXuVcm2OGA>

Letter received by OPA Oct. 20

Oakville MP Terence Young supports opposition to SWGTA

Normally: review period of 30 days

OPA not referenced

http://www.oakville.ca/nr-09nov03_1.htm

Ad appears on Nov. 4 and Nov. 6

Issued via Marketwire

<http://www.oakville.ca/nr-09nov12.htm>

Ben Chin, Jack Gibbons quoted

Doug McKenzie, President and Signatory

OPG, MEI, MOE, MNR, IESO, Federal government included

Letter with resolution sent to Premier on Oct. 15

Joint venture with Aker Construction Canada Ltd.

http://www.japancorp.net/Article.Asp?Art_ID=22264

Date based on e-mail trail

Closed door session at Otello's Banquet Hall

4-May-10	Mayors McCallion
14-May-10	MIRANET Clean
18-May-10	Oakville Land Use
19-May-10	Ford Power Hour
20-May-10	Oakville Land Use
26-May-10	MIRANET Clean
27-May-10	MPP Flynn writes
31-May-10	Oakville Land Use
31-May-10	MIRANET posts
1-Jun-10	Run 4 Clean Air
1-Jun-10	Mayors Trainer at
3-Jun-10	Ride 4 Clean Air
8-Jun-10	Party for Clean Air
11-Jun-10	Music 4 Clean Air
24-Jun-10	TransCanada seek
24-Jun-10	SWGTA Clean Air
Mid-2010	TransCanada orig
5-Jul-10	Elizabeth May, fed
20-Jul-10	Mike Schreiner, L
31-Jul-10	Michael Ignatieff
4-Aug-10	C4CA presentation
30-Aug-10	C4CA "Fight the f
2-Sep-10	Oakville calls for
18-Sep-10	MPP Flynn updat
21-Sep-10	TCA releases saf
21-Sep-10	Oakville open hou
22-Sep-10	ECO Gord Miller
27-Sep-10	Oakville public m
30-Sep-10	C4CA issues Myt
30-Sep-10	An evening with E
1-Oct-10	A lunch with Erin
1-Oct-10	Updated TransCa
7-Oct-10	ENERGY announ
21-Dec-10	Court scheduled



CHRONOLOGY OF KEY EVENTS

IPP Flynn promoting rally	Otello's Banquet Hall has permitted the rally in its parking lot
in to run in Oakville Beaver	MOE Gerreisen quoted; announced through Ontario Newsroom
ecified (local)	Date TBC -- e-mail indicates w/o Nov. 23
o oppose plant	http://www.omb.gov.on.ca/english/eDecisions/eDecisions.html
tion limiting PM 2.5	http://www.c4ca.org/images/PDFs/c4ca_ad.pdf
ling PM 2.5	Posted to Chartwell Maple Grove Residents Association site
if Justice (Divisional Court)	http://www.oakville.ca/nr-09dec22.htm
is for public review	Posted to Chartwell Maple Grove Residents Association site
	http://www.oakvillebeaver.com/news/article/290350
	http://www.oakville.ca/nr-09dec22.htm -- Vote to occur in February

2010

le for public review	Posted on TCA website. Available for public review until March 4.
Dec. newsletter)	Found on C4CA calendar; Dec. No indication of event being held.
ents associations reps	Said to be first ON municipality to use bylaw to control air quality
cil reps	
odes	
ig concern.	Oakville Conference and Banquet Centre at 2515 Wycroft Rd.
ow Report	Will support use of Canadian Environmental Protection Act.
use by Power Plant	Posted on TCA website.
earliment in Pickering.	CCKT supports C4CA
ittee	Oakville Chronology on MIRANET
at Lakeview.	Separation Distances for Natural Gas Power Plants
facilities open house	Established originally on March 29, 2009; one extension allowed.
	Town of Oakville news release.
	Made by Dorothy Tomiuk, MIRANET spokesperson
	Source MIRANET
	Passes 28-1. Sent to General Government Committee

SOUTHWEST GTA - CHRONOLOGY OF KEY EVENTS

, Burton, Trainer write to MEI to encourage location change.
 Air Subcommittee tours Nanticoke Industrial Park, transmission corridor.
 e Policy for Power Generation & Cogeneration Facilities - Public Workshop
 protest by C4CA.
 e Policy for Power Generation & Cogeneration Facilities - Public Workshop
 Air Subcommittee deputation to Mississauga City Council.
 to Hal Kvisle CEO of TransCanada to urge relocation.
 e Policy for Power Generation & Cogeneration Facilities - Public Workshop
 video: "Why Not Nanticoke? The Nanticoke Solution."
 nd Burton and C4CA hold news conference to promote Haldimand option.
 r at Jam Martini Bar (fund raising event)
 . Fund raising event at O'Finn's Irish Temper.
 king order from Ontario Superior Court of Justice enabling it to overturn ICBL.
 r Task Force headed by Dr. David Balsille provided final report and action plan.
 ginal timeline indicates "construction mobilization" by mid-2010
 deral Green Party Leader tours OGS site.
 leader, Ontario Green Party to tour Oakville Generating Station site.
 visits Oakville. Says he will support opposition to power plant.
 n to Century 21 Realtors.
 Power" Celebrity Golf Tournament at RattleSnake Point Golf Club.
 moratorium on further development of OGS until Balsillie is implemented.
 e to constituents says he is "very confident that a solution will be found."
 ety study for OGS: Will meet most stringent requirements.
 ise to introduce new planning requirements for power generation facilities.
 criticizes the process for selecting the OGS and YEC in his annual report.
 eeting on new planning requirements for power generation facilities.
 nbusters #1 Fact Sheet
 rin Brockovich organized by C4CA.
 Brockovich organized by C4CA.
 nada timeline indicates "construction mobilization" in October.
 ces that OGS will not proceed; transmission solution will be sought.
 o review TCA applications to quash Oakville ICBL and Health Protection Bylaw.

Advocate placement of plant in Haldimand County
 Shoots video posted to MIRANET site on May 31st.
 Workshops scheduled for May 18, 20, 31 - unclear if all were held

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 Proposes Nanticoke as alternative.
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 Available via You Tube.
 Organized by C4CA
 Queen's Park Media Studio
 Organized by C4CA
 Organized by C4CA
 Organized by C4CA
 Date identified in Oakville news release of March 30th.
 Announcement of Nov. 24/09, said it would be issued June 30th.
 TransCanada indicates continued public consultation
 C4CA events calendar
 C4CA events calendar
 C4CA + coverage in insideHalton.com
 C4CA events calendar
 C4CA events calendar
 Town of Oakville news release issued this date.
 Oakville.com
 TransCanada media advisory posted to OGS website.
 Town of Oakville website.
 Excerpt on ECO website and local media coverage.
 Town of Oakville website.
 C4CA website -- Latest News
 Fundraising event takes place at Appleby College in Oakville.
 At Velux Head Office, Oakville. Sold out.
 Viewed on TCA website, July 14, 2010.
 Government announcement.
 Matter moot as of Oct. 7th cancellation of OGS.

CHRONOLOGY OF KEY EVENTS

2011

d to the OGS.

Inside Halton.

If not overturned in court. Town news release from Sept. 28, 2010.

2012

TransCanada indicates continued public consultation

2013

or in the directive

June 2010, the TransCanada website cites COD of February 2014.

2014

2015

tern GTA this year

EB-2007-0707, Exhibit E, Tab 5, Schedule 3

Christine Lafleur

From: Mary Bernard
Sent: Thursday, January 27, 2011 3:15 PM
To: Kristin Jenkins
Subject: RE: SWGTA Procurement Process / Overview & Related Documents

Kristin – I found this embedded in another document – will this suit your needs. Please advise.

The Procurement Process

Q. Which companies competed for this project?

A. The four qualified applicants were Invenenergy Canada Development Partnership, Northland Power Inc., Portlands Energy Centre L.P., and Sithe Global Power Southdown ULC.

Q. When did these companies approach the OPA?

A. All companies that made a submission under the Southwest GTA Request for Qualifications process had to do so by November 28, 2008, the closing date for submissions under the RFQ process.

Q. Can you explain the scoring system?

A. First, there are mandatory technical and process requirements that must be fulfilled for the project to be considered. Then each proposal meeting those requirements is measured against a variety of qualitative, rated criteria. Finally, the bid price is taken into account and the overall project rating is adjusted accordingly. The winning project represents the best technical/ quality/ price balance.

Q. What criteria were used to evaluate the proposals?

A. Each proposal was evaluated against a number of factors, including six "rated criteria." These were: environmental assessment; municipal and regional approvals; community outreach, engineering, procurement and construction arrangements; equipment availability; and fuel supply.

A full discussion of the rated criteria and other factors used in the evaluation of proposals are contained in the Southwest GTA Request for Proposal posted on the OPA's [website](#).

Q. How was the successful proponent selected?

A. Submissions to the Southwest Greater Toronto Area Request for Proposal were submitted to the Ontario Power Authority. An independent evaluation team reviewed all submissions against the criteria noted in the RFP document. The evaluation team is composed of Power Authority staff and other industry agency staff and is chaired by an independent, third-party member. This committee made its recommendation to the Power Authority's Board of Directors, which made the final decision on the award of the contract.

Q. How did you maintain fairness in the evaluation process?

A. An external fairness advisor was present throughout the evaluation process, including all meetings and in all phases of the RFQ stages to ensure the evaluation was conducted fairly. The reports by the fairness advisor will be posted to the OPA's Generation Procurement website.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Kristin Jenkins
Sent: January 27, 2011 3:01 PM
To: Mary Bernard
Subject: FW: SWGTA Procurement Process / Overview & Related Documents
Importance: High

Here is a very good example of Mark not delivering what is asked for. Ben and I were asked by the Ministry for information about the SWGTA procurement process. We are issues management so his job is to summarize and create basically one pager of the key facts I asked for previously. So in the absence of that, can you please find the Qs and As that we put together on the SWGTA procurement process and send them to me. And, I do not want to have to sift through a 15 page document to find them, I simply want the procurement related Qs and As. Thanks.

From: Mark Dodick
Sent: January 27, 2011 2:15 PM
To: Kristin Jenkins
Cc: Tim Butters; Mary Bernard
Subject: SWGTA Procurement Process / Overview & Related Documents
Importance: High

Kristin,

The requested information is in the attached document.

I have provided all required details mentioned below with the exception of the names of the OPA staff who participated in the selection panel – I am assuming this is what is being sought when you ask for its "composition."

Shawn advised Tim that we have never disclosed this information, and I can affirm this is so from my FOI work with John Zych. However, the Fairness Report (which can be obtained through one of the page links I provide below) may make reference to our selection process and general information about the composition of the panel, which I hope will serve as a reasonable alternative and confirm the integrity of our decision-making process.

Please let me know if anything is missing from the response and I'll chase it down.

Thanks,
Mark

From: Kristin Jenkins
Sent: January 27, 2011 12:47 PM
To: Mark Dodick
Cc: Tim Butters; Mary Bernard
Subject: RE: Procurement Process
Importance: High

Mark,

Please pull out the procurement related events from the chronology from the time the RFQ was issued until the contract was awarded. Please compile this information into a bulleted list. In this document please also include the information from the news release and augment that information with details on the number of firms that submitted to the RFQ stage, the number selected to participate in the RFP and the composition of the selection panel. This is an urgent request from the ministry and I require the information as soon as possible. Thanks

Kristin

From: Mark Dodick
Sent: January 27, 2011 12:39 PM
To: Kristin Jenkins
Cc: Tim Butters; Mary Bernard
Subject: RE: Procurement Process
Importance: High

Kristin,

This project page appears to have/link to all the documents they're seeking:

<http://www.powerauthority.on.ca/gp/southwest-greater-toronto-area>

My chronology of events is attached to provide context. Should I still be searching for our messaging on the procurement theme? Tim caught it in essence below, though I have fully formed statements.

Let me know.

Thanks,
Mark

From: Kristin Jenkins
Sent: January 27, 2011 12:35 PM
To: Tim Butters; Mark Dodick
Subject: RE: Procurement Process

I think they want stuff like

- March 2009 issued RFQ
- June 2009 identified shortlist of X proponents and issued RFP
- December 2009 selection panel chaired by independent chair and oversee by fairness advisor selects TransCanada Energy etc

From: Tim Butters
Sent: January 27, 2011 12:31 PM
To: Kristin Jenkins
Subject: Procurement Process

While Mark is looking through his documents, here is the type of stuff I think they'll be looking for – please disregard the verb tense for a couple of them. In the meantime, I'll keep looking through my material. I've also asked Mark to provide information about the initial selection process – how many bids were submitted, by whom, etc.

- The Ontario Power Authority undertook a thorough, conscientious and prudent procurement that began in 2006. We have communicated continuously, honestly and openly. All alternative solutions were subject to honest investigation and probing analysis.

- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Planning since 2006:10 open houses, meetings with MPPs, mayors, municipal staffs, newsletter, Web communication, media, and more.
- Authoritative, third-party expert reviews of project: health, environment, process fairness. OPA role and decision upheld.
- The OPA has met all standards, and has selected a project—not a site—based on an open, public and competitive RFP.



Tim Butters | Media Relations Specialist

120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1

Phone: 416.969.6249 | Fax: 416.967.1947 | Email: tim.butters@powerauthority.on.ca

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Christine Lafleur

From: Mary Bernard
Sent: Friday, April 15, 2011 11:50 AM
To: Patricia Phillips
Cc: Tim Butters
Subject: Briefing note on OGS settlement
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB).doc

Pat – as requested by Kristin earlier this week, attached is a briefing note on the OGS settlement with TCE.

May need to be updated based on Kristin's meeting this morning.

Please review and advise if you have any revisions.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084



OPA Briefing Note

TransCanada/ OPA Settlement Negotiations for Oakville Generating Station (OGS)

April 14, 2011

For internal use only

ISSUE:

- Following almost six months of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have been unable to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).
- Colin Andersen has sent a letter to the chief executive officer of TCE to suggest that third-party mediation may be the best way to settle this commercial dispute.
- The key objective for the OPA is to reach an agreement that is in best interest of the ratepayer. The OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.

BACKGROUND:

Planning and Procurement Process:

The 2007 Integrated Power System Plan (IPSP) planning document looked at the issue of local area supply. Natural gas generation was identified as a resource with the flexibility to respond to situations when demand is high — acting as peak source providing local and system reliability.

A subsequent 2009 directive from the Minister of Energy authorized the OPA to undertake a competitive procurement process for a new generation facility in the Southwest GTA to address local area supply inadequacy issues.

A request for qualifications (RFQ) identified four companies with the financial resources, technical expertise and track record necessary to build the new plant. Bids

from these companies were evaluated by an independent chaired panel made up of representatives from the OPA, the IESO and the OEB. The panel's activities were overseen by a Fairness Advisor.

On Tuesday, August 29, 2009, the OPA announced a contract with TransCanada Corporation to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville

The OPA described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Cancellation of OGS:

On October 7, 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.

While the reliability needs of the Southwest GTA that were identified in 2007 still exist today, the OPA identified several reasons why a transmission solution could address local supply issues:

- Provincial demand was lower than projected due to the global economic downturn and the contribution of provincial conservation programs.
- There had been a significant uptake of new renewable energy capacity through the Feed-in Tariff program, which was launched after the initial supply need assessment was conducted in the 2007 IPSP.
- The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.
- In total since 2005, some 8,400 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required to meet the 2014 coal closure date.
- The flexibility in the supply picture gives the province time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA. Likewise, there is time to do further work to determine what, if any, generating facilities are required in the future.

- The LTEP initiative gives the province an opportunity to consider the best alternatives to address some of the province-wide needs.

OPA/ TCE public statements on compensation:

The latest media reports pertaining to the negotiation process between the OPA and TransCanada have focused on the possibility that the province might give TCE the rights to develop a local area peaking plant in Cambridge as compensation for the cancelled OGS project.

Both TransCanada and the OPA have avoided speculating on the potential outcome of the negotiations. The most recent news story on this theme appeared in the Toronto Star on February 18, 2011. In the article, Chris Breen from TransCanada is asked about speculation that TransCanada will be "handed" the Cambridge plant, he responded:

- We haven't been guaranteed a power plant by the OPA
- If and when that power plant is offered, we would go to the mayor of the city of Cambridge and consult him on the best location for a power plant.
- He identified that TransCanada owns a site in Cambridge that was purchased in anticipation of an RFP.
- He said that other firms with an interest in developing a power plant have also acquired sites in the Kitchener-Cambridge area.
- Many competitors have sites there too, as it's a standard operating procedure for power developers.

In the same article, Colin Andersen was asked about the cancellation of the Oakville Generating Station and current negotiations with TransCanada.

He responded as follows:

- 2007 IPSP identified need for gas plant in the Cambridge area.
- OPA and TransCanada are currently in discussions to mutually terminate the OGS contract.
- Discussions are going well – the key objective is to reach agreement that is in best interest of the ratepayer
- This does include looking at the option of another project for TransCanada. LTEP identified a project in Cambridge.
- Can't comment on specifics of what is being negotiated
- TransCanada is an established, respected, part of Ontario's electricity sector and elsewhere in Canada. OPA wants to continue to work with TransCanada
- Transmission options for SWGTA being looked at now. In not too distant future will be able to discuss those options. Process will require collaboration with area LDCs and community consultation.

APPROVED KEY MESSAGES:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
5. OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

QUESTIONS AND ANSWERS:

What is the status of the negotiations with TransCanada?

- OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
- While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
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What went wrong with OPA's procurement for SWGTA?

- The OPA designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.
- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Our procurement process did the job it was tasked to do, but circumstances changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.
- The OPA works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.
- The OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

Do you expect to be sued by TransCanada?

- The OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
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How many more gas plants are required in Ontario?

- To ensure reliability, the strategic use of natural gas generation will support the increase in renewable sources over time and supplement the modernization of nuclear generators.
 - The 2007 projected that some 12,000 MW of natural gas would be needed by 2015. Since then, changes in demand and supply — including about 8,400 MW of new, cleaner power across the system and successful conservation efforts — means that less capacity will be required.
 - Because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003, the outlook has changed and two of the three plants — including the proposed plant in Oakville — are no longer required.
-

However, a transmission solution to maintain reliable supply in the southwest GTA will be required.

- As indicated in 2007 Plan and in the LTEP, the procurement of a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area is still necessary to ensure regional electricity supply.

How much will the SWGTA transmission project cost?

- The cost of the transmission alternative is estimated at \$200 M.
- There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.
- The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

What does this mean for future need in the area?

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- The OPA continuously plans, monitors and evaluates alternatives. Changing circumstances makes it possible to address the provincial coal closure and other needs through alternative measures, such as transmission work in the SWGTA to address local reliability.
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Christine Lafleur

From: Patricia Phillips
Sent: Friday, April 15, 2011 2:04 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

Hi Mary – This is good. I made a couple of changes but I also realize that my changes deviate a bit from the messages we were given. My issue is that the choice of words sound a bit negative and dire. Unless that's the objective, it seems like we're not doing our job. Pat.

From: Mary Bernard
Sent: April 15, 2011 11:50 AM
To: Patricia Phillips
Cc: Tim Butters
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Christine Lafleur

From: Patricia Phillips
Sent: Monday, April 18, 2011 2:07 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

You can send her the one I changed. Thanks

From: Mary Bernard
Sent: April 18, 2011 2:06 PM
To: Patricia Phillips
Subject: Re: Briefing note on OGS settlement

Oakville Generating Station
Mary Bernard
Communications
Ontario Power Authority
416-969-6084

From: Patricia Phillips
Sent: Monday, April 18, 2011 01:33 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

What is OGS?

From: Mary Bernard
Sent: April 18, 2011 12:02 PM
To: Patricia Phillips
Subject: RE: Briefing note on OGS settlement

Pat – just to close the loop on this – is your version okay to send to Kristin? Or did you want to make suggestions about revising the key messages?

Please confirm.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Patricia Phillips
Sent: April 15, 2011 2:04 PM
To: Mary Bernard
Subject: RE: Briefing note on OGS settlement

Hi Mary – This is good. I made a couple of changes but I also realize that my changes deviate a bit from the messages we were given. My issue is that the choice of words sound a bit negative and dire. Unless that's the objective, it seems like we're not doing our job. Pat.

From: Mary Bernard
Sent: April 15, 2011 11:50 AM
To: Patricia Phillips

Cc: Tim Butters

Subject: Briefing note on OGS settlement

Pat – as requested by Kristin earlier this week, attached is a briefing note on the OGS settlement with TCE.

May need to be updated based on Kristin's meeting this morning.

Please review and advise if you have any revisions.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

Christine Lafleur

From: Tim Butters
Sent: Monday, April 18, 2011 2:35 PM
To: Mary Bernard
Subject: FW: Briefing note on OGS/Transcanada negotiations
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

I just spotted a typo. Should we flag for Kristin?

Following a series of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have not yet been able to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).

From: Mary Bernard
Sent: April 18, 2011 2:29 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Tim Butters
Subject: Briefing note on OGS/Transcanada negotiations

Kristin – as per your request last week, Tim prepared the attached.

Pat and I have both reviewed.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084



OPA Briefing Note

TransCanada/ OPA Settlement Negotiations for Oakville Generating Station (OGS)

April 14, 2011

For internal use only

ISSUE:

- Following a series of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have not yet been able to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).
- Colin Andersen has sent a letter to the chief executive officer of TCE to suggest that third-party mediation may be the best way to settle this commercial dispute.
- The key objective for the OPA is to reach an agreement that is in the best interest of the ratepayer. The OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.

BACKGROUND:

Planning and Procurement Process:

The 2007 Integrated Power System Plan (IPSP) planning document looked at the issue of local area supply. Natural gas generation was identified as a resource with the flexibility to respond to situations when demand is high — acting as peak source providing local and system reliability.

A subsequent 2009 directive from the Minister of Energy authorized the OPA to undertake a competitive procurement process for a new generation facility in the Southwest GTA to address local area supply inadequacy issues.

A request for qualifications (RFQ) identified four companies with the financial resources, technical expertise and track record necessary to build the new plant. Bids

from these companies were evaluated by an independent chaired panel made up of representatives from the OPA, the IESO and the OEB. The panel's activities were overseen by a Fairness Advisor.

On Tuesday, August 29, 2009, the OPA announced a contract with TransCanada Corporation to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville

The OPA described the plant as the optimal solution to address a number of local and system needs:

- Local Reliability
- Re-balancing GTA Supply & Demand:
- 2014 Coal Closure
- Partnering with Intermittent Renewables

Cancellation of OGS:

On October 7, 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.

While the reliability needs of the Southwest GTA that were identified in 2007 still exist today, the OPA identified several reasons why a transmission solution could address local supply issues:

- Provincial demand was lower than projected due to the global economic downturn and the contribution of provincial conservation programs.
- There had been a significant uptake of new renewable energy capacity through the Feed-in Tariff program, which was launched after the initial supply need assessment was conducted in the 2007 IPSP.
- The prospects for distributed generation in the GTA are more promising today than before the Green Energy Act.
- In total since 2005, some 8,400 MW of power generation has been added, and another 10,000 MW are under development. As a result, OGS is no longer required to meet the 2014 coal closure date.
- The flexibility in the supply picture gives the province time to consider the transmission work required to meet the needs of the growing communities in the Southwest GTA. Likewise, there is time to do further work to determine what, if any, generating facilities are required in the future.

- The LTEP initiative gives the province an opportunity to consider the best alternatives to address some of the province-wide needs.

OPA/ TCE public statements on compensation:

The latest media reports pertaining to the negotiation process between the OPA and TransCanada have focused on the possibility that the province might give TCE the rights to develop a local area peaking plant in Cambridge as compensation for the cancelled OGS project.

Both TransCanada and the OPA have avoided speculating on the potential outcome of the negotiations. The most recent news story on this theme appeared in the Toronto Star on February 18, 2011. In the article, Chris Breen from TransCanada is asked about speculation that TransCanada will be “handed” the Cambridge plant, he responded:

- We haven't been guaranteed a power plant by the OPA
- If and when that power plant is offered, we would go to the mayor of the city of Cambridge and consult him on the best location for a power plant.
- He identified that TransCanada owns a site in Cambridge that was purchased in anticipation of an RFP.
- He said that other firms with an interest in developing a power plant have also acquired sites in the Kitchener-Cambridge area.
- Many competitors have sites there too, as it's a standard operating procedure for power developers.

In the same article, Colin Andersen was asked about the cancellation of the Oakville Generating Station and current negotiations with TransCanada.

He responded as follows:

- 2007 IPSP identified need for gas plant in the Cambridge area.
- OPA and TransCanada are currently in discussions to mutually terminate the OGS contract.
- Discussions are going well – the key objective is to reach agreement that is in best interest of the ratepayer
- This does include looking at the option of another project for TransCanada. LTEP identified a project in Cambridge.
- Can't comment on specifics of what is being negotiated
- TransCanada is an established, respected, part of Ontario's electricity sector and elsewhere in Canada. OPA wants to continue to work with TransCanada
- Transmission options for SWGTA being looked at now. In not too distant future will be able to discuss those options. Process will require collaboration with area LDCs and community consultation.

APPROVED KEY MESSAGES:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
5. OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

QUESTIONS AND ANSWERS:

What is the status of the negotiations with TransCanada?

- OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
- While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
- OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
- OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

What went wrong with OPA's procurement for SWGTA?

- The OPA designed and ran a best-in-class procurement process to ensure a fair, transparent and vigorous competition.
- The OPA's procurements are designed to get the best competition and the best results for ratepayers – both on cost and the environment.
- Our procurement process did the job it was tasked to do, but circumstances changed. The plant is no longer required for coal closure. And local reliability issues in the Southwest GTA can be met with transmission work.
- The OPA works in the best interest of ratepayers, using the best information available to plan for and procure a reliable supply of sustainable and cost-effective electricity.
- The OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

Do you expect to be sued by TransCanada?

- The OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
- The OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

How many more gas plants are required in Ontario?

- To ensure reliability, the strategic use of natural gas generation will support the increase in renewable sources over time and supplement the modernization of nuclear generators.
 - The 2007 projected that some 12,000 MW of natural gas would be needed by 2015. Since then, changes in demand and supply — including about 8,400 MW of new, cleaner power across the system and successful conservation efforts — means that less capacity will be required.
 - Because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003, the outlook has changed and two of the three plants — including the proposed plant in Oakville — are no longer required.
-

However, a transmission solution to maintain reliable supply in the southwest GTA will be required.

- As indicated in 2007 Plan and in the LTEP, the procurement of a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area is still necessary to ensure regional electricity supply.

How much will the SWGTA transmission project cost?

- The cost of the transmission alternative is estimated at \$200 M.
- There's a lot of work to do before the project would start, and it does not need to begin immediately. We do have time. We anticipate that the work is required by the end of the decade.
- The public would be consulted on any transmission projects to ensure that needed work is done as efficiently as possible, and along existing transmission corridors.

What does this mean for future need in the area?

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Christine Lafleur

From: Mary Bernard
Sent: Monday, April 18, 2011 2:45 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Tim Butters
Subject: RE: Briefing note on OGS/Transcanada negotiations
Attachments: Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

Kristin -- Tim caught a typo that has been fixed in this version. Please delete the earlier one.

Thanks.

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416-969-6084

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OPA Briefing Note

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April 14, 2011

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- Following a series of negotiations, the Ontario Power Authority and TransCanada Energy Ltd. have not yet been able to reach an agreement on financial compensation for the cancellation of the Oakville Generating Station (OGS).
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Christine Lafleur

From: Chuck Farmer
Sent: Tuesday, May 03, 2011 1:19 PM
To: Mark Dodick
Cc: Mary Bernard; Joe Toneguzzo
Subject: FW: TCE Matter - IPSP Q&A Document

Here is the balance of the SWGTA question

Chuck Farmer

From: Barbara Ellard
Sent: May 3, 2011 1:18 PM
To: Chuck Farmer
Subject: Fw: TCE Matter - IPSP Q&A Document

Please see below.

From: Michael Killeavy
Sent: Tuesday, May 03, 2011 11:47 AM
To: Barbara Ellard
Subject: Fw: TCE Matter - IPSP Q&A Document

Here you go.

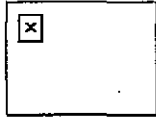
Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, May 03, 2011 11:10 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Susan Kennedy; Smith, Elliot <ESmith@osler.com>
Subject: RE: TCE Matter - IPSP Q&A Document

Michael,

Please see our revised suggested wording below.

"TransCanada and the OPA are currently discussing the disposition of the SWGTA contract. Costs, if any, associated with the disposition of the SWGTA contract are undetermined at this time."



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Friday, April 29, 2011 9:59 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - IPSP Q&A Document
Importance: High

*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

I have been asked to help answer the following question that will be included in a Q&A document for the IPSP consultations. The question and my proposed answer are below. Can you please review my answer and advise if it poses any problems vis-a-vis any defences we might have in any arbitration or litigation?

Question: "We haven't heard yet what the cost will be for the failed Oakville Generating Station. Whether or not its covered by the IPSP, what financial impact will cleaning up that mess and building the transmission that the Southwest GTA now needs have on ratepayers?"

Proposed Answer: "TransCanada and the OPA are currently discussing the termination of the SWGTA contract. The costs associated with the termination of the contract are still being discussed and have not yet been finalized." [NTD: Others will answer whether the OGS is in the IPSP and the Tx part of the question]

Thank you,
Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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Christine Lafleur

From: Mary Bernard
Sent: Tuesday, July 05, 2011 3:14 PM
To: Tim Butters
Subject: RE: Critical Issues List - TC entry

I would shorten and go directly to the cancellation, as the audience (the Board) will know it had a contract.

I don't know what to suggest for status – was going to suggest negotiations continue but I don't know if that is true.

I suggest you send to Pat to fill in.

Thanks.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

From: Tim Butters
Sent: July 5, 2011 3:06 PM
To: Mary Bernard
Subject: Critical Issues List - TC entry

I think we may still need Derek's input. Here is what I have so far...

TransCanada – Settlement Negotiations for Oakville Generating Station

Description:

~~In August 2009, the OPA announced a contract with TransCanada Corporation to build and operate a 900 MW natural gas fired generating station in Oakville to address a host of system needs in the area. In October 2010, the provincial government announced that the reliability issues in the Southwest GTA region could be met by a transmission solution and that the generation project would not be proceeding.~~

The cancellation by the government of the Oakville Generating Station in October 2010 triggered a commercial dispute between the TransCanada Energy Ltd. and the OPA. The two parties are currently in discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO, Colin Andersen, has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute. ~~From the OPA's perspective, it is not reasonable for the ratepayers of Ontario to incur a \$1 billion compensation for the cancellation of the generation supply contract.~~

Impact:

Both organizations have avoided speculating on the potential outcome of the negotiations, however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.


Status:

Tim Butters | Media Relations Specialist

Ontario Power Authority

120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1

Phone: 416.969.6249 | Fax: 416.967.1947 | Email: tim.butters@powerauthority.on.ca

 Please consider your environmental responsibility before printing this email

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Christine Lafleur

From: Tim Butters
Sent: Tuesday, July 05, 2011 3:20 PM
To: Mary Bernard; Patricia Phillips
Subject: RE: Greenfield South issue for critical issues list

Hi Pat,

Below is what I propose we provide for the TransCanada section of the list. Wondering if you have any new information to provide in the status section, or if you would like me to talk to Derek to get more information.

Description:

The cancellation by the government of the Oakville Generating Station (OGS) in October 2010 triggered discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO, Colin Andersen, has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute.

Impact:

Both organizations have avoided speculating on the potential outcome of the negotiations, however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.

Status:

From: Mary Bernard
Sent: July 5, 2011 1:27 PM
To: Patricia Phillips
Cc: Tim Butters
Subject: Greenfield South issue for critical issues list

Pat – for your review. I thought I would let you see what I’ve written on the Greenfield South issue before Tim incorporates it into the list.

I’ve tried to keep it short and sweet.

Mary Bernard
Corporate Communications
Ontario Power Authority
416-969-6084

Christine Lafleur

From: Kristin Jenkins
Sent: Tuesday, October 18, 2011 12:54 PM
To: Patricia Phillips; Mary Bernard
Subject: FW: Freedom of Information and Protection of Privacy Act Request 2011-024 (New Democratic Party - Costs of SWGTA and Mississauga Plant Cancellations)
Attachments: Request 2011-024.pdf; Request 2010-020 - Letter from Ontario NDP Caucus - October 14, 2010.pdf

This one obviously needs to be closely tracked.

From: John Zych
Sent: October 18, 2011 12:44 PM
To: JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Amir Shalaby; Michael Lyle; Kim Marshall; Andrew Pride; Kristin Jenkins; Patricia Phillips; Mary Bernard; Mark Dodick; Susan Kennedy; Irene Mauricette (LOA)
Subject: Freedom of Information and Protection of Privacy Act Request 2011-024 (New Democratic Party - Costs of SWGTA and Mississauga Plant Cancellations)

The OPA received this request with the filing fee last Friday.

It is my expectation (although not yet a conclusion) that any OPA records that are responsive to this request will be exempt from disclosure on the basis of section 18 of the Freedom of Information and Protection of Privacy Act, as,

- information where the disclosure could reasonably be expected to prejudice the economic interests of an institution,
- information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario,
- information as to positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario,
- information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in undue financial benefit or loss to a person;

or, under section 19, subject to solicitor-client privilege or prepared by or for our counsel for use in giving legal advice or in contemplation of or for use in litigation.

Let me think about this first before we start the search for records.

We had a similar request from the NDP before – request 2010-020 – the second attachment. That request was for records that described TransCanada's "recourse should the Oakville project be cancelled". No records were released except for a redacted version of the agreement between TransCanada and the OPA (as redacted by TransCanada). The NDP did not appeal.


John Zych
Corporate Secretary
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Suite 1600
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Toronto, ON M5H 1T1
416-969-6055
416-967-7474 Main telephone
416-967-1947 OPA Fax
416-416-324-5488 Personal Fax
John.Zych@powerauthority.on.ca

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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.

F01 2011-024

October 11, 2011

Mr. John Zych  10/14/11
Freedom of Information Officer
Ontario Power Authority
Suite 1600, 120 Adelaide Street West
Toronto, ON M5H 1T1

To Whom It May Concern:

Pursuant to the Freedom of Information and Protection of Privacy Act, I am requesting the following information from the Ontario Power Authority:

- Any documents, including emails, that discuss the possible costs associated with last year's decision to cancel the gas-fired plant in Oakville and the most recent promise to cancel the gas fired-plant in Mississauga.

I am attaching the \$5.00 application fee payable to the Ontario Power Authority.

Sincerely,



Michael Rosenstock
Researcher
Ontario NDP Caucus
Rm 469, Main Legislative Building
Queen's Park M7A 1A5
416-325-2427
rosenstockm@ndp.on.ca

October 14, 2010

Mr. John Zych
Freedom of Information Officer
Ontario Power Authority
Suite 1600, 120 Adelaide Street West
Toronto, ON M5H 1T1


To Whom It May Concern:

Pursuant to the Freedom of Information and Protection of Privacy Act, I am requesting the following information from the Ontario Power Authority:

- A copy of the OPA's agreement with TransCanada Corporation to build the Oakville Generating Station.
- Any supplementary documents that describe TransCanada Corporation's recourse should the Oakville project be cancelled.

I am attaching the \$5.00 application fee payable to the Ontario Power Authority.

Sincerely,


Michael Rosenstock
Researcher
Ontario NDP Caucus
Rm 469, Main Legislative Building
Queen's Park M7A 1A5
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rosenstockm@ndp.on.ca

Christine Lafleur

From: Kristin Jenkins
Sent: Monday, October 24, 2011 6:00 PM
To: 'rula.sharkawi@ontario.ca'; 'Sylvia.Kovesfalvi@ontario.ca'
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Proposed Responses to Greenfield Inquiries

Third one requires more info but deadline not until Wed.

• John Spears, Toronto Star (mechanics of cancelling the contract - how it's done, has it been done)

Recommended response:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

• Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

Recommended response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

• Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

Recommended response:

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.

Christine Lafleur

From: Sharkawi, Rula (ENERGY) [Rula.Sharkawi@ontario.ca]
Sent: Monday, October 24, 2011 7:08 PM
To: Kristin Jenkins; Kovesfalvi, Sylvia (ENERGY)
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

Kristin - its approved with "committed to relocating" language as per our MO.

Thanks for your patience.

Rula

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

From: Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>
To: Kovesfalvi, Sylvia (ENERGY); Sharkawi, Rula (ENERGY)
Cc: Patricia Phillips <Patricia.Phillips@powerauthority.on.ca>; Mary Bernard
<Mary.Bernard@powerauthority.on.ca>; Tim Butters <Tim.Butters@powerauthority.on.ca>
Sent: Mon Oct 24 19:03:34 2011
Subject: Re: Proposed Responses to Greenfield Inquiries

Assuming this is approved we will send to Star and Post. Please confirm asap. Thanks.

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

From: Kristin Jenkins
Sent: Monday, October 24, 2011 06:41 PM
To: 'Sylvia.Kovesfalvi@ontario.ca' <Sylvia.Kovesfalvi@ontario.ca>; 'rula.sharkawi@ontario.ca' <rula.sharkawi@ontario.ca>
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

With that change do we have ministry approval?

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

From: Kovesfalvi, Sylvia (ENERGY) [<mailto:Sylvia.Kovesfalvi@ontario.ca>]
Sent: Monday, October 24, 2011 06:34 PM
To: Kristin Jenkins; Sharkawi, Rula (ENERGY) <Rula.Sharkawi@ontario.ca>
Cc: Patricia Phillips; Mary Bernard; Tim Butters
Subject: Re: Proposed Responses to Greenfield Inquiries

OK - one change. Pls say: 'committed to having discussions about relocating' rather than 'committed to relocating'.

(Know you and rula had another discussion about who is responding - I'm not exactly sure ... can you confirm?)

Sent from my BlackBerry Wireless Handheld

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

From: Kristin Jenkins <Kristin.Jenkins@powerauthority.on.ca>
To: Sharkawi, Rula (ENERGY); Kovesfalvi, Sylvia (ENERGY)
Cc: Patricia Phillips <Patricia.Phillips@powerauthority.on.ca>; Mary Bernard
<Mary.Bernard@powerauthority.on.ca>; Tim Butters <Tim.Butters@powerauthority.on.ca>

Sent: Mon Oct 24 18:00:16 2011
Subject: Proposed Responses to Greenfield Inquiries

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Recommended response:

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 21, 2011 5:09 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

From: Kristin Jenkins
Sent: September 21, 2011 4:56 PM
To: Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'
Subject: Toronto Star Request - Cancellation of Oakville Contract

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Kristin

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 5:10 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

But we aren't in discussions with TCE.

Michael Killeavy, LL.B., MBA, P.Eng.
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Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

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From: Michael Killeavy
Sent: September 21, 2011 5:10 PM
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Aleksandar Kojic

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I didn't say they were settlement discussions in the response to the ministry.

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 5:14 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

There are no discussions period. It's implied from the question.

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 6:38 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

I have asked our litigation counsel to comment on your answer. I think it's generally okay. You might want to say that the OPA is proceed towards a resolution with TCE. It's just a thought.

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Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Kristin Jenkins
Sent: Wednesday, September 21, 2011 05:08 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

From: Kristin Jenkins
Sent: September 21, 2011 4:56 PM
To: Sharkawi; Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); Kulendran, Jesse (ENERGY)
Subject: Toronto Star Request - Cancellation of Oakville Contract

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explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

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Aleksandar Kojic

From: Michael Lyle
Sent: September 22, 2011 7:49 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 22, 2011 8:31 AM
To: Michael Lyle; Kristin Jenkins; JoAnne Butler
Cc: Colin Andersen; Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

I agree.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
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416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Michael Lyle
Sent: September 22, 2011 8:31 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Thinking about this some more it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with "Discussions are ongoing.....".

From: Michael Lyle
Sent: Thursday, September 22, 2011 07:49 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

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From: Kristin Jenkins

Sent: September 21, 2011 4:56 PM

To: Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); Kulendran, Jesse (ENERGY)

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Aleksandar Kojic

From: JoAnne Butler
Sent: September 22, 2011 9:02 AM
To: Michael Killeavy; Michael Lyle; Kristin Jenkins
Cc: Colin Andersen; Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

I agree as well. As for notification, maybe Colin could, out of courtesy, mention to Alex on his call that the press are getting nosy on this one and we providing holding messages??

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Michael Killeavy
Sent: Jueves, 22 de Septiembre de 2011 08:31 a.m.
To: Michael Lyle; Kristin Jenkins; JoAnne Butler
Cc: Colin Andersen; Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

I agree.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
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Aleksandar Kojic

From: Michael Killeavy
Sent: September 22, 2011 10:20 AM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

Follow Up Flag: Follow up
Flag Status: Completed

Here are Osler's comments on the proposed answer.

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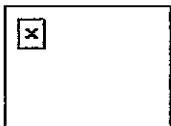
From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Thursday, September 22, 2011 09:49 AM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Michael,
We propose responding with the following:

The Ontario Power Authority is continuing to work with TransCanada, the company originally selected to develop the Oakville plant, regarding the cancellation of Oakville Generating Station. A final resolution has not yet been reached.

As a courtesy we'd suggest calling TCE to let them know about this.

Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, September 21, 2011 5:16 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Cc: Susan Kennedy
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

Can you guys comment on this proposed response to a media inquiry about OGS? Please see below. Thx.

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Sent: Wednesday, September 21, 2011 05:08 PM
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Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 22, 2011 10:23 AM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Ok. I will eliminate the last sentence originally proposed and change to Discussion are continuing with Trans Canada... and send to the ministry. Who is going to give TCE a heads up? Whoever does should let them know we are awaiting word from the ministry on wording of the response and that it may change somewhat.

From: Michael Killeavy
Sent: September 22, 2011 10:20 AM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

Here are Osler's comments on the proposed answer.

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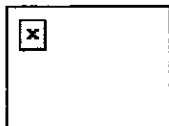
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, September 22, 2011 09:49 AM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Susan Kennedy
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Michael,
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As a courtesy we'd suggest calling TCE to let them know about this.

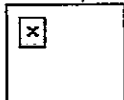
Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osier.com

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



From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Wednesday, September 21, 2011 5:16 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Cc: Susan Kennedy
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Can you guys comment on this proposed response to a media inquiry about OGS? Please see below. Thx.

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 22, 2011 12:30 PM
To: Michael Killeavy; Deborah Langelaan
Cc: JoAnne Butler
Subject: RE: Email to TCE ...

Thanks.

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

From: Michael Killeavy
Sent: September 22, 2011 12:29 PM
To: Deborah Langelaan
Cc: Kristin Jenkins; JoAnne Butler
Subject: Email to TCE ...

We need to tell John Mikkelson of TCE that we have responded to a Toronto Star question as follows:

"Discussions with TransCanada, the company selected to develop the Oakville plant, are continuing. These are ongoing discussions and we have no further information to provide at this time."

We do not know why the inquiry was made.

I will help draft the email.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 30, 2011 11:20 AM
To: JoAnne Butler
Cc: Amir Shalaby; Colin Andersen
Subject: Consultation for KWCG Regional Planning

Hi JoAnne. Planning in the region is at point where consultation is required. OPA group has started internal discussions on what this would look like and had wanted to meet with the LDC members of the study group Oct 13 to discuss. Amir and I agree that we should hit the pause button, for two reasons. First, because of OPA discussions with Cambridge CAO and TCE discussions with mayor's office on gas plant in Cambridge, we are going to need to do some outreach with them in advance. Second, and bigger picture, it sounds like whoever forms the next government is going to want to formalize a process for siting gas plants beyond what's now required regulation wise which means we are going to need to engage government on the consultation process. Communications with input from PSP and ER will put together a piece for discussion at ETM Oct 12. Can you let me know who you would like Pat Phillips to follow-up with for ER input, Kevin?

Kristin

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Aleksandar Kojic

From: Kristin Jenkins
Sent: October 24, 2011 4:47 PM
To: Colin Andersen; JoAnne Butler; Michael Killeavy; Michael Lyle
Cc: Tim Butters; Mary Bernard; Patricia Phillips
Subject: Change in Media Relations Protocol

Importance: High

Minister's Office does not want calls referred there. They want OPA to draft responses for review and approval which OPA will then send to media. Below are recommended responses to the calls. Tim please confirm capacity and CODs for OGS and Greenfield South for response to third question.

- John Spears, Toronto Star (mechanics of cancelling the contract - how it's done, has it been done)

-Not appropriate to float options publicly when we have not yet engaged the proponent which is also something we don't want to highlight. Recommend:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

- Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

Recommended Response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

- Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.

Aleksandar Kojic

From: Tim Butters
Sent: October 24, 2011 4:56 PM
To: Kristin Jenkins
Subject: RE: Change in Media Relations Protocol

Thanks -

Ian Harvey (third question) can wait - he just got back to me to say that his deadline is end of day Wednesday.

Just so I'm clear, once the messages are reviewed by the exec/ SMEs they will go to the ministry for review. Once reviewed, I'll send to the reporters?

Also, can the Spears response be used for Tanya as well?

TB

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Aleksandar Kojic

From: Kristin Jenkins
Sent: October 24, 2011 5:12 PM
To: Tim Butters
Subject: Re: Change in Media Relations Protocol

Don't send anything until you hear from me.

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

From: Tim Butters
Sent: Monday, October 24, 2011 04:55 PM
To: Kristin Jenkins
Subject: RE: Change in Media Relations Protocol

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Aleksandar Kojic

From: Tim Butters
Sent: October 24, 2011 5:14 PM
To: Kristin Jenkins
Subject: Re: Change in Media Relations Protocol

Okay. TB

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

From: Kristin Jenkins
Sent: Monday, October 24, 2011 05:11 PM
To: Tim Butters
Subject: Re: Change in Media Relations Protocol

Don't send anything until you hear from me.

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

From: Tim Butters
Sent: Monday, October 24, 2011 04:55 PM
To: Kristin Jenkins
Subject: RE: Change in Media Relations Protocol

Thanks -

Ian Harvey (third question) can wait - he just got back to me to say that his deadline is end of day Wednesday.

Just so I'm clear, once the messages are reviewed by the exec/ SMEs they will go to the ministry for review. Once reviewed, I'll send to the reporters?
Also, can the Spears response be used for Tanya as well?

TB

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

From: Kristin Jenkins
Sent: October 24, 2011 4:47 PM
To: Colin Andersen; JoAnne Butler; Michael Killeavy; Michael Lyle
Cc: Tim Butters; Mary Bernard; Patricia Phillips
Subject: Change in Media Relations Protocol
Importance: High

Minister's Office does not want calls referred there. They want OPA to draft responses for review and approval which OPA will then send to media. Below are recommended responses to the calls. Tim please confirm capacity and CODs for OGS and Greenfield South for response to third question.

• John Spears, Toronto Star (mechanics of cancelling the contract - how it's done, has it been done)

-Not appropriate to float options publicly when we have not yet engaged the proponent which is also something we don't want to highlight. Recommend:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

- Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

Recommended Response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

- Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.

Aleksandar Kojic

From: Helena Edward
Sent: October 25, 2011 5:05 PM
To: Kristin Jenkins
Attachments: TransCanada & Greenfield South Chart .docx

Hi Kristin,

Here's the Chart !

Helena

Developer	Project	Proponent	System Impacts
TransCanada Oakville Generating Station	<ul style="list-style-type: none"> -900 mw combined cycle -\$1.2 Billion construction cost - No environmental or municipal approvals -No Construction - One of many TCE gas plants 	<ul style="list-style-type: none"> -Experienced, sophisticated gas developer -Public company -Ongoing interest in investing in Ontario 	<ul style="list-style-type: none"> - OGS meet address SWGTA supply & reliability issues -Without OGS transmission upgrades required by 2018
Eastern Power Greenfield South	<ul style="list-style-type: none"> -280 mw -300-400 m construction cost -Environmental & Municipal approvals - Construction underway; major expenses committed - Eastern's biggest project - Low rate of return 	<ul style="list-style-type: none"> -First gas plant -Private family-run business -Emotionally attached to the Greenfield Project 	<ul style="list-style-type: none"> - Greenfield South address SWGTA supply & reliability issues -Without GS transmission upgrades required in 2015 or 2016

Aleksandar Kojic

From: Kristin Jenkins
Sent: October 25, 2011 5:13 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby
Cc: Brett Baker; Irene Mauricette
Subject: Greenfield
Attachments: Greenfield South Media Protocol.docx; Greenfield Messaging - 10-25-11.docx; OGS-GS Comparison.docx

As discussed this morning, attached are drafts for your review and comment of an OPA/Ministry media protocol, key messages and comparison between OGS and GS. We are currently working on Qs and As and will circulate a draft by midday tomorrow.

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

Greenfield South Media Protocol

1. OPA and Ministry of Energy will inform each other as soon as possible about media inquiries and communications activities around Greenfield South.
2. The OPA and Ministry will share draft messaging for responses and statements in advance of release.
3. The OPA and the Ministry will initiate their approval processes as soon as possible. If necessary the Ministry will escalate to Cabinet Office.
4. The Ministry and the OPA will commit to timely approval of messaging to ensure that that deadlines are met and good relations with media are maintained.
5. Should responses be delayed to 30 minutes before deadline, OPA will inform the Ministry that the deadline is approaching and the messaging will be deemed approved if there is no final word within those 30 minutes.

DRAFT & CONFIDENTIAL

OPA ASKS EASTERN TO STOP CONSTRUCTION AND TO START DISCUSSIONS TO MUTUALLY AGREE ON TERMS TO RELOCATE THE PLANT

EASTERN SAYS YES:

1) NEGOTIATED AGREEMENT

- Side-deal to stop construction while negotiations take place
- Relocation deal possible
- Financial settlement possible
- Negotiations break down move to other options – unilateral termination of contract or legislation as set out below

Communications impact – best case scenario, construction stops and perceived collaborative process underway

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Construction at the Greenfield South site has now stopped.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

EASTERN SAYS NO:

1) NEGOTIATED AGREEMENT

- Relocation deal possible
- Financial compensation deal possible
- If negotiations unsuccessful move to other options – unilateral termination or legislation
- The plant could be completed and operated as a merchant plant without OPA contract

Communications impact – problematic because construction continues

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Eastern Power is exercising its legal right to continue construction at the current site despite requests that they stop construction while negotiations are underway.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.

- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

2) OPA UNILATERAL TERMINATION OF CONTRACT

- Limits taxpayer/ratepayer exposure as Eastern now required to mitigate damages
- Litigation likely
- Construction not guaranteed to stop
- Without OPA contract, plant still could be completed and operated as a merchant plant

Communications impact – negative as the government’s plan for relocation viewed as failing, costing a lot of money due to likely litigation. And, the plant potentially continues to get built.

KEY MESSAGES

- OPA hoped to reach a negotiated agreement that provided fair treatment to Eastern Power and value to Ontario taxpayers and ratepayers. Unfortunately, this was not possible.
- OPA has terminated the contract with Eastern Power in order to protect the interests of taxpayers and ratepayers. Eastern Power will now be responsible for any additional costs if they choose to continue construction of the plant.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA will not be making any further public comments as this matter is now the subject of a legal proceeding.

3) LEGISLATION

- Construction stops and merchant facility not possible

Communications impact - government’s plan for relocation viewed as failing; sends chill through investment community; litigation likely and perceived as costly route

KEY MESSAGES (Government)

- The provincial government hoped that a negotiated agreement could have been reached that provided fair treatment to Eastern and value to Ontario taxpayers/ratepayers.
- Unfortunately, Eastern Power was not interested in negotiating such an agreement and refused to stop construction of the plant.
- Legislation is the only option that guarantees that the Greenfield South plant is not built and operated in Mississauga.
- OPA/government will not be making any further public comments as this matter is now the subject of legal proceedings.

Developer	Project	Proponent	System Impacts
<p>TransCanada Oakville</p> <p>Generating Station</p>	<ul style="list-style-type: none"> • 900 MW combined cycle • \$1.2 B construction cost • No environmental or municipal approvals • Pre-construction • One of many TCE gas plants • Procured through OPA-led RFP process • Self-financed 	<ul style="list-style-type: none"> • Experienced, sophisticated developer • Public company • Ongoing interest in investing in Ontario • Owns and operates two other gas plants in Ontario 	<ul style="list-style-type: none"> • OGS meet address SWGTA supply & reliability issues • Without OGS transmission upgrades required by 2018
<p>Eastern Power</p> <p>Greenfield South</p>	<ul style="list-style-type: none"> • 280 MW combined cycle • \$300-400 M construction cost • Environmental & Municipal approvals • Construction underway; major expenditures committed • OPA contract provides low rate of return • Procured through Ministry-led RFP process • Secured lenders 	<ul style="list-style-type: none"> • First gas plant for developer • Private family-run business • Emotional attachment to the Greenfield South Project 	<ul style="list-style-type: none"> • Greenfield South address SWGTA supply & reliability issues • Without GS transmission upgrades required in 2015 or 2016

Aleksandar Kojic

From: Joe Toneguzzo
Sent: October 25, 2011 6:07 PM
To: JoAnne Butler; Michael Lyle; Kristin Jenkins
Cc: Amir Shalaby; George Pessione
Subject: FW: Greenfield

Amir requested that I forward the following comments related to the OGS-GS Comparison:

Current studies indicate the dates for transmission upgrades required in the file named OGS-GS Comparison are not as urgent than indicated.

See changes to dates in Red to be incorporated in the System Impacts Column copied below:

System Impacts
<ul style="list-style-type: none">• OGS addressed SWGTA supply & reliability issues• Without OGS transmission upgrades required by 2019
<ul style="list-style-type: none">• Greenfield South addressed SWGTA supply & reliability issues• Without GS transmission upgrades required in 2018 or 2017

This timing provides standard planning lead times for completing studies, obtaining approvals and implementing the required facilities.

Please let me know if any questions.

Thanks - Joe

From: Amir Shalaby
Sent: Tuesday, October 25, 2011 5:15 PM
To: Joe Toneguzzo; George Pessione
Subject: Fw: Greenfield

Take a scan and tell me if have concerns

From: Kristin Jenkins
Sent: Tuesday, October 25, 2011 05:12 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby
Cc: Brett Baker; Irene Mauricette
Subject: Greenfield

As discussed this morning, attached are drafts for your review and comment of an OPA/Ministry media protocol, key messages and comparison between OGS and GS. We are currently working on Qs and As and will circulate a draft by midday tomorrow.

Kristin

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Aleksandar Kojic

From: Kristin Jenkins
Sent: October 25, 2011 6:10 PM
To: Joe Toneguzzo
Subject: Re: Greenfield

Thanks.

From: Joe Toneguzzo
Sent: Tuesday, October 25, 2011 06:07 PM
To: JoAnne Butler; Michael Lyle; Kristin Jenkins
Cc: Amir Shalaby; George Pessione
Subject: FW: Greenfield

Amir requested that I forward the following comments related to the OGS-GS Comparison:

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Aleksandar Kojic

From: Michael Lyle
Sent: October 25, 2011 8:29 PM
To: Kristin Jenkins; Colin Andersen; JoAnne Butler; Michael Killeavy; Amir Shalaby
Cc: Brett Baker; Irene Mauricette
Subject: Re: Greenfield

A few comments first on key messages document. First under Eastern says No negotiated agreement perhaps could add bullet saying "Eastern continues construction while negotiations ongoing" at the beginning. In bullet 4 could add at end "as all necessary regulatory approvals are in place". In Chart on TCE under project, I believe that some approvals had been received although Michael K will have a better recollection on this.

From: Kristin Jenkins
Sent: Tuesday, October 25, 2011 05:12 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby
Cc: Brett Baker; Irene Mauricette
Subject: Greenfield

As discussed this morning, attached are drafts for your review and comment of an OPA/Ministry media protocol, key messages and comparison between OGS and GS. We are currently working on Qs and As and will circulate a draft by midday tomorrow.

Kristin

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Aleksandar Kojic

From: Kristin Jenkins
Sent: October 26, 2011 12:01 PM
To: Colin Andersen; Michael Lyle; Michael Killeavy; Amir Shalaby; JoAnne Butler
Cc: Patricia Phillips; Irene Mauricette; Brett Baker
Subject: Greenfield Materials
Attachments: Greenfield Messaging - 10-25-11.docx; Greenfield South Media Protocol.docx; OGS-GS Comparison.docx

Updated drafts attached.

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

DRAFT & CONFIDENTIAL

KEY MESSAGING

RESOLVING GREENFIELD SOUTH

BACKGROUND

The provincial government has authorized the OPA to start discussions with Eastern Power to relocate the Greenfield South power plant to a more suitable location. As a first step, the OPA will ask Eastern to stop construction and to enter discussions to mutually agree on relocation terms. This document sets out the possible scenarios that could develop from this request along with the associated recommended key messages.

EASTERN SAYS YES TO STOPPING CONSTRUCTION AND STARTING DISCUSSIONS:

1) NEGOTIATED AGREEMENT

- Side-deal to stop construction while negotiations take place
- Relocation deal possible
- Financial settlement possible
- Negotiations break down move to other options – unilateral termination of contract or legislation as set out below

Communications impact – best case scenario, construction stops and perceived collaborative process underway

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Construction at the Greenfield South site has now stopped.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

EASTERN SAYS NO TO STOPPING CONSTRUCTIONS:

1) NEGOTIATED AGREEMENT

- Construction continues during negotiations
- Relocation deal possible
- Financial compensation deal possible
- If negotiations unsuccessful move to other options – unilateral termination or legislation
- As all required regulatory approvals are in place, the plant could be completed and operated as a merchant plant without OPA contract

Communications impact – problematic because construction continues; likely creates perception Eastern will receive lucrative deal because government under enormous pressure to settle quickly to stop construction

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Eastern Power is exercising its legal right to continue construction at the current site despite requests that they stop construction while negotiations are underway.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

2) OPA UNILATERAL TERMINATION OF CONTRACT

- Limits taxpayer/ratepayer exposure as Eastern now required to mitigate damages
- Litigation likely
- Construction not guaranteed to stop
- Without OPA contract, plant still could be completed and operated as a merchant plant

Communications impact – negative as government's plan for relocation viewed as failing, costing a lot of money due to likely litigation and because plant potentially continues to get built and operated as merchant facility

KEY MESSAGES

- OPA hoped to reach a negotiated agreement that provided fair treatment to Eastern Power and value to Ontario taxpayers and ratepayers. Unfortunately, Eastern Power did not support this approach.
- OPA has terminated the contract with Eastern Power in order to protect the interests of taxpayers and ratepayers. Eastern Power will now be responsible for any additional costs if they choose to continue construction of the plant.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA will not be making any further public comments as this matter is now the subject of a legal proceeding.

3) LEGISLATION

- Construction stops and merchant facility not possible

Communications impact - government's plan for relocation viewed as failing; sends chill through investment community; litigation likely and perceived as very costly

KEY MESSAGES (Government)

- The provincial government hoped that a negotiated agreement could have been reached that provided fair treatment to Eastern and value to Ontario taxpayers/ratepayers.
- Unfortunately, Eastern Power was not interested in negotiating such an agreement and refused to stop construction of the plant.
- Legislation is the only option that guarantees that the Greenfield South plant is not built and operated in Mississauga.
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Ontario Power Authority/Ministry of Energy Greenfield South Media Protocol

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Comparison of Oakville Generating Station and Greenfield South Power Plant

Developer	Project	Proponent	System Impacts
TransCanada Oakville Generating Station	<ul style="list-style-type: none"> • 900 MW combined cycle • \$1.2 B construction cost • No environmental or municipal approvals • Pre-construction • One of many TCE gas plants • Procured through OPA-led RFP process • Self-financed 	<ul style="list-style-type: none"> • Experienced, sophisticated developer • Public company • Ongoing interest in investing in Ontario • Owns and operates two other gas plants in Ontario 	<ul style="list-style-type: none"> • OGS addressed SWGTA supply & reliability issues • Without OGS, transmission upgrades required by 2019
Eastern Power Greenfield South Power Plant	<ul style="list-style-type: none"> • 280 MW combined cycle • \$300-400 M construction cost • Environmental & municipal approvals • Construction underway; major expenditures committed • OPA contract provides low rate of return • Procured through Ministry-led RFP process • Secured lenders 	<ul style="list-style-type: none"> • First gas plant for developer • Private family-run business • Emotional attachment to the Greenfield South Project 	<ul style="list-style-type: none"> • Greenfield addressed SWGTA supply & reliability issues • Without Greenfield transmission upgrades required in 2017 or 2018

Aleksandar Kojic

From: Kovesfalvi, Sylvia (ENERGY) [Sylvia.Kovesfalvi@ontario.ca]
Sent: November 21, 2011 12:42 PM
To: Kristin Jenkins
Subject: RE: Greenfield - Toronto Star & Mississauga News

Ok – thanks.

From: Kristin Jenkins [mailto:Kristin.Jenkins@powerauthority.on.ca]
Sent: November 21, 2011 12:26 PM
To: Kovesfalvi, Sylvia (ENERGY)
Subject: RE: Greenfield - Toronto Star & Mississauga News

Will do. As you know Tim usually does this – and much better than me – but I did the Star call without him.

From: Kovesfalvi, Sylvia (ENERGY) [mailto:Sylvia.Kovesfalvi@ontario.ca]
Sent: November 21, 2011 12:25 PM
To: Kristin Jenkins
Subject: FW: Greenfield - Toronto Star & Mississauga News

Thanks for the info below Kristin. Please include Paola Gemmiti, Paul Gerard and me in the distribution – thanks very much.

ps – I'm finalizing the QA's for our records and will be sending that over this afternoon. Will incorporate Q's that are coming in today (these were covered in an early, general QA).

From: Cayley, Daniel (ENERGY)
Sent: November 21, 2011 12:21 PM
To: Kovesfalvi, Sylvia (ENERGY); Morton, Robert (ENERGY); Kulendran, Jesse (ENERGY); Gerard, Paul (ENERGY)
Cc: King, Ryan (ENERGY); Nutter, George (ENERGY); Gemmiti, Paola (ENERGY)
Subject: FW: Greenfield - Toronto Star & Mississauga News

FYI

Daniel Cayley
Issues and Media Officer
Communications Branch
Ministries of Energy and Infrastructure
Office: (416) 325-0781
BB: (416) 347-4677
daniel.cayley@ontario.ca



Please consider the environment before printing this e-mail

From: Kristin Jenkins [mailto:Kristin.Jenkins@powerauthority.on.ca]
Sent: November 21, 2011 12:16 PM
To: Botond, Erika (ENERGY); Kett, Jennifer (ENERGY); Cayley, Daniel (ENERGY); Tim Butters; Patricia Phillips; Colin Andersen; Michael Lyle
Subject: Greenfield - Toronto Star & Mississauga News

I spoke to Tanya Talaga. Pretty much focused on cost issue but a couple of other issues came up that I want to flag. She asked about the ongoing need in SWGTA for additional electricity supply which raised the issue of the transmission that will be built to replace the cancelled Oakville plant. She also asked if the Greenfield plant would be relocated in the

SWGTA. I told her that relocation was part of discussion with Greenfield and could not get into the details. I also said that I was not aware if the government had made any comments on relocating the plant in the GTA or not and suggested she follow up with the government on that. Mississauga News just wanted to know if there was any additional information on costs etc that could be provided. I told the reporter there isn't at this time.

We've also had calls from the Karen Howlett, John Spears and Christian Gregoire at Radio Canada. Have left messages with them. Will send you summary after we connect.

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

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Aleksandar Kojic

From: Kristin Jenkins
Sent: November 21, 2011 1:06 PM
To: Colin Andersen
Subject: RE: Greenfield - Toronto Star & Mississauga News

I just talked to him. Asked me what else I could tell him, I said not much at this time as discussions continue. He said what's new then? and I said construction is stopping. He said what did OPA give to get that, is there a settlement, is there an arbitration process? I said talks still underway and I don't have any more details at this time. He said ok and that he would stop pestering me and that was it. Do you have a minute when you get back? I want to run some questions and answers by you on the need for the plant before I send to ministry.

From: Colin Andersen
Sent: November 21, 2011 1:00 PM
To: Kristin Jenkins
Subject: Re: Greenfield - Toronto Star & Mississauga News

Tks. JS is here at oen.

From: Kristin Jenkins
Sent: Monday, November 21, 2011 12:15 PM
To: 'Botond, Erika (ENERGY)' <Erika.Botond@ontario.ca>; Kett, Jennifer (ENERGY) <Jennifer.Kett@ontario.ca>; 'Cayley, Daniel (MEI)' <Daniel.Cayley@ontario.ca>; Tim Butters; Patricia Phillips; Colin Andersen; Michael Lyle
Subject: Greenfield - Toronto Star & Mississauga News

I spoke to Tanya Talaga. Pretty much focused on cost issue but a couple of other issues came up that I want to flag. She asked about the ongoing need in SWGTA for additional electricity supply which raised the issue of the transmission that will be built to replace the cancelled Oakville plant. She also asked if the Greenfield plant would be relocated in the SWGTA. I told her that relocation was part of discussion with Greenfield and could not get into the details. I also said that I was not aware if the government had made any comments on relocating the plant in the GTA or not and suggested she follow up with the government on that. Mississauga News just wanted to know if there was any additional information on costs etc that could be provided. I told the reporter there isn't at this time.

We've also had calls from the Karen Howlett, John Spears and Christian Gregoire at Radio Canada. Have left messages with them. Will send you summary after we connect.

Kristin

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Aleksandar Kojic

From: JoAnne Butler
Sent: October 18, 2010 5:11 PM
To: Michael Killeavy
Subject: RE: Meeting tomorrow

I know...but our hands are tied anyway...government has backed us into a corner....doubt that we will be allowed to go to litigation so let's just get on with it and see what options they can put forward...

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

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

From: Michael Killeavy
Sent: Lunes, 18 de Octubre de 2010 05:10 p.m.
To: JoAnne Butler
Subject: Re: Meeting tomorrow

Until we have litigation counsel on board we need to be careful. We don't want to get suckered into anything.

You know I love planners.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: JoAnne Butler
To: Michael Killeavy; Deborah Langelaan
CC: Amir Shalaby
Sent: Mon Oct 18 17:02:00 2010
Subject: RE: Meeting tomorrow

This came out of our Friday meeting. We have not brought in the lawyers yet.

Deb, you should probably make sure that Mike is aware of it anyway...good point...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

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

From: Michael Killeavy
Sent: Lunes, 18 de Octubre de 2010 05:00 p.m.
To: Deborah Langelaan; JoAnne Butler
Cc: Amir Shalaby
Subject: Re: Meeting tomorrow

Does Mike Lyle know that this meeting is being held and does he think we ought to participate?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Deborah Langelaan
To: JoAnne Butler
CC: Michael Killeavy; Amir Shalaby
Sent: Mon Oct 18 16:58:20 2010
Subject: FW: Meeting tomorrow

JoAnne;

Do you have a copy of the briefing document TCE refers to below?

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA | Suite 1600 - 120 Adelaide St. W. |
Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca
<<mailto:%7Cdeborah.langelaan@powerauthority.on.ca>> |

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: October 18, 2010 4:55 PM
To: Deborah Langelaan
Subject: Meeting tomorrow

Deborah, I don't think we need a detailed agenda for tomorrow's meeting, but I thought providing an overall objective might be helpful. To that end, here is my take on the objective - please feel free to add or edit as you see fit:

To review the overall electrical system supply and demand for the Province and to identify regional needs for energy infrastructure and their timing. We are hoping Amir can provide the views of the OPA planning group. TransCanada can provide information on the alternatives we provided to the government (I believe the OPA has the briefing document outlining these), and information on our sites at Halton Hills and Cambridge.

Regards, Terry

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Aleksandar Kojic

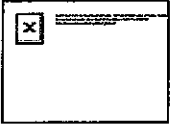
From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: October 8, 2010 11:59 AM
To: Michael Killeavy
Cc: Smith, Elliot
Subject: Trans-Canada Oakville CES Contract

Michael,

Not sure how the "cancellation" of the Oakville project is going to play out contractually, but I thought that I would reach out to you to keep in mind that whatever the approach, the OPA needs to keep in mind potentially implications relating to TCE's Section 1.6 claim on Oakville and the other facilities.

Needless to say, if we can be of assistance on bigger picture considerations on how to handle all of this, we'd be pleased to assist.

Regards, Rocco



Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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



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soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: October 8, 2010 12:02 PM
To: 'RSebastiano@osler.com'
Cc: 'ESmith@osler.com'
Subject: Re: Trans-Canada Oakville CES Contract

Thank you. We appreciate the heads up.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Sebastiano, Rocco <RSebastiano@osler.com>
To: Michael Killeavy
CC: Smith, Elliot <ESmith@osler.com>
Sent: Fri Oct 08 11:59:26 2010
Subject: Trans-Canada Oakville CES Contract

Michael,

Not sure how the "cancellation" of the Oakville project is going to play out contractually, but I thought that I would reach out to you to keep in mind that whatever the approach, the OPA needs to keep in mind potentially implications relating to TCE's Section 1.6 claim on Oakville and the other facilities.

Needless to say, if we can be of assistance on bigger picture considerations on how to handle all of this, we'd be pleased to assist.

Regards, Rocco

http://www.osler.com/img/email_logo.gif <http://www.osler.com/img/email_logo.gif>

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

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Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/img/email_website.gif <<http://www.osler.com/>>

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Aleksandar Kojic

From: Deborah Langelaan
Sent: October 13, 2010 1:58 PM
To: Michael Killeavy
Subject: SW GTA
Attachments: TransCanda Energy Ltd- October 7 2010.pdf

Michael;

Attached is a copy of the letter that was sent to TCE.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |



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

T 416-967-7474
F 416-967-1947

www.powerauthority.on.ca

October 7, 2010

TransCanada Energy Ltd.
450-1st Street
Calgary, AB T2P 5H1

Attn: Alex Pourbaix,
President,
Energy and Oil Pipelines

Dear Mr. Pourbaix :

Re: Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. and Ontario Power Authority (the "OPA") dated October 9, 2009

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in southwest GTA.

The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract. We would like to begin negotiations with you to reach mutual agreement to terminate the Contract.

Given Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers.

You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

We undertake that we will not disclose this letter without giving you prior notice and we request that you do the same.

Sincerely,

ONTARIO POWER AUTHORITY

Per: 

Name: Colin Andersen

Title: Chief Executive Officer

Aleksandar Kojic

From: JoAnne Butler
Sent: October 18, 2010 5:01 PM
To: Deborah Langelaan
Cc: Michael Killeavy; Amir Shalaby; Ben Chin
Subject: RE: Meeting tomorrow

I do not have the document... Ben or Amir might have it...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Deborah Langelaan
Sent: Lunes, 18 de Octubre de 2010 04:58 p.m.
To: JoAnne Butler
Cc: Michael Killeavy; Amir Shalaby
Subject: FW: Meeting tomorrow

JoAnne;

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Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: October 18, 2010 4:55 PM
To: Deborah Langelaan
Subject: Meeting tomorrow

Deborah, I don't think we need a detailed agenda for tomorrow's meeting, but I thought providing an overall objective might be helpful. To that end, here is my take on the objective – please feel free to add or edit as you see fit:

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Regards, Terry

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Aleksandar Kojic

From: Amir Shalaby
Sent: October 18, 2010 5:14 PM
To: JoAnne Butler; Deborah Langelaan
Cc: Michael Killeavy; Ben Chin
Subject: RE: Meeting tomorrow

I do not have any documents

From: JoAnne Butler
Sent: Monday, October 18, 2010 5:01 PM
To: Deborah Langelaan
Cc: Michael Killeavy; Amir Shalaby; Ben Chin
Subject: RE: Meeting tomorrow

I do not have the document... Ben or Amir might have it...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

120 Adelaide Street West, Suite 1600
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416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Deborah Langelaan
Sent: Lunes, 18 de Octubre de 2010 04:58 p.m.
To: JoAnne Butler
Cc: Michael Killeavy; Amir Shalaby
Subject: FW: Meeting tomorrow

JoAnne;

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Deborah Langelaan | Manager, Natural Gas Projects | OPA |
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Aleksandar Kojic

From: Deborah Langelaan
Sent: October 18, 2010 5:39 PM
To: Michael Lyle
Cc: JoAnne Butler; Michael Killeavy
Subject: Fw: Meeting tomorrow

Mike;

Last Friday afternoon JoAnne, Ben and I met with representatives of TransCanada to discuss the repudiation of the SW GTA contract. It was the inaugural meeting and it went well. TCE indicated that their preference is to move the Facility to another location and they suggested it was also the Province's preference. As you will see in Terry's e-mail below we will be meeting tomorrow afternoon to discuss ON demand/supply and regional needs for infrastructure. As was the case for Friday's meeting this meeting is without lawyers.

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Mon Oct 18 16:54:59 2010
Subject: Meeting tomorrow

Deborah, I don't think we need a detailed agenda for tomorrow's meeting, but I thought providing an overall objective might be helpful. To that end, here is my take on the objective - please feel free to add or edit as you see fit:

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Aleksandar Kojic

From: Deborah Langelaan
Sent: October 18, 2010 7:39 PM
To: Ben Chin; Amir Shalaby; JoAnne Butler
Cc: Michael Killeavy
Subject: Re: Meeting tomorrow

It's ok - Terry will bring a copy to tomorrow's meeting.

Deb

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

From: Ben Chin
To: Amir Shalaby; JoAnne Butler; Deborah Langelaan
CC: Michael Killeavy
Sent: Mon Oct 18 18:08:36 2010
Subject: Re: Meeting tomorrow

Amir, I think you did get something from TC that they submitted to gov previously?

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

From: Amir Shalaby
To: JoAnne Butler; Deborah Langelaan
CC: Michael Killeavy; Ben Chin
Sent: Mon Oct 18 17:13:43 2010
Subject: RE: Meeting tomorrow

I do not have any documents

From: JoAnne Butler
Sent: Monday, October 18, 2010 5:01 PM
To: Deborah Langelaan
Cc: Michael Killeavy; Amir Shalaby; Ben Chin
Subject: RE: Meeting tomorrow

I do not have the document...Ben or Amir might have it...

JCB

JoAnne C. Butler

Vice President, Electricity Resources

Ontario Power Authority

120 Adelaide Street West, Suite 1600

Toronto, Ontario M5H 1T1

416-969-6005 Tel.

416-969-6071 Fax.

joanne.butler@powerauthority.on.ca

From: Deborah Langelaan
Sent: Lunes, 18 de Octubre de 2010 04:58 p.m.
To: JoAnne Butler
Cc: Michael Killeavy; Amir Shalaby
Subject: FW: Meeting tomorrow

JoAnne;

Do you have a copy of the briefing document TCE refers to below?

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA | Suite 1600 - 120 Adelaide St. W. |
Toronto, ON M5H 1T1 |
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Aleksandar Kojic

From: JoAnne Butler
Sent: October 19, 2010 4:33 PM
To: Ben Chin; Deborah Langelaan
Cc: Michael Killeavy
Subject: Re: TCE OGS - Oakville Litigation & OMB Hearing

I agree. Stay neutral.

JCB

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

From: Ben Chin
To: Deborah Langelaan; JoAnne Butler
CC: Michael Killeavy
Sent: Tue Oct 19 15:50:44 2010
Subject: RE: TCE OGS - Oakville Litigation & OMB Hearing

They've also asked gov, and haven't received an answer. I think for our part, we shouldn't be impeding them from doing what they need to do. I don't think we should be telling them to wrap up their hearings, or not. If they want to wrap it up - and it makes sense - they should. T

From: Deborah Langelaan
Sent: October 19, 2010 3:45 PM
To: JoAnne Butler; Ben Chin
Cc: Michael Killeavy
Subject: TCE OGS - Oakville Litigation & OMB Hearing

JoAnne and Ben;

During this afternoon's meeting with TCE Chris Breen advised the OPA that it is their intent, unless the OPA/Province feels differently, to wrap up the lawsuit with the Town of Oakville as well as the hearing with the OMB. The Town has asked that TCE to advise them by Thursday of this week of its intent. Are either of you aware of any reason why the OPA would object to TCE pursuing this strategy?

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA | Suite 1600 - 120 Adelaide St. W. |
Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca
<<mailto:%7Cdeborah.langelaan@powerauthority.on.ca>> |

Aleksandar Kojic

From: Deborah Langelaan
Sent: October 20, 2010 8:58 AM
To: Michael Killeavy
Subject: Emailing: TCE_Alternatives_Update_20100830
Attachments: TCE_Alternatives_Update_20100830.pdf

The message is ready to be sent with the following file or link attachments:

TCE_Alternatives_Update_20100830

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Oakville Generating Station

Alternatives Update

August 30, 2010

The following information is preliminary, indicative and does not represent an offer or commitment and is provided without prejudice for the purposes of facilitating discussions surrounding solutions to advancing the development of the Oakville Generating Station and responding to suggestions that options may exist.

We have reviewed the content of this document with the Ontario Power Authority and have incorporated their comments.

This record includes information that is subject to solicitor-client privilege and information that was prepared for use by Crown counsel in giving legal advice or in contemplation of or for use in litigation. This record also contains third party information supplied in confidence and information relating to the economic and other interests of Ontario, and information that could prejudice the conduct of intergovernmental relations, all within the meaning of the Freedom of Information and Protection of Privacy Act.

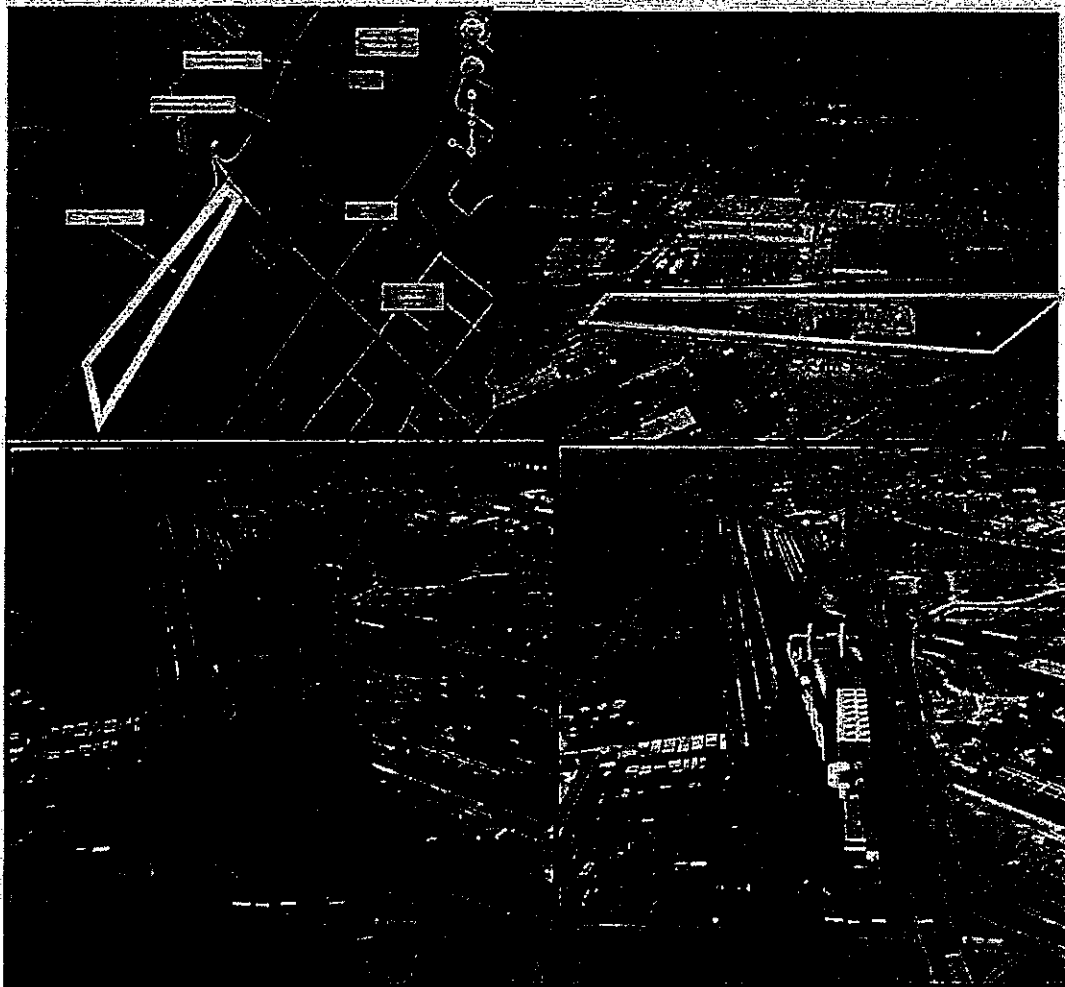
What we have done since July 15th:

We have added a review of the Nanticoke Option in the same format to the work of July 15th as previously presented.

We have added a table which directly compares the four options.

This record includes information that is subject to solicitor-client privilege and information that was prepared for use by Crown counsel in giving legal advice or in contemplation of or for use in litigation. This record also contains third party information supplied in confidence and information relating to the economic and other interests of Ontario, and information that could prejudice the conduct of intergovernmental relations, all within the meaning of the Freedom of Information and Protection of Privacy Act.

Baseline - Oakville Generating Station



The Oakville Generating Station is a natural gas-fired combined cycle electricity generating facility with a Contract Capacity of 900 MW to be constructed on zoned industrial land. The site is southeast of Ford at 1500 Royal Windsor Drive in Oakville located just east of the Queen Elizabeth Way (QEW). This site is where TransCanada plans to construct and is committed to proceeding with the facility pursuant to the completed RFP process and its contract with the OPA.

Major equipment for the facility consists of two Mitsubishi G-class combustion turbine generators, two heat recovery steam generators (HRSGs) and a steam turbine generator in a 2 x 2 x 1 configuration. The G-class gas turbines utilized are the most efficient commercially available. The gas turbines and duct burners will be equipped with dry low NOx combustion technology and will utilize selective catalytic reduction (SCRs) for post combustion NOx reduction. The steam cycle cooling for the station will be through a plume abated mechanical draft cooling tower which yields performance benefits, lowers noise levels and improves aesthetics over alternative air

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cooled condenser technology. The cooling tower make-up water will be lake water supplied from Lake Ontario via existing Ford infrastructure.

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OPA Contracted Capacity: 900 MW
 Estimated Cost: \$1.20 Billion (\$1,335 /kW)
 Connection Point: Hydro One 230 kV circuits B15C and B16C near Oakville TS (approx. 500 m underground).
 Gas Utility: Union
 Commercial Operation Date: Q1 2014
 Proximity to residents: 400 m
 Closest Receptor (school): 320 m

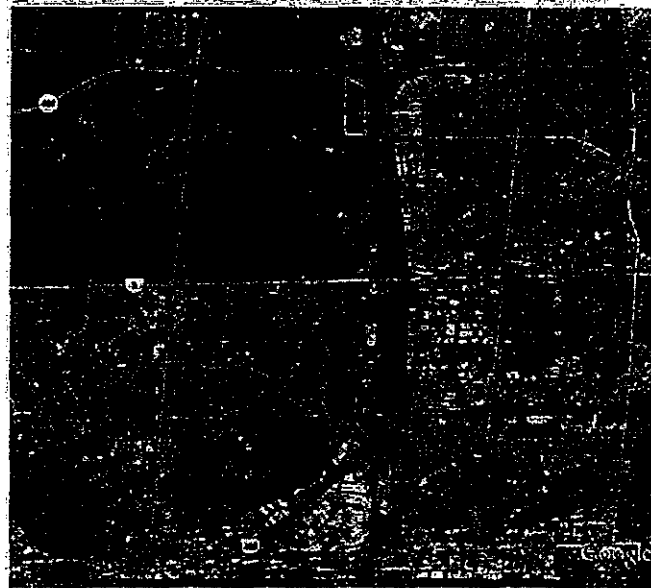
<u>Advantages</u>	<u>Risks</u>
Conforms to OPA RFP Criteria	Public opposition – on issues of safety, emissions
Conforms to existing OPA CES Contract	Town of Oakville Interim Control Bylaw - requires exempting regulation by Province or successful court challenge
Official Plan: Employment, with Power Generation as a permitted use	Town of Oakville Health Protection By-law (PM _{2.5}) - requires exempting legislation from the Province or successful court challenge
Zoning: General Employment E-2 - Power Generation is permitted use –(Interim Control By-law in place)	Town of Oakville, Region of Halton permits and approvals will likely be impeded. ICBL likely to be replaced with prohibitive zoning by-law by March 2011
The Ford Site is grandfathered for electricity under s. 46.1 of the Electricity Act.	Threats of legal actions with respect to Environmental Assessment Decision, Civil Suits by C4CA, Health Protection By-law (PM _{2.5}).
Cooling Tower reduces footprint, improves efficiency, increases output	Currently 5 appeals at the Ontario Municipal Board. TransCanada has also brought court applications to Quash the ICBLs, the Health Protection By-law and any further zoning or official plan impediments. Court date starting December 20th. This litigation may be subject to delays and appeals.
Water source from Lake Ontario via private facilities	
Minimal electrical interconnection: 500 m underground	

Required Next Steps:

1. The Province will step in with a regulation under the Planning Act to exempt the Ford site or by way of a generic exemption, all power projects procured pursuant to a Minister's Directive. This capability was specifically legislated under Section 62.0.1(1) of the Planning Act to ensure that the government's energy plan (chartered by the IPSP) would be implemented. As well as removing current time sensitive barriers to development of the project, this would clearly signal the intent of the Province to proceed. This power has recently been exercised to address a similar situation with respect to the York Energy Centre in King.
 2. TransCanada is contesting the Health Protection By-law (PM_{2.5}). In the event that opposition continues toward OGS, Province may consider enacting legislation for OGS.
- This record includes information that is subject to solicitor-client privilege and information that was prepared for use by Crown counsel in giving legal advice or in contemplation of or for use in litigation. This record also contains third party information supplied in confidence and information relating to the economic and other interests of Ontario, and information that could prejudice the conduct of intergovernmental relations, all within the meaning of the Freedom of Information and Protection of Privacy Act.*

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Alternative 2 – Oakville North



A natural gas-fired combined cycle electricity generating facility with a Contract Capacity of 880 MW that could be constructed on Provincial lands in northeastern Oakville. The concept is to relocate the current Oakville Generating Station north to a greenfield site near the intersection of Highways 403 and 407 and construct a 7 km underground transmission line to the required connection zone via existing utility corridor.

This record includes information that is subject to solicitor-client privilege and information that was prepared for use by Crown counsel in giving legal advice or in contemplation of or for use in litigation. This record also contains third party information supplied in confidence and information relating to the economic and other interests of Ontario, and information that could prejudice the conduct of intergovernmental relations, all within the meaning of the Freedom of Information and Protection of Privacy Act.

Major equipment for the facility would be the same as the current Oakville Generating Station. Two alternatives are under for steam cycle cooling for the station:

- In the event that Ford consents and the regulatory regime permits including the Town of Oakville, cooling water from Lake Ontario originally destined for the Oakville Generating Station on the Ford site will be pumped via a new pipeline in the Hydro corridor to the north Oakville site for use in a plume abated mechanical draft cooling tower.
- Alternatively if water cannot be secured from Ford steam cooling will be through air cooled condenser technology increasing the footprint, but virtually eliminating water usage and plume.

	Cooling Tower	Air Cooled Condenser
Location:	Burnhamthorpe and Ninth line in Oakville	
OPA Contracted Capacity:	900 MW	880 MW
Estimated Capital Cost:	\$1.4 Billion (\$1,555 /kW) ↑	\$1.4 Billion (\$1,590 /kW) ↑
Connection Point:	Hydro One 230 kV circuits B15C and B16C near Oakville TS (approx. 7km underground).	
Gas Utility:	Union	
Commercial Operation Date:	Q1 2015 (one year delay)	
Estimated increase in cost	17%	17%
*Proximity to nearest resident:	350 m (*assumes that adjacent residences are purchased and removed)	
Proximity to nearest school:	900 m	

<u>Advantages</u>	<u>Risks</u>
Site selected is owned by Province (Management Secretariat)	Does not conform to OPA RFP Criteria – location exceeds 2 km max. transmission line length and OEB Section 92 criteria. Leave to construct will be required if project not exempted by the Province.
Proximity to high density residents: ~1000 m (after buy-out of locals) currently Mississauga	Requires renegotiation of the OPA CES Contract
Official Plan: Employment Area	Potential for legal challenge to OPA process
Zoning: Existing Development (ED) Zone in recent (April 15, 2010) new comprehensive zoning	On-site potential risks include wetlands and heritage building
Provincial ownership of land creates some exemptions under planning act which may be beneficial	Under the current Existing Development (ED) Zone, while district energy facilities are, large-scale power generation facilities are not specifically listed as acceptable uses. This type of facility likely requires amendments to the Secondary Plan, the Official Plan, the comprehensive zoning by-law through a Minister's zoning Order, or a regulation passed under the Planning Act. Town of Oakville Health Protection By-law (PM2.5) still applicable – would seek exemption on the basis of greater public good served through relocation

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ACC requires no water no potential for plume or plume related issues	ACC has lower efficiency, lower output than wet cooling tower (~20 MW)
While Cooling Tower has increased efficiency and power output	Cooling Tower requires large amounts of water and potential for plume near major highways
No rail in proximity to site - fully addresses community concerns related to CN/GO rail proximity	Town could create new ICBL on the basis of new planning rationale.
Offers compromise to Town of Oakville while ensuring Town accepts its roles in hosting regional electricity infrastructure	Will require re-starting the entire permitting process – min. delay of 12 months
Greenfield site of 42 acres + adjacent hydro corridor - sufficient for construction and laydown	Potential for the Town of Oakville, Region of Halton permits and approvals to be frustrated
Hydro One utility corridor exists under the Parkway Belt West Plan from site to point of connection	Requires securing site – buying out local residential properties – securing easements, access agreements
	Significant new electrical connection – 7 km u/g adjacent to residential communities (setting new precedent for generator connection)
	North Oakville may react negatively to relocation of generation from south Oakville - Mississauga also as closest effected residential community
	<p>May require front-ending of water, sewer and road services to the site</p> <ul style="list-style-type: none"> • Road - Burnhamthorpe will be brought up from rural to urban in 2012 in front of the site. • Water - a 750mm trunk will be installed along Burnhamthorpe in front of the site in 2017. Presumably, other supporting capital infrastructure (treatment, pumping stations, etc.) will be on-line before that time. • Sanitary – the DC background study also indicates a 2017 timeframe for connections south from Burnhamthorpe.

Required Next Steps:

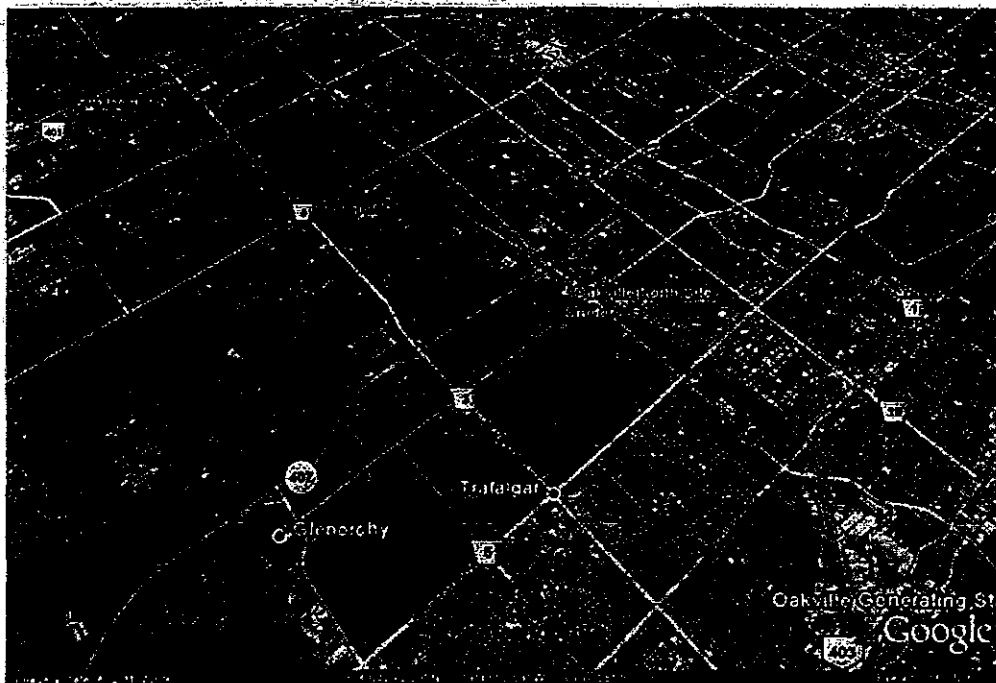
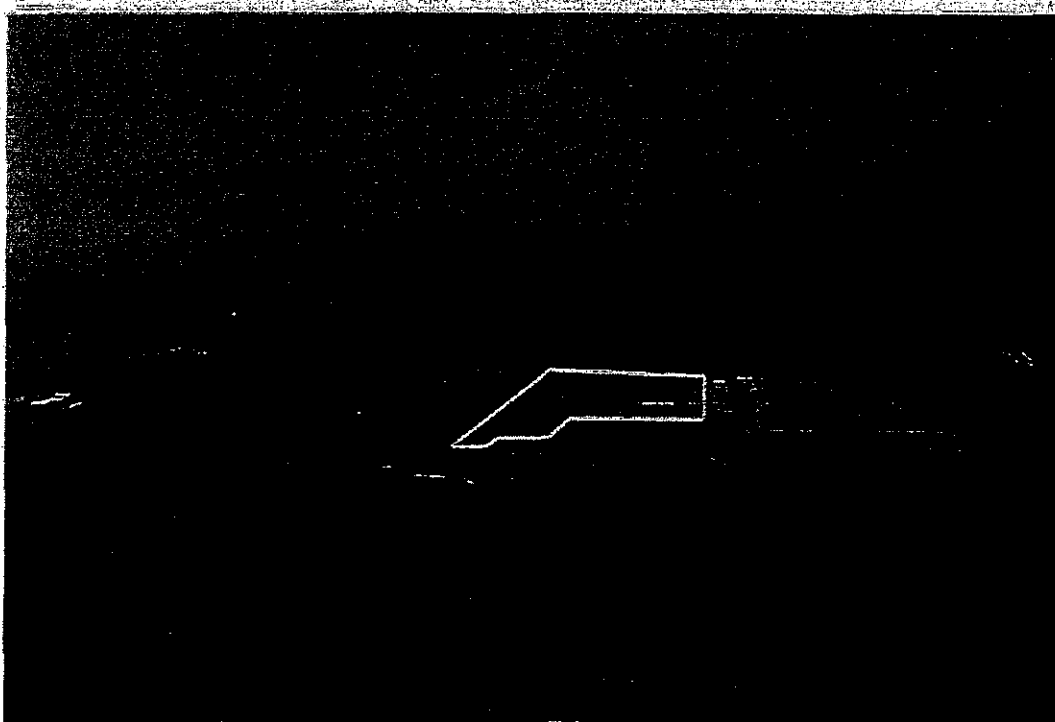
- MOEnergy would need to discuss the implications of moving sites with the Ontario Power Authority and making changes to a completed procurement process that would not conform to the original RFP mandatory criteria.
- Should the OPA be receptive to this concept, TransCanada would need to secure a site, enter into agreements with land owners, easements, and renegotiate its CES Contract with the OPA to reflect the lower output, higher cost and delayed in service date and start the permitting and approvals process.

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- OPA would be expected keep TransCanada whole with respect to bid economics.
- OPA would be expected hold TransCanada harmless with respect to actions of other bidders or challenges to changes to bid and/or contract.
- Province could exempt transmission lines from Section 92
- Province could designate site under Ministerial zoning order if required to exempt site from Town's zoning by-laws

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Alternative 3 – Halton Hills 2



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A natural gas-fired combined cycle electricity generating facility with a Contract Capacity of 880 MW that could be constructed on TransCanada land in Halton Hills. The concept is to relocate the current Oakville Generating Station north to a greenfield site adjacent to the Halton Hills Generating Station at Highway 401 and 6th line and construct a 20 km underground transmission line to the required connection zone via existing utility corridor.

Major equipment for the facility would be the same as the current Oakville Generating Station except that the steam cycle cooling for the station will be through air cooled condenser technology increasing the footprint, but virtually eliminating water usage and plume.

Location:	6 th line and Highway 401 Halton Hills
OPA Contracted Capacity:	880 MW
Estimated Cost:	\$1.5 Billion (\$1652 /kW) ↑
Connection Point:	Hydro One 230 kV circuits B15C and B16C near Oakville TS (approx. 20km underground).
Gas Utility:	Union
Commercial Operation Date:	Q1 2015 (one year delay)
Estimated increase in cost	23%
Proximity to nearest resident:	300 m
Proximity to nearest school:	2.5 km

<u>Advantages</u>	<u>Risks</u>
Greenfield site of approximately 47 acres	Does not conform to OPA RFP Criteria – location exceeds 2 km max. transmission line length and OEB Section 92 criteria. Leave to construct will be required if project is not exempted by the Province
Site is owned by TransCanada	Requires renegotiation of the OPA CES Contract
Proximity to high density residents: 2.5 km currently in north east Milton	Potential for legal challenge to OPA process
Official Plan: Employment Area – Power Generation as an acceptable use	Will require re-starting the entire permitting process – delay of 12 months
Zoning: Current: Prestige Industrial	Water requirements exceed the water allotment for the site
Additional land may be acquired for facility water servicing rights, one block of approximately 70 acres to the west of the proposed alternate site	Need to front end water and sewer services to the site
ACC requires no water no potential for plume or plume related issues	ACC has lower efficiency, lower output than wet cooling tower (-20 MW)
No rail in proximity to site - fully addresses community concerns related to CN/GO rail proximity	Town of Halton Hills could create an ICBL similar to what was done in Oakville and King Township

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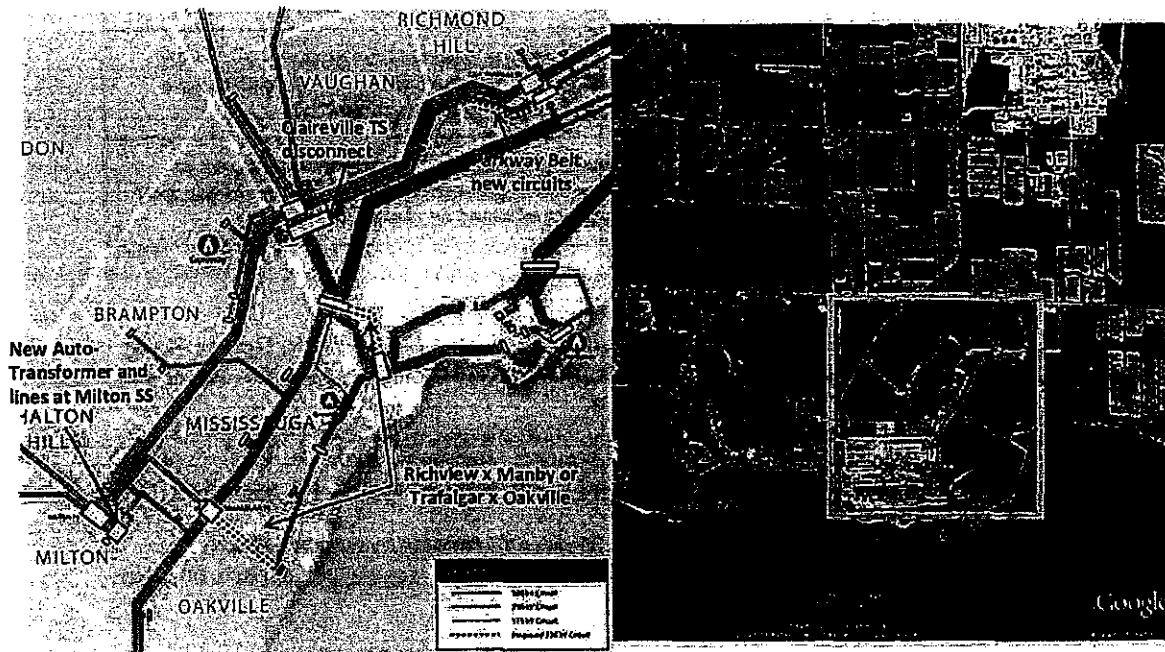
Existing Hydro One utility corridor exists under the Parkway Belt West Plan across from site to point of connection, minimal private land required.	Potential for the Town of Halton Hills Region of Halton permits and approvals to be frustrated
	Significant new electrical connection – 20 km u/g adjacent to residential communities (setting new precedent for generator connection)
	Halton Hills and Milton may react negatively to relocation of generation from Oakville – Milton also is closest effected residential community

Required Next Steps:

- MOEnergy would need to discuss the implications of moving sites with the Ontario Power Authority and making changes to a completed procurement process that would not conform to the original RFP mandatory criteria.
- Should the OPA be receptive to this concept, TransCanada would need to secure a site, enter into agreements with landowners, easements, and renegotiate its CES Contract with the OPA to reflect the lower output and higher cost and start the permitting and approvals process.
- OPA would be expected keep TransCanada whole with respect to bid economics.
- OPA would be expected hold TransCanada harmless with respect to actions of other bidders or challenges to changes to bid and/or contract.
- Province could exempt transmissions line from Section 92.
- Province could designate site under Ministerial zoning order if required to exempt site from Town's zoning by-laws.

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Alternative 4 – Nanticoke + GTA Transmission



The concept is to relocate the current Oakville Generating Station natural gas-fired combined cycle electricity generating facility to a greenfield site on the Ontario Power Generation Nanticoke GS site located in Haldimand County Ontario and implemented transmission system upgrades in the GTA to address transmission system deficiencies.

Major equipment for the facility would be the same as the current Oakville Generating Station with two alternatives for steam cycle cooling for the station:

- In the event that the regulatory regime including Haldimand County permits cooling water from Lake Erie will be pumped via a new pipeline to the Nanticoke site for use in a plume abated mechanical draft cooling tower.
- Alternatively if the final site is reasonably proximate to Lake Erie water could be pumped from and returned to the lake in volumes sufficient for once through cooling resulting in improved performance a smaller footprint and virtually eliminating water usage and plume.

GAS PIPELINE (\$100-\$300 million)

Currently there is very limited amount of natural gas available. To locate the Oakville GS in Nanticoke would require a new gas line to be constructed. While there are various routes available the shortest route encompasses approximately 50 km of new 30 inch pipe. It crosses the Six Nations First Nations Reserve and would require negotiation and agreement with the Six Nations and New Credit prior to construction and approval. Estimated costs of the line are between \$100 and \$150 million and it is expected if approval could be achieved that it would take 3 years. Alternatively, a 100 km new 30 inch pipe can access the site from the west at Bright with a cost of \$200 - \$300 million. There is potential for a shorter timeframe with two years to permit and construct the pipeline from the west versus 3 years for the pipeline from the northeast.

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TRANSMISSION UPGRADES (\$200 - \$400 million)

Extensive new transmission facilities will be required to be constructed in the GTA:

- To address the Claireville TS auto-transformer relief, 7km of new transmission lines consisting of overhead and / or underground lines will need to be constructed from Richmond Hill TS #1 & #2 to Parkway TS with an estimated cost of \$65 million.
- To address the Trafalgar TS auto-transformer overload, new auto-transformers would be required at Milton SS with facilities to reconnect some of the stations currently supplied from Trafalgar TS. The estimated cost of this infrastructure is \$90 to \$105 million including the station and the overhead transmission circuits.
- To address the Richview to Manby transmission corridor overload there are two options.
 - Provide a new double circuit 230 kV overhead or underground transmission line between Trafalgar TS and Oakville TS having a length of about 7 km to move some of the SW-GTA electrical load onto Trafalgar TS. The estimated cost of this line is \$20 million for an overhead transmission line or \$100 million if it is constructed underground.
 - Alternatively, a new double circuit 230 kV line could be constructed between Richview TS and Manby TS a distance of about 6.5 km adjacent to the existing hydro corridor between these two stations. The estimated cost of this line would be about \$30 million if overhead and \$150M if underground.

Locating the gas generation outside the GTA transmission system would result in increased transmission line losses for delivering the energy from Nanticoke area to the GTA. A preliminary assessment of the increased cost of losses over a 20 year period results in costs in the range of \$40M to \$80M.

While the above transmission solutions addresses the near term supply constraints to the southwest GTA they do not reduce the dependency of the GTA on the aging transmission system nor make any significant improvement in the reliability of electricity supply nor provide any material capacity for future growth. To illustrate the local supply point in 1985 generation within the GTA was approximately equal to the demand. As a result of continued load growth and the elimination of generation facilities within the GTA now only about 25% of the GTA load is being supplied from local generation and most of that is from the Pickering nuclear station. This places increasing strain on an aging transmission system and increases the potential for events which might lead to supply interruptions. By comparison the City of New York requires utilities to secure 80% of their peak demand from in-city generation sources.

	Cooling Tower	Once-Through
Location:	Nanticoke GS, 34 Haldimand Road 55, Nanticoke, ON	
OPA Contracted Capacity:	900 MW	
Estimated Power Plant Capital:	\$1.4 Billion (\$1,555 /kW) ↑	\$1.2 Billion (\$1,590 /kW) ↑
Estimated Transmission Capital:	\$200-400 Million	
Estimated NG Pipeline Capital:	\$100-300 Million	
Range of Total Capital Cost:	\$1.5 Billion – 2.1 Billion	
Connection Point:	Hydro One 230 kV circuits N1M and N2M near Nanticoke GS (approx. 1 km overhead).	
Gas Utility:	Union	
Commercial Operation Date:	Q1 2017 (three year delay) to Q1 2018 (four year delay)	
Estimated increase in cost	23 - 75%	

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*Proximity to nearest resident:	750 m
Proximity to nearest school:	9 km

<u>Advantages</u>	<u>Risks</u>
Greenfield site of approximately 50 acres (assumed)	Negotiation of either right of way for the gas line over the Six Nations reserve or the alternate route from Bright, both are expected to be time consuming and expensive.
Site is owned by Ontario Power Generation	Does not conform to OPA RFP Criteria – location is outside the southwest GTA connection window.
Proximity to high density residents: 11.5 km currently in the Town of Port Dover	Requires renegotiation of the OPA CES Contract
Official Plan: Employment Area – Power Generation as an acceptable use	Potential for legal challenge to OPA process
Zoning: Current: Heavy Industrial – Electricity Production is a permitted use	Will require re-starting the entire permitting process including time to permit the natural gas pipeline – expected delay of 36 - 48 months
No rail in proximity to site - fully addresses community concerns related to CN/GO rail proximity	Potential for the permits and approvals to be frustrated by County
Assume water available from the OPG site in sufficient quantities for a cooling tower and possibly allow once through cooling	Significant new electrical infrastructure required within the GTA adjacent to residential communities Halton Hills, Mississauga, north Oakville and Milton may react negatively to transmission as an option to the Oakville GS
Consistent with local surrounding activities, and generally supportive community.	This solution does not increase the capacity available for new load growth within the SW-GTA, nor reduce dependency on the transmission system, nor improve system reliability, nor provide local voltage support to southwest GTA.
	Increases transmission losses as compared with local generation
	Reduces Parkway TS capacity for future load growth

Required Next Steps:

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- Should the OPA be receptive to this concept, TransCanada would need to secure a site, enter into agreements with landowners, easements, and renegotiate its CES Contract with the OPA to reflect the higher cost and start the permitting and approvals process.
- OPA would be expected keep TransCanada whole with respect to bid economics.
- OPA would be expected hold TransCanada harmless with respect to actions of other bidders or challenges to changes to bid and/or contract.

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Summary of Alternatives:

Project Objective	Oakville GS @ the Ford Site	Oakville GS @ a site in north Oakville	Oakville GS @ a site adjacent to Halton Hills GS	Oakville GS @ a site in Nanticoke w/ transmission upgrades in GTA
Provide 900 MW of new clean generation capacity to replace coal fired capacity to be shut down in 2014	✓	✓	✓	✓
Provide 900 MW of dispatchable fast-ramping capacity to the Ontario electricity system to facilitate greater acceptance of renewable generation	✓	✓	✓	✓
Improve the inter-regional supply security by increasing the amount of inter-regional generation	✓	✓	✓	X
Improve the efficiency of electricity delivery through reduced transmission losses from local generation	✓	✓	✓	X
Contract Capacity	900 MW	880 MW	880 MW	900 MW
Comparative Incremental Cost	Base	+\$200 million	+\$300 million	+\$ 300 to 900 million
Comparative Incremental Cost of Losses	Base	Base	Base	+ 40 to 80 million
In-service	2014	2015	2015	2017 - 2018

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Issues:

TransCanada cannot move beyond conceptual analysis of options without at least the following:

1. Receive clear direction to continue with one or more alternatives on a cost reimbursable basis, plus
2. Ability to speak with and enter into negotiations with public entities, such as:
 - a. Halton Region / Haldimand County
 - b. ORC/H1 Real Estate / OPG
 - c. OPA
 - d. Conservation Authority
 - e. MTO
 - f. Ministry of the Environment
 - g. Ministry of Culture and Heritage
3. Ability to speak with and enter into negotiations with private land owners for land purchase options
4. Municipal / Regional Acceptance or alternatives there to need to be confirmed.
5. Access to the Generating Station land and TX line route land for:
 - a. Phase 1 EA
 - b. Topographic Survey
 - c. Geotechnical Investigation
6. Ability to contact Union Gas to confirm interconnection location, pressure and capacity
7. Ability to explore alternate water and discharge sources required for cooling tower or once-through cooling options
8. If required, explore termination options with Ford.

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 20, 2010 1:32 PM
To: Susan Kennedy
Subject: Re: Request for Submissions for Litigation Counsel ...

No - I can do it. I'll show it to you before I fire it out. TCE is less of a concern than Becker since the former is very public.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Susan Kennedy
To: Michael Killeavy
Sent: Wed Oct 20 13:25:37 2010
Subject: RE: Request for Submissions for Litigation Counsel ...

Nope but I can take a shot at cobbling something together for your review if you are jammed.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: October 20, 2010 12:04 PM
To: Susan Kennedy
Subject: RE: Request for Submissions for Litigation Counsel ...

I will add them both. Thank you again for the assistance.

Do you have a draft "matter description" that I might use as a template?

Michael Killeavy, LL.B., MBA, P.Eng.

Director, Contract Management

Ontario Power Authority

120 Adelaide Street West, Suite 1600

Toronto, Ontario M5H 1T1

416-969-6288 (voice)

416-969-6071 (fax)

416-520-9788 (cell)

michael.killeavy@powerauthority.on.ca

From: Susan Kennedy
Sent: October 20, 2010 11:56 AM
To: Michael Killeavy
Subject: RE: Request for Submissions for Litigation Counsel ...

I'm good with your suggestions.

Other suggestions, if you're interested in a pure litigation shop:

I'm fine with your picks, if you want a couple of others:

McCague Borlack (we used them for solar ground mount price change exposure issues):

<http://www.mccagueborlack.com/>

My contact: <http://www.mccagueborlack.com/lawyers/lisa-horey>

Heenan Blaikie (Don Jack):

<http://www.heenanblaikie.com/en/ourTeam/bio?id=6423>

Susan H. Kennedy

Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: October 20, 2010 11:48 AM
To: Susan Kennedy
Subject: RE: Request for Submissions for Litigation Counsel ...

Thanks. I will prepare two such documents.

I am thinking of sending it to:

1. TCE - A&B; Osler; Davies;
2. Becker - McCarthy Tetrault; Baker McKenzie; BLG

I'm open to suggestions. This will ensure that we get two different firms. Are you okay with this?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.

Director, Contract Management

Ontario Power Authority

120 Adelaide Street West, Suite 1600

Toronto, Ontario M5H 1T1

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416-520-9788 (cell)

michael.killeavy@powerauthority.on.ca

From: Susan Kennedy
Sent: October 20, 2010 10:32 AM
To: Michael Killeavy
Subject: RE: Request for Submissions for Litigation Counsel ...

I'm going to suggest you go with two separate requests - identical except for disclosure of the counterparties. This is just to simplify the response process - i.e. depending on how much information someone is given they may pitch slightly differently for TransCanada matter than for Becker. Alternatively, someone may be conflicted out on one or other and it will help clarify exactly which one they are pitching for if you get separate submissions (even if they are very similar submissions).

I've done a mark-up with some suggestions (I've done for TransCanada but would suggest same for Becker, mutatis mutandis). We should also perhaps do up a "matter description" which you can send out quickly if you get calls for more information.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: October 20, 2010 8:25 AM
To: Susan Kennedy
Subject: Request for Submissions for Litigation Counsel ...
Importance: High

Susan,

Could you please review and comment on the attached Request for Submissions? It is modelled on the one I did last year to obtain contract management counsel.

Thank you,

Michael

Michael Killeavy, LL.B., MBA, P.Eng.

Director, Contract Management

Ontario Power Authority

120 Adelaide Street West, Suite 1600

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michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: October 20, 2010 2:54 PM
To: Susan Kennedy
Subject: FW: Meeting follow-up

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Michael Killeavy
Sent: October 19, 2010 8:09 PM
To: Michael Lyle
Cc: JoAnne Butler; Deborah Langelaan
Subject: Fw: Meeting follow-up

Please see the email below. It is a follow up to the TCE meeting we had today.

We were thinking that we ought to just tell them to do what they think is best in the circumstances rather than taking an active part in their plan to mitigate any damages. Can you comment on this approach?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Terry Bennett <terry.bennett@transcanada.com>
To: Deborah Langelaan; JoAnne Butler; Ben Chin; Michael Killeavy; Amir Shalaby
CC: Karl Johansson <karl.johansson@transcanada.com>; John Mikkelsen <john.mikkelsen@transcanada.com>; Terri Steeves <terri.steeves@transcanada.com>; Chris Breen <chris.breen@transcanada.com>; Finn Greflund <finn.greflund@transcanada.com>

Sent: Tue Oct 19 20:02:18 2010

Subject: Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Livable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035).
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1500 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal.
4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

Aleksandar Kojic

From: Michael Lyle
Sent: October 20, 2010 2:56 PM
To: Michael Killeavy
Cc: JoAnne Butler; Deborah Langelaan; Susan Kennedy
Subject: RE: Meeting follow-up

I agree generally with this approach. Note that the e-mail does not actually ask us to take an active role in their mitigation plan but rather comment only if we wish them not to proceed with any of their proposed actions. Given that a response is not required, I would recommend not providing one.

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

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Michael

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To: Deborah Langelaan; JoAnne Butler; Ben Chin; Michael Killeavy; Amir Shalaby
CC: Karl Johansson <karl.johansson@transcanada.com>; John Mikkelsen
<john.mikkelsen@transcanada.com>; Terri Steeves <terri.steeves@transcanada.com>; Chris Breen
<chris.breen@transcanada.com>; Finn Greflund <finn.greflund@transcanada.com>
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2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
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4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 20, 2010 3:11 PM
To: Michael Lyle
Cc: JoAnne Butler; Deborah Langelaan; Susan Kennedy
Subject: RE: Meeting follow-up

OK

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Michael Lyle
Sent: October 20, 2010 2:56 PM
To: Michael Killeavy
Cc: JoAnne Butler; Deborah Langelaan; Susan Kennedy
Subject: RE: Meeting follow-up

I agree generally with this approach. Note that the e-mail does not actually ask us to take an active role in their mitigation plan but rather comment only if we wish them not to proceed with any of their proposed actions. Given that a response is not required, I would recommend not providing one.

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

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

From: Michael Killeavy
Sent: October 19, 2010 8:09 PM
To: Michael Lyle
Cc: JoAnne Butler; Deborah Langelaan
Subject: Fw: Meeting follow-up

Please see the email below. It is a follow up to the TCE meeting we had today.

We were thinking that we ought to just tell them to do what they think is best in the circumstances rather than taking an active part in their plan to mitigate any damages. Can you comment on this approach?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan; JoAnne Butler; Ben Chin; Michael Killeavy; Amir Shalaby
CC: Karl Johannson <karl_johannson@transcanada.com>; John Mikkelsen
<john_mikkelsen@transcanada.com>; Terri Steeves <terri_steeves@transcanada.com>; Chris Breen
<chris_breen@transcanada.com>; Finn Greflund <finn_greflund@transcanada.com>
Sent: Tue Oct 19 20:02:18 2010
Subject: Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Livable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035).
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1500 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal.

4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

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Aleksandar Kojic

From: Deborah Langelaan
Sent: October 20, 2010 5:57 PM
To: Michael Lyle
Cc: Michael Killeavy
Subject: Fw: Response

Michael;

Please see below with respect to the magnitude of TCE's reimbursement of the Town of Oakville's legal costs.

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Wed Oct 20 17:45:34 2010
Subject: Response

Deborah, here is the response from our lawyers:

Costs are completely within the discretion of the Court, but are normally calculated in circumstances such as this on a partial indemnity basis. Depending on the rates of the lawyers, costs on a partial indemnity basis are usually about 55-60% of a party's actual costs.

Our VERY rough estimate of the Town's costs based on the activities undertaken is in the ball park (order of magnitude) range of \$750,000 to \$1,500,000. Given the percentage allocation quoted above, our portion would therefore fall in the \$400,000 to \$900,000 range.

Please note again that these are at best educated estimates. The Town's actual costs may be quite different from these estimates.

Regards, Terry

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 21, 2010 8:14 AM
To: Susan Kennedy
Subject: RE: Response

Agreed. Things can only now get worse. Have a nice day.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Susan Kennedy
Sent: October 21, 2010 8:13 AM
To: Michael Killeavy
Subject: RE: Response

Hadn't seen it - I was guessing \$500k - \$1M, so I feel validated, which is always nice first thing in the AM.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: October 21, 2010 8:08 AM
To: Susan Kennedy
Subject: FW: Response

I don't know if Mike sent this to you or not. It's TCE's estimate of the Town's legal costs incurred to date. Please see below.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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416-969-6288 (voice)
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416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Deborah Langelaan
Sent: October 20, 2010 5:57 PM
To: Michael Lyle
Cc: Michael Killeavy
Subject: Fw: Response

Michael;

Please see below with respect to the magnitude of TCE's reimbursement of the Town of Oakville's legal costs.

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Wed Oct 20 17:45:34 2010
Subject: Response

Deborah, here is the response from our lawyers:

Costs are completely within the discretion of the Court, but are normally calculated in circumstances such as this on a partial indemnity basis. Depending on the rates of the lawyers, costs on a partial indemnity basis are usually about 55-60% of a party's actual costs.

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Please note again that these are at best educated estimates. The Town's actual costs may be quite different from these estimates.

Regards, Terry

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 21, 2010 8:43 AM
To: Michael Lyle
Subject: RE: TCE
Attachments: Memo re_ Termination of SWGTA Contract.DOCX

As requested.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Michael Lyle
Sent: October 21, 2010 8:42 AM
To: Michael Killeavy
Subject: TCE

You mentioned a FEB 2010 memo from AB. Could you send me a copy?

MEMORANDUM

STRICTLY PRIVILEGED AND CONFIDENTIAL

TO: Ontario Power Authority (the "OPA")

FROM: Aird & Berlis LLP

DATE: February 17, 2010

RE: Southwest GTA Clean Energy Supply Agreement dated as of October 9, 2009 between TransCanada Energy Ltd. (the "Supplier") and the OPA (the "SW GTA Contract") in respect of Oakville Generating Station (the "Facility"): Consequences of Termination by OPA

File #: 103661 – SWGTA

Client #: 33770 – Ontario Power Authority

I. Introduction

The Supplier won the right to enter into the SW GTA Contract with the OPA following a competitive request-for-proposals ("RFP") procurement process carried on by the OPA. As part of that process, the winner of the RFP was required to enter into the form of SW GTA Contract without the possibility of amending or modifying any of the terms of that contract (other than those specific to the Facility, such as specifications and connection).

Since the date of execution of the SW GTA Contract, the development of the Facility by the Supplier has faced significant local opposition. Furthermore, an explosion at a natural gas-fired plant located in Middletown, Connecticut on February 7, 2010, although in no way related to the Facility, has heightened concerns in Oakville.

The OPA is currently exploring various options with respect to the SW GTA Contract. This memorandum addresses issues related to potential termination of the SW GTA Contract by the OPA.

All capitalized terms herein have the same defined meanings as in the SW GTA Contract.

II. Executive Summary

The OPA can itself terminate the SW GTA Contract or rely on others to take certain steps that may result in its termination.

The first option is for the OPA to terminate the SW GTA Contract of its own volition. This would likely constitute a Buyer (i.e. OPA) Event of Default under the SW GTA Contract or a repudiation under general contract law. Express remedies in the case of a Buyer Event of Default are available to the Supplier, but those enumerated in the SW GTA Contract are not particularly helpful to the Supplier.

Remedies under general contract law would provide a more useful avenue for the Supplier. Under this route, the Supplier would be entitled to bring an action against the OPA for damages, including sunk

costs and expected future profits. These amounts could be estimated at between \$1 and \$2 billion, assuming discount rates of 7% to 10%.

However, any such remedies would be subject to an exclusionary clause contained in the SW GTA Contract. Section 14.1 provides that, notwithstanding any provision of the SW GTA Contract, neither Party will be liable for any "special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits ..., loss of use of property or claims of customers or contractors of the Parties for any such damages."

If enforceable, this provision would severely limit the amounts for which OPA would be liable. However, recent case law raises serious issues about whether the OPA could rely on a court to apply Section 14.1. In a situation where (a) the OPA may have difficulty justifying termination of the contract, and (b) the contract was not subject to negotiation due to the nature of the procurement process, the court may be less likely to uphold such a blanket exclusion.

The OPA could terminate the SW GTA Contract if a delay of 24 months was occasioned by a Force Majeure, such as an act of the Ontario Government or the municipality of Oakville. Following such 24-month period, the OPA would have the option of terminating the SW GTA Contract without liability.

Force Majeure is defined as an act, etc. that prevents a Party from performing its obligations and that is beyond a Party's reasonable control. This includes an "order, judgment, legislation, ruling or direction" by a Governmental Authority, not caused by the OPA's fault or negligence, and with respect to which the OPA must have used Commercially Reasonable Efforts to oppose.

Formally, acts of the Ontario Government are beyond the control of the OPA. An issue is whether a court, in this situation, would distinguish between the OPA and the Ontario Government. If it did, the OPA would still have to show that it made Commercially Reasonable Efforts to prevent or remedy the Force Majeure.

Even if such an act of the Ontario Government constituted Force Majeure, the question would arise whether the government's action constituted Discriminatory Action. Discriminatory Action is defined as a law, order-in-council or regulation, or direct or indirect amendment of the contract, without the agreement of the Supplier, by the Provincial Government or Legislature. If Discriminatory Action applied, the Supplier would be entitled to receive damages potentially amounting to sums similar to those available under the breach of contract scenario described above.

If Oakville, rather than the Ontario Government, caused the Force Majeure, this would mean that such acts would not constitute Discriminatory Action and the Discriminatory Action remedy set out above would not be available to the Supplier.

III. Discussion

a. Supplier's contractual remedies for breach by OPA

This analysis is based on the assumption that OPA simply tells the Supplier that the project is cancelled. For the purposes of this portion of the analysis, we have assumed that no event of force majeure is alleged and that there is nothing that might come within the definition of "Discriminatory Action" within the meaning of section 13.1 of the SW GTA Contract.

If the OPA to terminate the SW GTA Contract of its own volition this would likely constitute a Buyer (i.e. OPA) Event of Default under section 10.3 of the SW GTA Contract and a repudiation of the contract under general contract law. Express remedies in the case of a Buyer Event of Default are available to the Supplier under section 10.4. However, such enumerated remedies provide that the Supplier may

set off payment due to the Buyer (of which there are none) against amounts payable by the Buyer to the Supplier. Thus, such remedies are not particularly helpful to the Supplier.

Remedies under general contract law would provide a more useful avenue for the Supplier. Under this route, the Supplier would be entitled to bring an action against the OPA for damages, including sunk costs and expected future profits.

Article 14, Liability and Indemnification, provides:

14.1 Exclusion of Consequential Damages

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

On the assumption that the damages suffered by the Supplier by OPA's repudiation will consist of two principal claims, *viz.*, a claim to recover the sunk costs of the project up to the date of the repudiation and the present value of the net profits that would have been earned over the term of the SW GTA Contract—the question then is how those claims would be dealt with in the light of the exclusion in section 14.1

The OPA could argue that the language of section 14.1 is effective to deny the Supplier any claim for breach of contract. The exclusion with respect to "loss of profits" would prevent a claim for the present value of the Supplier's future profits and the exclusion with respect to "special damages" could prevent a claim for the Supplier's sunk costs.

The phrase "special damages" is not commonly used in cases of a breach of contract. It is more common to find the term "direct damages" used to describe the most easily established damages. In a case where, for example, a seller failed to deliver goods, the buyer's direct damages would be the difference between the contract price and the market price when the buyer went into the market to buy replacement goods. The term "special damages" is often encountered in torts cases and is there distinguished from general damages, e.g. damages for pain and suffering. A convenient way to distinguish special from general is that the former will generally be supported by receipts.

Since a plain reading of section 14.1 could lead to the conclusion that, on OPA's repudiation of the Agreement, the Supplier gets nothing, it can be assumed that a judge might seek to find a basis for avoiding this result. This was arguably the outcome in a recent Supreme Court of Canada case.

b. The Supreme Court's Decision in *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4 ("*Tercon*") [Feb 12, 2010].

The question in *Tercon* was the enforceability of a clause in a tender document purporting to limit the liability of the defendant province, in the circumstances.

The facts of *Tercon* were that the B.C. Government, through the Minister of Transportation and Highways, sought, through a "Request for Expressions of Interest" (RFEI), to get expressions of interest for the design and construction of a highway in a remote area of the province. Six teams responded, including Tercon Contractors and one other, Brentwood. The province then changed its mind, undertook the design function itself and then issued an RFP. Only those contractors who had responded to the RFEI were entitled to bid under the RFP. In the result, the province awarded the contract to Brentwood, which company, by the date when the tender was submitted, had, by entering

into a joint venture with an unqualified company, become an unqualified bidder. Tercon Contractors immediately sued the province for breach of an undertaking to use only qualified bidders.

In defending the action, the province relied on section 2.10 of the RFP which stated:

2.10 ... Except as expressly and specifically permitted in the Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.

The trial judge upheld that the breach by the plaintiff was so egregious that the limitation of liability clause did not operate to protect the province. The British Columbia Court of Appeal allowed the province's appeal and held that the clause protected the province in the circumstances.

On further appeal to the Supreme Court, the full court agreed that the doctrine of fundamental breach should be discarded. The court, both majority and minority, further agreed with Binnie J. who said: (paras 122, 123):

[122] The first issue, of course, is whether as a matter of interpretation the exclusion clause even applies to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (Hunter, at p. 462). This second issue has to do with contract formation, not breach.

[123] If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts.

The disagreement between the majority and minority centered on the meaning of the phrase, "as a result of participating in this RFP" in section 2.10. In Cromwell J.'s view, what the province did (in accepting a bid from a non-compliant bidder) took the process outside the scope of the clause. Cromwell J. said: (para. 74)

[74] I turn to the text of the clause which the Province inserted in its RFP. It addresses claims that result from "participating in this RFP". As noted, the limitation on who could participate in this RFP was one of its premises. These words must, therefore, be read in light of the limit on who was eligible to participate in this RFP. As noted earlier, both the ministerial approval and the text of the RFP itself were unequivocal: only the six proponents qualified through the earlier RFEI process were eligible and proposals received from any other party would not be considered. Thus, central to "participating in this RFP" was participating in a contest among those eligible to participate. A process involving other bidders, as the trial judge found the process followed by the Province to be, is not the process called for by "this RFP" and being part of that other process is not in any meaningful sense "participating in this RFP".

Cromwell J. emphasized throughout his reasons that the province had behaved badly. He adopted the view of the trial judge that the breach had been egregious (para. 6) and that the conduct (para. 78) "... of the Province in this case strikes at the heart of the integrity and business efficacy of the tendering process".

The minority adopted the point of view of the British Columbia Court of Appeal and held that the limitation of liability clause applied in the circumstances. Nevertheless, with respect to the third inquiry that Binnie J. outlined, he said, (para. 82):

... Rather, the principle is that a court has no discretion to refuse to enforce a valid and applicable contractual exclusion clause unless the plaintiff (here the appellant Tercon Contractors) can point to some paramount consideration of public policy sufficient to override the public interest in freedom of contract and defeat what would otherwise be the contractual rights of the parties....

c. Application of Decision in *Tercon* to SW GTA Contract

Tercon can be read as standing for the proposition that a court, faced with a limitation of liability clause that purports to limit the liability of a potential defendant too much, will find a way to limit its scope. The Supplier under the SW GTA Contract can make a very strong claim to be paid its costs that are now to be thrown away. If the clause were interpreted to deny the Supplier the recovery of those costs, a court might be moved to hold that it should not be carried so far. Various arguments can be made to support the Supplier's claim to its costs thrown away: a claim for such costs would be a claim for its "direct costs", i.e., the head of damages that would be normal in a case of breach of contract, not, as has been mentioned, a claim for special damages in tort. In other words, the language of section 14.1 of the SW GTA Contract may not limit the Supplier's claim for its costs, i.e., its direct costs, thrown away.

The second concern over the decision in *Tercon* arises from the admission by both the majority and the minority that egregious conduct or public policy might limit the scope of a limitation of liability clause. Until this case, there were very few examples of decisions cutting back or limiting a clause like section 14.1 on the ground that the defendant's conduct was very bad. It had been assumed in Canada that a party guilty of fraud might be unable to rely on an exemption clause. This position had been taken in a Delaware case, *ABRY Partners v. F&W Acquisition, LLC*, 891 A.2d 1032 (Del. Ch. 2006), and it would not be surprising if a Canadian court had followed it.

While there is no suggestion that either OPA or the government would engage in fraud or any bad conduct with respect to the termination of the SW GTA Contract, it is not obvious that bad conduct by a defendant necessarily means that a limitation of liability clause is ineffective.

The "public policy" exception to the general enforceability of a limitation of liability clause, is even more worrying as the court does not explain just what public policy is or might be engaged in *Tercon*.

Without engaging in an exhaustive analysis of the cases on construction tendering, it can be said that it is not obvious that what the province did in *Tercon* was contrary to public policy—or at least so contrary to public policy that the protection the province reasonably thought that it had should be stripped away.

In the case facing OPA or the Ontario government, the question would be whether a deliberate breach of a contract would be regarded by the courts as so egregious as to justify stripping away the protection of section 14.1.

A factor present in both *Tercon* and this case is that the parties are experienced entities, able, one would have thought, to be held to the terms of the contracts they make, whether or not they were offered the agreements on a take-it-or-leave-it basis.

d. Conclusions re: Potential Liability

With two important qualifications, the plain words of section 14.1 support an argument that, on a breach by OPA, the Supplier has no claim to compensation; all its claims being excluded by the plain language of the section.

The first qualification is that the Supplier will be seen by the court to have a very good claim to some compensation, if only to reimbursement for the costs it will have been forced to throw away. A court which considers that one party has been hard done by will often be moved to provide it with some relief and section 14.1 might not be effective in this situation.

The second qualification is the scope given to public policy in *Tercon*. A court moved, like the trial judge and the majority in the Supreme Court, by the enormity of what a defendant has done may simply say that it would violate public policy to enforce such a clause.

e. Discriminatory Action

A Discriminatory Action is defined in Section 13.1(a) of the SW GTA Contract to occur if:

(i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal in response to the RFP: or

(ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier.

A Discriminatory Action will not occur if Laws and Regulations of general application are enacted. However, please note the memorandum dated July 7, 2009, provided to the OPA, a copy of which is attached, that shows that in certain circumstances a law of general application can be interpreted as being a law of specific application.

The strict wording of the SW GTA Contract requires for Discriminatory Action that the Legislative Assembly of Ontario enacts a statute or the government of Ontario enacts an order-in-council or regulation. As such, a Ministerial Direction to simply repudiate the SW GTA Contract would not likely qualify under that definition. Also according to the strict wording of the provisions, a repudiation of the SW GTA Contract would not be an amendment of it, as none of the provisions would be altered.

However, there remains some risk that a court may find that the Ontario government indirectly "amended" the SW GTA contract by way of Ministerial Direction by causing the OPA to repudiate it, in particular in light of the exception in the exclusion clause of Section 14.1

While it may be that the strict wording of the agreement may govern, courts are inclined to provide remedies to parties who have suffered damages. In the event that the courts were to find that a Discriminatory Action occurred, then Section 13.2 of the SW GTA Contract would apply. This section states:

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

(a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first Calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion

of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier; and

(b) the amount by which (i) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products in respect of Contracted Facility Operation.

In essence, if it is found that there is a Discriminatory Action then the SW GTA Contract provides that the Supplier can recover its lost profits and any increase in costs that it will suffer as a result of the Discriminatory Action. This would be very similar to the damages available in contract for a repudiation.

f. Force Majeure Effects and Definitions – OPA may terminate due to Force Majeure after 24 Months if OPA uses Commercially Reasonable Efforts to oppose the Ministerial Directive.

Section 11.1 of the SW GTA Contract sets out the effects of invoking Force Majeure:

11.1(h) If, by reason of Force Majeure, the COD is delayed by more than twenty-four (24) months after the original Milestone Date for attaining Commercial Operation of the Facility (prior to any extension pursuant to Section 11.1(f)), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

Force Majeure is defined in Section 11.3 as:

"any act, event cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party's reasonable control".

Sections 11.3(g) and 11.3(h) further stipulate that Force Majeure includes:

(g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction.

11.3(h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;

Commercially Reasonable Efforts are defined as meaning:

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

g. Exclusions to Force Majeure

The OPA may not invoke Force Majeure under the SW GTA Contract in the following circumstances:

- 1) if the OPA has caused the Force Majeure by its own fault or negligence (s. 11.2(a)); and
- 2) if and to the extent the OPA has not used Commercially Reasonable Efforts to remedy or remove the Force Majeure.

h. OPA may only rely on Force Majeure to terminate SW GTA Contract if it actively opposes cancellation of contract by Ministerial Directive.

Given the exclusions to the Force Majeure definition, it would be necessary for the OPA to actively oppose any Ministerial Directive if the OPA were seeking to cancel the SW GTA Contract as a result of Force Majeure. The OPA must not have applied for or assisted in the application for the Ministerial Directive. The OPA further is required by the SW GTA Contract to actively oppose the Ministerial Directive, using Commercially Reasonable Efforts. While Commercially Reasonable Efforts require some effort, they do not require that the OPA expend funds or assume liabilities in order to oppose the Ministerial Directive.

The SW GTA Contract is silent as to whether the opposition to any Ministerial Directive would need to be public, however, although it would be necessary to provide to the Supplier a copy of any active opposition to avoid litigation on the Force Majeure point.

i. OPA may rely on Force Majeure to terminate SW GTA Contract if a Third Party denies it relevant permits without actively opposing such denial of permits (but it cannot consent thereto).

It is an open question whether the OPA would be considered equivalent to the Ministry if a Provincial permit were denied. The Supplier may raise arguments that the OPA and the Ontario Ministry are so closely related that they should be treated as a single entity for the purposes of relying on Force Majeure to cancel the contract. There may be other administrative law issues that are raised if an Ontario Ministry were to deny a permit, rather than the arms-length actions of a third party. Our advice is to assume that it is necessary that a third party block the issuance of a permit to ensure that section 11.3(h) is available to the OPA.

If a third party were to deny issuance of a permit necessary for the Facility to reach COD, there are no requirements that the OPA actively oppose such denial. The only requirement under the SW GTA Contract is that the OPA not consent to such denial of the permit.

j. Quantum of Potential Damages

In the case that s. 14.1 is not effective, and a Force Majeure claim is not available, the OPA would be liable to the Supplier for all of its damages, including its sunk costs to date and loss of future profits.

An estimate of the magnitude of the damages can be made by calculating the net present value of the Net Revenue Requirement of the SW GTA Contract, which is equal to \$17,277/MW/Month, times 900 MW (equal roughly to \$15.5 million per month). Assuming a reasonable discount rate (7%-10%), the

net present value of this amount is roughly equal to \$1-\$2 billion, and accounts for the potential lost revenue for Electricity and Related Products. This amount should also approximate the capital costs of the project with an internal rate of return.

The Supplier will be required to mitigate their damages, but it is difficult to see how in the current climate for gas-fired generation that they would be able to obtain a similar investment.

The precise figures for lost profit and damages are difficult to calculate precisely, but the numbers above should give an indication of the magnitude of the potential claim. In particular, the figure cited above does not take into consideration actual sunk costs, any extra revenues over the revenue floor provided by the Net Revenue Requirements, or any value for the lost capital asset that would remain at the end of the Term of the SW GTA Contract, all of which would increase the potential liability. It likewise does not estimate the Supplier's rate of return on its lost revenue stream, which could lower the potential liability, or any form of mitigation of damages in the form of alternate investments. If a more detailed estimate of damages is required, it will be necessary to retain an expert in damages quantification and valuation.

Aleksandar Kojic

From: Deborah Langelaan
Sent: October 22, 2010 9:27 AM
To: Michael Killeavy
Subject: FW: MPS Update

Michael;

Below is an update from TCE regarding their efforts surrounding the gas turbines. You will see in the 2nd option that TCE is seeking OPA support in their discussions with Mitsubishi. Let's discuss.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: October 21, 2010 6:00 PM
To: Deborah Langelaan; JoAnne Butler; Ben Chin
Cc: Finn Greflund; Karl Johansson; Chris Breen; Terri Steeves
Subject: MPS Update

Confidential and Without Prejudice

Deborah, we wanted to keep the OPA updated on our discussion with respect to the gas turbines. Below is a brief summary of where we are.

As discussed at our Tuesday meeting, TransCanada is attempting to determine what options are available with respect to the purchase of the two Mitsubishi GAC combustion turbines.

The two options that TransCanada is pursuing are the viability of third party sale and re-negotiating the terms of the MPS Agreements to support the needs and timeframe of the OPA.

First, viability of third party sales, TransCanada has contacted Thomassen Amcot International to get an opinion on the available market for re-sale.

Timeframe: by December 31, 2010

Consequence: Below market value price

Market Assessment: Currently there is little or no market, potential projects, in North America. If discount were significant, a large utility may consider early purchase and storage for a future project. Discount is made higher by the recent softening of the equipment market, which would result in new equipment being less expensive than the purchase price of our equipment.

Key Consideration: for any potential buyers include assignment language, payment and delivery terms, as well as LTSA (long term service agreement) obligations.

Update: TransCanada intends to set up a meeting with TAI the first week of November in case this option is pursued.

Second, re-negotiate terms with MPS, TransCanada has requested such changes as delayed delivery, equipment swap, MPS credit and 60 day suspension without harm.

Timeframe: October 31, 2010 / December 31, 2010

Consequence: Significant and escalating cancellation provisions or in the future equipment storage and double handling costs

Assessment: To date MPS has not been receptive to our requests. The request to allow for delayed delivery, equipment swap or MPS credit was declined, though we are not adverse to asking again if we had a more specific ask that is

supported by the OPA. Our second request for a no-harm 60 day suspension has not received much support, but we are continuing to pursue and have offered to meet with MPS and/ or Mitsubishi in Orlando, FL or Japan, at their convenience. MPS understands that we are looking for resolution by the end of October, prior to the next step up of cancellation charges.

Thanks, Terry

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

Aleksandar Kojic

From: Michael Killeavy
Sent: October 25, 2010 8:10 AM
To: Ziyaad Mia
Cc: Michael Lyle; Susan Kennedy
Subject: Evaluation of the Requests for Submissions - Litigation Counsel
Attachments: Request For Submissions - Litigation Counsel 20 Oct 2010 - TCE.pdf; Request For Submissions - Litigation Counsel 20 Oct 2010 - ...pdf; Matter Description - TCE.pdf; Matter Description -

Importance: High

Categories: Orange Category

Ziyaad,

Thank you for agreeing to help out with the evaluation of submissions for litigation counsel. There are two potential litigations facing us:

1. Oakville Generating Station cancellation where TransCanada Energy is our counterparty; and
- 2.

Attached are the files I sent to prospective counsel with the invitation last week. I also included the pro forma contract for each procurement (SWGTA RFP and CHP III RFP), since these documents were already in the public domain. I can send these, too, if you wish.

The deadline for responding to the invitation is 5:00pm today. We'd like to have the evaluation completed by this Friday (29 October). I expect four submissions for the TCE matter,

Thank you again for your assistance.

Michael

ONTARIO POWER AUTHORITY

REQUEST FOR SUBMISSIONS

Legal Services – Litigation Counsel

CONFIDENTIAL

Services Required

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by a contract counterparty, TransCanada Energy Ltd.

Background

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site: <http://www.powerauthority.on.ca/>

The OPA is currently managing over 16,000 MW of electricity generation contracts, which include large-scale gas-fired generation and hydropower contracts, as well as smaller-scale Feed-in Tariff and Renewable Energy Standard Offer Program ("RESOP") contracts.

Scope of Services and Qualifications

The retained counsel (the "Litigation Counsel") will be required to provide advice on managing this dispute to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

Counsel must demonstrate an ability to provide strong litigation advice in relation to managing the disputes and defending claims made against the OPA, must have a strong working knowledge of the electricity sector in Ontario, and electricity generating contracts (both contingent support payment and power purchase agreements). Knowledge of the OPA's electricity generation contracts will be considered an asset.

It is imperative that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA.

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA.

We understand that you may require additional information with respect to the potential litigation matter in order to prepare your submission. Additional information is available upon your request (together with

your confirmation that you have completed conflict searches and not identified any conflicts which would preclude you from acting in connection with the matter for which you are seeking additional information).

Please note that counsel for generation procurements, contract management, and for regulatory hearing work is not being retained pursuant to this Request for Submissions. Counsel for generation procurements, contract management and regulatory hearing work will be retained if, and as, needed pursuant to a separate process.

Term of Retainer

The term of the retainer will be for a period of 12 months and will be extended, as needed, upon written notice. Retainers will be non-exclusive. The OPA may terminate the retainer at any time, in its sole discretion, upon written notice.

Submission Request

If you wish to be considered to provide the above-noted services, please submit the following, preferably not later than 5:00:00 pm on 25 October 2010:

A. Description of background and qualifications:

1. Describe the names of the partners and associates you would expect to assign to the Services, describe the expected services to be provided by each lawyer and provide their resumes. If your firm has multiple offices and you anticipate drawing on the expertise of lawyers not located in Toronto, please identify the jurisdiction in which such lawyers are located. Please identify the partner who will be in charge of the retainer for your firm;
2. Describe your firm's relevant experience, including a brief summary of any notable litigations, issues and/or matters or cases handled by your firm which you feel demonstrate the nature and extent of your firm's expertise;

If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

B. Cost:

1. State the rates at which the services of partners, associates and non-lawyer law clerks, paralegals or other paraprofessionals would be provided to the OPA. Include:
 - a. For each lawyer whose resume is provided, the rate you propose to charge the OPA.
 - b. For each applicable category of billable, non-lawyer personnel including law clerk, paralegal or other paraprofessional, the rate you propose to charge the OPA.
 - c. A schedule of all out-of-pocket disbursements which you anticipate will result in a charge to the OPA and the rate for each. Note that the OPA expects that disbursements will be charged at the firm's actual out-of-pocket cost, without mark-up.
2. In addition, you may propose any alternative fee structure deemed appropriate as a supplement to the fees requested above.

In setting forth its qualifications, each law firm should provide, in concise but adequate detail, the information sought above. Responses should not exceed 20 single-sided pages (including resumes) and should be prepared on 8 ½ x 11-inch paper using at least 12 point type with margins of no less than one-inch.

The OPA may follow-up with requests for additional information (for example, references) and may wish to interview candidates.

This request for submissions is a non-binding invitation to submit a response for consideration. This request does not create, and should not be construed as creating, any contractual relations or obligations between the OPA and any candidate.

Submissions can be made by email to the email address given below.

Selection Timing

The OPA expects to complete its selection process not later than 29 October 2010, however, this timing may be subject to change.

Questions and Submissions

Questions and submissions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Please reference: Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your submission.

ONTARIO POWER AUTHORITY

REQUEST FOR SUBMISSIONS

Legal Services – Litigation Counsel

CONFIDENTIAL

Services Required

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by a contract counterparty, 1721027 Ontario Inc. o/a Becker Cogeneration Plan.

Background

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site: <http://www.powerauthority.on.ca/>

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The retained counsel (the "Litigation Counsel") will be required to provide advice on managing this dispute to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

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Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Please reference: Legal Services – Litigation Counsel (Becker Cogeneration Plant) in your submission.

**ONTARIO POWER AUTHORITY
REQUEST FOR SUBMISSIONS**

Matter Description

Legal Services – Litigation Counsel

CONFIDENTIAL

On 9 October 2009 the Ontario Power Authority ("OPA") and TransCanada Energy Ltd. ("TransCanada") entered into the Southwest GTA Clean Energy Supply Contract (the "Contract"). On 7 October 2010, the province announced that the Contract was cancelled. The OPA may be exposed to potential liability from TransCanada as a result of this cancellation of the Contract by the province. No action has yet been commenced by TransCanada. The OPA and TransCanada have had several preliminary meetings to discuss the cancellation of the Contract, including costs incurred to date by TransCanada.

Questions

Questions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Please reference: Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your question.

ONTARIO POWER AUTHORITY

REQUEST FOR SUBMISSIONS

Matter Description

Legal Services – Litigation Counsel

CONFIDENTIAL

Questions

Questions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: October 25, 2010 9:00 AM
To: Ziyaad Mia
Subject: RE: Evaluation of the Requests for Submissions - Litigation Counsel
Attachments: letter to OPA.PDF

Importance: High

If you want to get started, attached is the submission from Davies for the TCE matter.

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

From: Ziyaad Mia
Sent: October 25, 2010 8:56 AM
To: Michael Killeavy
Subject: Re: Evaluation of the Requests for Submissions - Litigation Counsel

Thanks Michael.

I am off today getting a bunch of things done prior to a trip I am taking soon. I am off on vacation starting late Friday afternoon so this should work fine.

Ziyaad

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

From: Michael Killeavy
To: Ziyaad Mia
CC: Michael Lyle; Susan Kennedy
Sent: Mon Oct 25 08:10:21 2010
Subject: Evaluation of the Requests for Submissions - Litigation Counsel

Ziyaad,

Thank you for agreeing to help out with the evaluation of submissions for litigation counsel. There are two potential litigations facing us:

1. Oakville Generating Station cancellation where TransCanada Energy is our counterparty;

Attached are the files I sent to prospective counsel with the invitation last week. I also included the pro forma contract for each procurement (SWGTA RFP and CHP III RFP), since these documents were already in the public domain. I can send these, too, if you wish.

The deadline for responding to the invitation is 5:00pm today. We'd like to have the evaluation completed by this Friday (29 October). I expect four submissions for the TCE

October 22, 2010

Kent B. Thomson
Dir 416.863.5566
kentthomson@dwpv.com

DELIVERED AND BY E-MAIL

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1

Dear Mr. Killeavy:

Legal Services – Litigation Counsel (TransCanada Energy Ltd.)

We are pleased to express our interest in providing the legal services required by the Ontario Power Authority (the "OPA") to assist the OPA in responding to potential claims against it by TransCanada Energy Ltd. (the "Services"). As requested, we have set out below a summary of our background, qualifications and rates.

A. Description of Industry-Specific Experience

1. Our Experience with OPA

As explained more fully below,

As a result of these mandates, we have gained valuable experience about the business and mandate of OPA, and the industry in which it operates. We understand that OPA was pleased with our work on both occasions.

This mandate has required us to apply our knowledge of the electricity sector in Ontario to a complicated series of negotiations raising commercial, political, economic and regulatory considerations.

2. Our Experience in the Ontario Energy Industry

Our energy team is a cross-disciplinary group of lawyers experienced in all aspects of energy projects. We draw from our firm's traditional transactional focus to combine our core strengths in corporate and project finance, corporate/commercial, infrastructure, environmental, tax and mergers and acquisitions. We have developed extensive experience in a broad range of complex energy projects including new construction and ongoing gas, co-generation, wind, hydroelectric, solar, nuclear and biofuel projects. Through this experience we have become very familiar with electricity contracts in the Province of Ontario including renewable energy, natural gas and nuclear power purchase agreements and contingent support arrangements. We act for a wide range of industry participants, including developers, purchasers and financing entities and have experience working with all of the key stakeholders (e.g., the Ontario Power Authority, the Ontario Independent Electricity System Operator, etc.). Our varied experience has afforded us a thorough understanding of Ontario's electricity sector.

B. Our Team

The following provides a summary description of our proposed team. Full biographies of these members of the proposed team are attached in Schedule A. We would also propose to involve more junior lawyers, students and paralegals, as appropriate.

Kent Thomson is the Head of the firm's Litigation Department in Toronto, is a Fellow of the American College of Trial Lawyers, and has been recognized repeatedly as one of Canada's leading litigation counsel. He practises complex, "high stakes" litigation involving a wide range of areas, and has appeared at all levels of the trial and appellate courts in Ontario on many occasions. These include the Superior Court of Justice, the Ontario Court of Appeal and the Supreme Court of Canada. He has also appeared on many occasions in the Federal Court of Canada and before the courts of a number of other provinces, including British Columbia, Alberta, Saskatchewan, Manitoba, Québec and Nova Scotia. Kent has acted as lead counsel in a number of precedent setting cases in the areas of commercial disputes, oppression, plans of arrangement, class actions, securities law, tort law, competition law, tax law and defamation. A number of these cases have been decided by the Supreme Court of Canada. Kent has been featured repeatedly in the Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada.

Sandra Forbes is a partner in the Litigation practice and has also been repeatedly recognized and recommended as a leading litigation counsel in commercial litigation. She specializes in commercial, class action, administrative and competition litigation and has appeared before all levels of court in Ontario and other provinces as well as the Supreme Court of Canada, and the Federal Court of Appeal.

Sandra has also appeared as counsel before many administrative tribunals, including the Ontario Energy Board and was the primary counsel involved in working with the OPA on a day to day basis in the Goreway Station matter.

Matthew Milne-Smith is a partner in the Litigation practice. His practice includes a broad range of civil litigation, including commercial disputes, class actions, constitutional challenges, insolvency proceedings, tort claims and other matters. He has appeared before a variety of courts and other tribunals, including the Supreme Court of Canada and the Ontario Court of Appeal. Matthew has acted as counsel on a number of leading cases decided by the Ontario Superior Court of Justice, the Ontario Court of Appeal and the Supreme Court of Canada in the areas of enforcement of arbitration clauses, crown liability class actions, enforcement of foreign judgments, freedom of speech, and solicitors' duty of loyalty.

C. Background Information

1. General Information About Davies

Davies Ward Phillips & Vineberg LLP practises nationally and internationally from offices in Toronto, Montréal and New York and is consistently at the heart of the largest and most complex commercial and financial matters on behalf of its clients. We focus on assisting clients with sophisticated and time-sensitive projects. We thrive on challenge and have devoted ourselves to developing the legal expertise necessary to perform to the highest standards on complicated, demanding and innovative types of projects. We have a reputation for commitment to our clients and quickly become a member of our client's team to help find creative solutions to important issues.

Davies is a market leader in each of its core practice areas. The 2010 *Canadian Legal Lexpert® Directory* recognized our litigation practice as a leader in commercial litigation, tax litigation, insolvency litigation, class actions and arbitration and dispute resolution. The practice is also repeatedly recognized by various ranking agencies including Chambers Global's *Guide to the World's Leading Lawyers for Business*, *The Best Lawyers in Canada* and the Lexpert®/American Lawyer *Guide to the Leading 500 Lawyers in Canada*.

2. Specific Expertise

Litigation

Davies is regularly at the centre of Canada's most complex, high-stakes business litigation. Comprised of approximately 40 lawyers working from Toronto and Montréal, the practice has a proven track record of success acting in disputes of virtually every description.

Our litigators have extensive trial and appellate experience at all levels of court across the country, including trial and appeal courts in a number of provinces, the Federal Court Trial Division and Court of Appeal and the Supreme Court of Canada. Our experience is vast and our successes have included industry defining cases, including as counsel for BCE Inc. in a landmark case decided recently in favour of BCE by the Supreme Court of Canada arising from the proposed \$51.7 billion privatization of BCE. This is widely considered to be one of the most important commercial cases ever decided by the Supreme Court.

We appear regularly as counsel before administrative and regulatory tribunals as well as in private forums involving arbitrations, mediations and other forms of alternate dispute resolution. Furthermore, we have extensive experience in dealing with cross-border and multi-jurisdictional disputes and in working closely with counsel in other jurisdictions.

Government

We have extensive experience working with various government entities in government-sponsored projects in different areas of our practice. For example, we represented the Ontario government in connection with the initial public offering by Teranet Inc. We acted for the Royal Canadian Mint to develop, sponsor and manage a new type of investment in gold bullion to be listed on the Toronto Stock Exchange. We act for the Ontario Lottery and Gaming Corporation in dozens of matters, including the development, financing and operation of casinos and numerous litigation matters between Ontario First Nations and the Ontario government regarding entitlement to casino revenues. We also recently advised the Ontario government in establishing a fund of funds for venture capital investments.

Further, we act for the City of Toronto in connection with the redevelopment of Union Station, which involves complex negotiations with three levels of government ministries and agencies and overseeing a procurement process. Similarly, we acted for the City of Toronto in the Toronto waterfront revitalization project, including negotiations with three levels of government, advising on governance issues and negotiation of procurement documentation.

In addition to our file-specific experience, many of our lawyers have worked for a number of regulatory organizations, which gives them a level of experience and expertise for the firm to draw upon in consultation with clients. I have acted in the past year or two, for

example, as counsel to the Chair of the Ontario Securities Commission, counsel to the Chair of the Ontario Energy Board and as counsel to the Commissioner of Competition, the head of the Competition Bureau in Canada.

Finally, we have one of Canada's leading infrastructure/public-private partnerships practice groups, which has given us substantial experience in acting for both the public and private sector in the procurement of complex projects.

3. Conflict of Interest

We are not aware of any conflict of interest should Davies be retained by OPA. We recognize that the OPA has legitimate concerns with respect to the possibility of future conflicts that may arise and we would attempt to address these concerns in a formal engagement letter while preserving our ability to effectively represent our other clients.

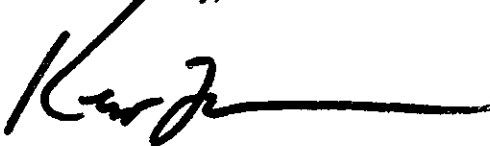
D. Cost

Our fees for professional services generally reflect hours worked by Davies personnel and hourly rates in effect at the time the services are rendered. We have included the current regular hourly rates of the individuals on our proposed team in Schedule B and are confident that we can reach a mutually acceptable fee arrangement if OPA chooses to retain us. We are submitting these proposed rates on a confidential basis and ask that you keep such information confidential. We would also charge for out-of-pocket expenses relating to the Services, including photocopy, long-distance calls and courier charges, at actual out-of-pocket cost without mark-up.

The strength of our firm is rooted in our commitment to teamwork, excellence and client service. We pride ourselves in our ability to work efficiently and effectively with clients in complex commercial disputes, and are widely known as thoughtful, fair and aggressive advocates who work tirelessly to advance and protect the rights and interests of our clients.

We would be delighted to discuss this matter with you in more detail, either in person or by telephone.

Yours very truly,



Kent E. Thomson

KET/jc

SCHEDULE A

Biographies of Davies Team

DAVIES

DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor Tel 416 863 0900
1 First Canadian Place Fax 416 863 0871
Toronto Canada M5X 1B1 www.dwpv.com



KENT E. THOMSON

Dir 416 863 5566
Fax 416 863 0871
kentthomson@dwpv.com

OFFICE
Toronto

PRACTICE AREAS
Litigation
Competition & Foreign Investment Review

BOARD MEMBERSHIPS
Dean's Council – Advisory Board to Faculty
of Law, Queen's University
Member, Judiciary Committee, American
College of Trial Lawyers

PROFESSIONAL MEMBERSHIPS
Fellow, American College of Trial Lawyers
Fellow, International Academy of Trial
Lawyers
Fellow, Litigation Counsel of America
The Advocates' Society
Canadian Bar Association

BAR ADMISSION
Ontario, 1984

EDUCATION
Queen's University, LL.B., 1982
Queen's University, B.A. (with Distinction),
1979

COMMUNITY INVOLVEMENT
Involved in a broad range of community,
school-related and charitable activities
Coached dozens of children's hockey, soccer
and baseball teams

Kent Thomson is the Head of the firm's Litigation Department in Toronto, and has been recognized repeatedly as one of Canada's leading litigation counsel. He practises complex, "high stakes" litigation involving a wide range of areas, and has appeared at all levels of the trial and appellate courts in Ontario on many occasions. These include the Superior Court of Justice, the Ontario Court of Appeal and the Supreme Court of Canada. He has also appeared on many occasions in the Federal Court of Canada and before the courts of a number of other provinces, including British Columbia, Alberta, Saskatchewan, Manitoba, Québec and Nova Scotia. Kent has acted as lead counsel in a number of precedent setting cases in the areas of oppression, plans of arrangement, class actions, securities law, tort law, competition law, tax law and defamation. A number of these cases have been decided by the Supreme Court of Canada.

Kent also appears frequently as lead counsel before a number of tribunals in Canada, including the Ontario Securities Commission and the Competition Tribunal. Kent has represented numerous parties in complex domestic and international arbitrations conducted pursuant to the applicable Rules of the American Arbitration Association, the I.C.C., C.P.R., the London Court of International Arbitration and UNCITRAL. These arbitrations have been conducted throughout Canada, as well as in the United States, Europe, Australia and Africa.

REPRESENTATIVE WORK

- Acted as one of the lead counsel for BCE Inc. in defending successfully extensive litigation before the Quebec Superior Court, Quebec Court of Appeal and Supreme Court of Canada concerning the \$51.7 billion takeover and privatization of BCE by a consortium of private equity buyers. This case concerns the largest transaction of its kind in Canadian history, and is widely considered to be one of the most important commercial cases ever heard by the Supreme Court of Canada.
- Acted as lead counsel for The Beaverbrook Foundation in this complex, quasi-public arbitration concerning a dispute over the ownership of numerous pieces of valuable art at the Beaverbrook Art Gallery in Fredericton, New Brunswick. These include, among others, Turner's *Fountain of Indolence* and Lucien Freud's *Hotel Bedroom*.
- Acted as lead counsel for Jaguar Corporation, a minority shareholder of HudBay Minerals, in proceedings before the Ontario Securities Commission in which Jaguar was successful in opposing an \$800 million merger between HudBay and Lundin.

KENT E. THOMSON

Dir 416 863 5566
Fax 416 863 0871
kentthomson@dwvp.com

LANGUAGE
English

HOBBIES AND INTERESTS
Marathons and triathlons; hockey; football;
tennis

- Acted as lead counsel for Pershing Square and other minority shareholders of Sears Canada in precedent-setting trial and appellate proceedings before the Ontario Securities Commission, Ontario Divisional Court and Ontario Court of Appeal in which Pershing Square was successful in opposing the privatization of Sears Canada by its controlling shareholder, Sears Holdings.
- Acted as lead counsel for Eugene Melnyk, the founder of Biovail and the owner of the Ottawa Senators, in lengthy trial proceedings before the Ontario Securities Commission.
- Acted as counsel to staff of the Ontario Securities Commission in enforcement proceedings brought against Research in Motion, its founders James Balsillie and Michael Lazaridis, as well as others.

RECOGNITION

- Admitted as a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers. Both of these "invitation only" organizations are comprised of elite litigation counsel in Canada and the United States that are regarded by their peers as having achieved the highest standards of professional excellence and ethical conduct.
- Repeatedly recognized in the Lexpert®/American Lawyer *Guide to the Leading 500 Lawyers in Canada* and recognized by Lexpert® as one of the leading U.S./Canada Cross-Border Litigation Lawyers in Canada.
- Featured in *The International Who's Who of Commercial Litigators*.
- Recognized in Chambers Global's *The World's Leading Lawyers and Leaders in their Field* in both the Competition/Anti-trust and Dispute Resolution categories and in Chambers Global's *The World's Leading Lawyers for Business*.
- Highly recommended in the *PLC Which lawyer? Yearbook* in the areas of Competition/Antitrust and Dispute Resolution.
- Recognized in Expert Guide's *List of the World's Leading Competition & Antitrust Lawyers*.
- Recognized in *The Best Lawyers in Canada®* as a leading practitioner of Bet-the-Company Litigation, Class Action Litigation, Competition/Antitrust Law, Corporate & Commercial Litigation and Securities Law.
- Recognized as a leading litigation counsel in *Empire Who's Who* and *Canadian Who's Who*.
- Recognized in Global Competition Review's *The International Who's Who of Competition Lawyers and Economists*.
- Recognized as a leading litigation counsel in *Global Counsel 300*.
- Recognized as a leading business law practitioner by Law Business Research's

KENT E. THOMSON

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Who's Who Legal: Canada in the areas of Commercial Litigation and Competition.

- Named by Lexpert® as one of Canada's top 50 counsel in the areas of international corporate commercial, class action and securities litigation and one of Canada's top 10 counsel in the area of international competition litigation.
- Recipient of Martindale-Hubbell's highest rating for legal ability and integrity.

ARTICLES AND PUBLICATIONS

Kent has delivered numerous papers on litigation-related issues. Some of his most recent include:

- "The Impact of Currie v. McDonald's on Defence Counsel in Class Proceedings"; paper delivered at The Canadian Institute's 7th Annual National Forum on Litigating Class Actions, in 2006; "Lessons from Sears: The Fundamental Importance of Fairness", presentation to the Conference Board of Canada conference on Mergers and Acquisitions: New Threats and Opportunities, 2007.
- "Securities Commission as an Antidote to Poison Pills: Xstrata's Bid for Falconbridge", paper delivered at the Osgoode Professional Development Centre's Canadian Securities Law Update, 2007.
- "Establishing a Reasonable Alternative to a Class Action", paper delivered at the Conference Board of Canada conference on Class Actions, 2007.
- "Reviewable Matters and Private Enforcement – a Two Year Review", paper delivered at the Canadian Bar Association Conference 2007 Annual Fall Conference on Competition Law.
- "The Bermuda Triangle of Litigation: Missing Documents and the Tort of Spoliation", paper delivered at the joint meeting of the American College of Trial Lawyers and the Advocates' Society in 2008.
- "Proving Damages: Lost Profits & Value", paper delivered at the Osgoode Professional Development conference on Litigating Commercial Damages in 2008.
- "BCE Bondholder Litigation: Corporate Governance Implications", paper delivered at Insight's Conferences on Advanced Mergers and Acquisitions in Calgary and Toronto in 2008 and 2009.

TEACHING ENGAGEMENTS

Kent is often called upon to teach trial and appellate advocacy programs in Canada and the United States. He has also lectured on a variety of litigation issues at Queen's University, York University, the University of Toronto and the University of Western Ontario.

DAVIES



SANDRA A. FORBES

Dir 416 863 5574
Fax 416 863 0871
sforbes@dwpv.com

OFFICE
Toronto

PRACTICE AREAS
Litigation
Competition & Foreign Investment Review

BOARD MEMBERSHIPS
Editorial Board of the *Ontario Reports*
Director of The Advocates' Society from
2000 to 2010 and President for the 2009-
2010 term
Osgoode Hall Law School Alumni Board of
Directors

PROFESSIONAL MEMBERSHIPS
Selection Committee for The Catzman Award
for Professionalism and Civility, awarded by
The Advocates' Society (2009)
Selection Committee for the David Mundell
Medal for Legal Writing (2005-2007)
Past Chair of the Enforcement Practices and
Procedures Committee of the Canadian Bar
Association National Competition Law
Section (2004-2006)

BAR ADMISSION
Ontario, 1992

EDUCATION
Osgoode Hall Law School, LL.B., 1990

DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor	Tel	416 863 0900
1 First Canadian Place	Fax	416 863 0871
Toronto Canada		www.dwpv.com
M5X 1B1		

Sandra Forbes is a partner in the Litigation and Competition & Foreign Investment Review practices. She specializes in corporate/commercial, class action, securities, administrative and competition litigation and has appeared before all levels of court in Ontario as well as the Supreme Court of Canada, the Federal Court of Appeal, the New Brunswick Court of Appeal, the British Columbia Supreme Court and the Court Martial Appeal Court of Canada.

Sandra has appeared as counsel before the Ontario Securities Commission, the Competition Tribunal, the Ontario Energy Board, the Patented Medicine Prices Review Board and the College of Physicians and Surgeons of Ontario. She has acted as counsel for defendants in numerous class actions alleging anti-competitive conduct, including in-the-air cargo, hydrogen peroxide, LCD panels, linerboard and vitamins industries.

Sandra was Law Clerk to the Honourable Peter Cory of the Supreme Court of Canada from 1990 to 1991 and is a Past President of The Advocates' Society.

REPRESENTATIVE WORK

- Counsel for a defendant in a national class action alleging an international conspiracy in the air cargo industry.
- Acted as litigation counsel to the developer of Confederation Bridge in various matters confronting this public-private partnership, including an environmental challenge and construction-related disputes.
- One of the defence counsel in the Ontario Securities Commission's proceeding against RT Capital Management Inc. in relation to "high closing" trading activity.
- Counsel for Agricore United in the proceedings brought by the Commissioner of Competition before the Competition Tribunal.
- Acted for a target in the criminal investigation brought by the Commissioner of Competition into an alleged conspiracy in the Canadian carbonless papers industry.
- Counsel in the dispute between the Beaverbrook Art Gallery and the UK Beaverbrook Foundation concerning ownership of various works of art.

RECOGNITION

- Recognized as a leading business law practitioner in the area of Competition by Law Business Research's *Who's Who Legal: Canada*.
- Recognized in *Lexpert® Magazine's Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada*.

SANDRA A. FORBES

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Fax 416 863 0871
sforbes@dwvpv.com

COMMUNITY INVOLVEMENT

The Advocates' Society (various projects to protect and improve access to justice)
smART Women, Art Gallery of Ontario
(2007-2010)

LANGUAGE

English

- Recognized in the International Bar Association's *Who's Who Legal: Canada* in the area of Competition.
- Listed in the *Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada*.
- Recognized in *The Best Lawyers in Canada®* in the areas of Class Action Litigation, Competition/Antitrust Law and Corporate and Commercial Litigation.
- Recognized by *Lexpert®* magazine as one of Canada's top 40 lawyers under 40 in its feature article "The Top 40 Under 40".
- Named by *Lexpert®* as one of "25 Litigators to Watch".
- Recognized in the *PLC Which lawyer? Yearbook*.
- Recommended practitioner in Corporate Commercial Litigation, Competition Litigation and Class Actions in both the *Canadian Legal Lexpert® Directory* and *Lexpert's The Best Lawyers in Canada*.
- Recognized by Chambers Global's *The World's Leading Lawyers for Business* as an "intense, hard-working litigation lawyer" in the competition/antitrust category and by *Leaders in their Field* in Competition/Antitrust.

ARTICLES AND PUBLICATIONS

Sandra was a regular contributing author to the *Supreme Court Law Review* on the law of evidence from 1999 to 2007. She was co-editor of "Peter Cory at the Supreme Court of Canada 1989-1999" for the Supreme Court of Canada Historical Society Series, 2001. Sandra was co-author of "Canada: Recent Developments In Private Antitrust Litigation", for the *Private Antitrust Litigation News* in 2002, and co-author of a chapter on Foreign Class Actions for the *American Bar Association Handbook on Class Actions* in 2003. In 2005, Sandra's paper and lecture on "Damages in Competition Law" were published as part of the Law Society Special Lectures.

TEACHING ENGAGEMENTS

Sandra is an Adjunct Professor at the University of Toronto Faculty of Law in Advanced Advocacy and is a frequent participant in National Judicial Institute education programs for judges. Sandra is also an instructor for Advocates' Society Workshops on a variety of advocacy issues.

SPEAKING ENGAGEMENTS

Sandra has given numerous papers and presented extensively at North American and international conferences. A selection of her papers and presentations includes:



MATTHEW MILNE-SMITH

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mmilne-smith@dwpv.com

OFFICE
Toronto

PRACTICE AREAS
Litigation

BOARD MEMBERSHIPS
AboutFace International

PROFESSIONAL MEMBERSHIPS
Ontario Bar Association
Advocates' Society
Metropolitan Toronto Lawyers' Association

BAR ADMISSIONS
Ontario, 2001
New York State, 2000

EDUCATION
Yale Law School, J.D., 1999
Princeton University, A.B. (summa cum
laude), 1996

LANGUAGE(S)
English

HOBBIES AND INTERESTS
Hockey; skiing; music

Matthew Milne-Smith is a partner in the Litigation practice. His practice includes a broad range of civil litigation, including commercial disputes, class actions, constitutional challenges, insolvency proceedings, tort claims and other matters. He has appeared before a variety of courts and other tribunals, including the Supreme Court of Canada and the Ontario Court of Appeal. Matthew has acted as counsel on a number of leading cases decided by the Ontario Superior Court of Justice, the Ontario Court of Appeal and the Supreme Court of Canada in the areas of class actions, enforcement of foreign judgments, enforcement of arbitration clauses, freedom of speech, and solicitors' duty of loyalty.

Before joining the firm, Matthew clerked for the Honourable Mr. Justice Frank Iacobucci at the Supreme Court of Canada in 1999/2000.

REPRESENTATIVE WORK

- Successfully defeated certification in a proposed \$3.5 billion class action against the Ontario Lottery & Gaming Corporation.
- Successfully represented a foreign client in multiple proceedings before the Ontario Superior Court of Justice and Court of Appeal in respect of the enforcement of a foreign judgment over constitutional and other objections.
- Successfully acted for BCE Inc. before the Supreme Court of Canada in litigation commenced by certain Bell Canada debentureholders to contest a \$51.7 billion leveraged buy-out, the largest LBO ever, in Canada or elsewhere.
- Successfully defended Delta Air Lines, Inc. in the first class action under the new *Federal Court Rules* against allegations of conspiracy to fix the level of commissions paid to travel agents.
- Successfully defended a leading real estate developer at trial against a claim by a condominium corporation concerning control of a mixed-use building.
- Acting for the Beaverbrook Foundation in an arbitration against the Beaverbrook Art Gallery concerning the ownership of a collection of art worth approximately \$50 million, acquired by the Beaverbrook Foundation between 1954 and 1965, and currently housed at the Beaverbrook Art Gallery.
- Acting for the Ontario Lottery & Gaming Corporation in numerous class proceedings and individual actions concerning problem gambling and disputed lottery claims.
- Acted for defendants in numerous price-fixing class actions.
- Argued before the Supreme Court of Canada in the seminal case concerning a solicitor's duty of loyalty, *R. v. Neil*.

SANDRA A. FORBES

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sforbes@dwpv.com

- "The Vitamins Class Action: Litigating in an International Forum", International Bar Association Anti-Trust Section Meeting, Italy, 2005.
- "International Cartel Enforcement", Canadian Bar Association and International Bar Association Spring Competition Law Conference – "North America and the Globalisation of Antitrust", 2007.
- Moderator, "Trial Judges – Do's and Don'ts", The Advocates' Society and American College of Trial Lawyers Spring Symposium, 2007.
- "Being Sued in Multiple Jurisdictions", The Conference Board of Canada's Class Action Forum, 2007.
- "Multijurisdictional Conspiracy Investigations and Parallel Class Actions", Canadian Bar Association National Competition Law Section Conference, 2007.
- The New Administrative Law – "Standards of Review: Are we There Yet?" Law Society of Upper Canada, 2007.
- "The Year in Review: The Most Important Evidence Law Cases of the Past Twelve Months", Osgoode Professional Development's 5th Annual Conference on Evidence Law for the Civil Litigator, 2008.
- "Navigating the Minefield of Class Actions, Securities Litigation and Settlement", The Canadian Institute 20th Annual Securities Superconference, 2010.

MATTHEW MILNE-SMITH

Dir 416 863 5595
Fax 416 863 0871
mmilne-smith@dwpv.com

- Acted for the Canadian Civil Liberties Association before the Supreme Court of Canada in two appeals concerning freedom of expression.

RECOGNITION

- Recognized by *The Best Lawyers in Canada*® as a leading practitioner of Corporate and Commercial Litigation.

ARTICLES AND PUBLICATIONS

Matthew is the author of "Developments in the Law of Evidence: The 2007-2008 Term" (2008), 43 *Sup. Ct. L. Rev.* 299; "Developments in the Law of Evidence: The 2008-2009 Term" (2009), 48 *Sup. Ct. L. Rev.* 161; and the Book Review, "Education, Student Rights and the Charter" (2000), 26 *Queen's L.J.* 287.

SPEAKING ENGAGEMENTS

Matthew is a speaker and presenter at numerous legal conferences and seminars.

SCHEDULE B

PROPOSED RATES TABLE

Name of Resource	*Regular Hourly Rate
Kent Thomson	\$850
Sandra Forbes	\$725
Matthew Milne-Smith	\$620
Articling Students	\$230
Paralegals	\$150 to \$385

*These are our 2010 rates. Rates are subject to annual revision.

Aleksandar Kojic

From: Michael Killeavy
Sent: October 25, 2010 4:04 PM
To: Yvonne Cuellar
Subject: FW: Evaluation of the Requests for Submissions - Litigation Counsel
Attachments: Request For Submissions - Litigation Counsel 20 Oct 2010 - TCE.pdf; Request For Submissions - Litigation Counsel 20 Oct 2010 - TCE.pdf; Matter Description - TCE.pdf; Matter Description -

Importance: High

Categories: Orange Category

Here is everything. There were two separate requests for submission:

1. TCE Oakville GS:

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Michael Killeavy
Sent: October 25, 2010 8:10 AM
To: Ziyaad Mia
Cc: Michael Lyle; Susan Kenedy
Subject: Evaluation of the Requests for Submissions - Litigation Counsel
Importance: High

Ziyaad,

Thank you for agreeing to help out with the evaluation of submissions for litigation counsel. There are two potential litigations facing us:

1. Oakville Generating Station cancellation where TransCanada Energy is our counterparty; and

Attached are the files I sent to prospective counsel with the invitation last week. I also included the pro forma contract for each procurement (SWGTA RFP and CHP III RFP), since these documents were already in the public domain. I can send these, too, if you wish.

The deadline for responding to the invitation is 5:00pm today. We'd like to have the evaluation completed by this Friday (29 October). I expect four submissions for the TCE matter.

ONTARIO POWER AUTHORITY

REQUEST FOR SUBMISSIONS

Legal Services – Litigation Counsel

CONFIDENTIAL

Services Required

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by a contract counterparty, TransCanada Energy Ltd.

Background

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site: <http://www.powerauthority.on.ca/>

The OPA is currently managing over 16,000 MW of electricity generation contracts, which include large-scale gas-fired generation and hydropower contracts, as well as smaller-scale Feed-in Tariff and Renewable Energy Standard Offer Program ("RESOP") contracts.

Scope of Services and Qualifications

The retained counsel (the "Litigation Counsel") will be required to provide advice on managing this dispute to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

Counsel must demonstrate an ability to provide strong litigation advice in relation to managing the disputes and defending claims made against the OPA, must have a strong working knowledge of the electricity sector in Ontario, and electricity generating contracts (both contingent support payment and power purchase agreements). Knowledge of the OPA's electricity generation contracts will be considered an asset.

It is imperative that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA.

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA.

We understand that you may require additional information with respect to the potential litigation matter in order to prepare your submission. Additional information is available upon your request (together with

your confirmation that you have completed conflict searches and not identified any conflicts which would preclude you from acting in connection with the matter for which you are seeking additional information).

Please note that counsel for generation procurements, contract management, and for regulatory hearing work is not being retained pursuant to this Request for Submissions. Counsel for generation procurements, contract management and regulatory hearing work will be retained if, and as, needed pursuant to a separate process.

Term of Retainer

The term of the retainer will be for a period of 12 months and will be extended, as needed, upon written notice. Retainers will be non-exclusive. The OPA may terminate the retainer at any time, in its sole discretion, upon written notice.

Submission Request

If you wish to be considered to provide the above-noted services, please submit the following, preferably not later than 5:00:00 pm on 25 October 2010:

A. Description of background and qualifications:

1. Describe the names of the partners and associates you would expect to assign to the Services, describe the expected services to be provided by each lawyer and provide their resumes. If your firm has multiple offices and you anticipate drawing on the expertise of lawyers not located in Toronto, please identify the jurisdiction in which such lawyers are located. Please identify the partner who will be in charge of the retainer for your firm;
2. Describe your firm's relevant experience, including a brief summary of any notable litigations, issues and/or matters or cases handled by your firm which you feel demonstrate the nature and extent of your firm's expertise;

If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

B. Cost:

1. State the rates at which the services of partners, associates and non-lawyer law clerks, paralegals or other paraprofessionals would be provided to the OPA. Include:
 - a. For each lawyer whose resume is provided, the rate you propose to charge the OPA.
 - b. For each applicable category of billable, non-lawyer personnel including law clerk, paralegal or other paraprofessional, the rate you propose to charge the OPA.
 - c. A schedule of all out-of-pocket disbursements which you anticipate will result in a charge to the OPA and the rate for each. Note that the OPA expects that disbursements will be charged at the firm's actual out-of-pocket cost, without mark-up.
2. In addition, you may propose any alternative fee structure deemed appropriate as a supplement to the fees requested above.

In setting forth its qualifications, each law firm should provide, in concise but adequate detail, the information sought above. Responses should not exceed 20 single-sided pages (including resumes) and should be prepared on 8 ½ x 11-inch paper using at least 12 point type with margins of no less than one-inch.

The OPA may follow-up with requests for additional information (for example, references) and may wish to interview candidates.

This request for submissions is a non-binding invitation to submit a response for consideration. This request does not create, and should not be construed as creating, any contractual relations or obligations between the OPA and any candidate.

Submissions can be made by email to the email address given below.

Selection Timing

The OPA expects to complete its selection process not later than 29 October 2010, however, this timing may be subject to change.

Questions and Submissions

Questions and submissions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Please reference: Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your submission.

ONTARIO POWER AUTHORITY

REQUEST FOR SUBMISSIONS

Legal Services – Litigation Counsel

CONFIDENTIAL

Services Required

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by a contract counterparty,

Background

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site:
<http://www.powerauthority.on.ca/>

The OPA is currently managing over 16,000 MW of electricity generation contracts, which include large-scale gas-fired generation and hydropower contracts, as well as smaller-scale Feed-in Tariff and Renewable Energy Standard Offer Program ("RESOP") contracts.

Scope of Services and Qualifications

The retained counsel (the "Litigation Counsel") will be required to provide advice on managing this dispute to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

Counsel must demonstrate an ability to provide strong litigation advice in relation to managing the disputes and defending claims made against the OPA, must have a strong working knowledge of the electricity sector in Ontario, and electricity generating contracts (both contingent support payment and power purchase agreements). Knowledge of the OPA's electricity generation contracts will be considered an asset.

It is imperative that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA.

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA.

We understand that you may require additional information with respect to the potential litigation matter in order to prepare your submission. Additional information is available upon your request (together with

your confirmation that you have completed conflict searches and not identified any conflicts which would preclude you from acting in connection with the matter for which you are seeking additional information).

Please note that counsel for generation procurements, contract management, and for regulatory hearing work is not being retained pursuant to this Request for Submissions. Counsel for generation procurements, contract management and regulatory hearing work will be retained if, and as, needed pursuant to a separate process.

Term of Retainer

The term of the retainer will be for a period of 12 months and will be extended, as needed, upon written notice. Retainers will be non-exclusive. The OPA may terminate the retainer at any time, in its sole discretion, upon written notice.

Submission Request

If you wish to be considered to provide the above-noted services, please submit the following, preferably not later than 5:00:00 pm on 25 October 2010:

A. Description of background and qualifications:

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2. Describe your firm's relevant experience, including a brief summary of any notable litigations, issues and/or matters or cases handled by your firm which you feel demonstrate the nature and extent of your firm's expertise;

If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

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1. State the rates at which the services of partners, associates and non-lawyer law clerks, paraflegals or other paraprofessionals would be provided to the OPA. Include:
 - a. For each lawyer whose resume is provided, the rate you propose to charge the OPA.
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 - c. A schedule of all out-of-pocket disbursements which you anticipate will result in a charge to the OPA and the rate for each. Note that the OPA expects that disbursements will be charged at the firm's actual out-of-pocket cost, without mark-up.
2. In addition, you may propose any alternative fee structure deemed appropriate as a supplement to the fees requested above.

In setting forth its qualifications, each law firm should provide, in concise but adequate detail, the information sought above. Responses should not exceed 20 single-sided pages (including resumes) and should be prepared on 8 ½ x 11-inch paper using at least 12 point type with margins of no less than one-inch.

The OPA may follow-up with requests for additional information (for example, references) and may wish to interview candidates.

This request for submissions is a non-binding invitation to submit a response for consideration. This request does not create, and should not be construed as creating, any contractual relations or obligations between the OPA and any candidate.

Submissions can be made by email to the email address given below.

Selection Timing

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Questions and Submissions

Questions and submissions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

**ONTARIO POWER AUTHORITY
REQUEST FOR SUBMISSIONS**

Matter Description

Legal Services – Litigation Counsel

CONFIDENTIAL

On 9 October 2009 the Ontario Power Authority ("OPA") and TransCanada Energy Ltd. ("TransCanada") entered into the Southwest GTA Clean Energy Supply Contract (the "Contract"). On 7 October 2010, the province announced that the Contract was cancelled. The OPA may be exposed to potential liability from TransCanada as a result of this cancellation of the Contract by the province. No action has yet been commenced by TransCanada. The OPA and TransCanada have had several preliminary meetings to discuss the cancellation of the Contract, including costs incurred to date by TransCanada.

Questions

Questions should be directed to:

Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
Fax: 416-969-6071
Email: michael.killeavy@powerauthority.on.ca

Please reference: Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your question.

**ONTARIO POWER AUTHORITY
REQUEST FOR SUBMISSIONS**

Matter Description

Legal Services – Litigation Counsel

CONFIDENTIAL

Questions

Questions should be directed to:

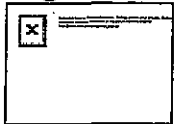
Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6288
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Email: michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: October 25, 2010 5:00 PM
To: Michael Killeavy
Subject: PA Litigation Counsel on Potential Claims by TCE
Attachments: 4882838_4.pdf

Michael, here is our proposal.

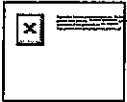
Regards, Rocco.



Rocco Sebastiano
Partner

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Osler, Hoskin & Harcourt LLP
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October 25, 2010

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Ontario Power Authority
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M5H 1T1

Attention: Michael Killeavy

Dear Mr. Killeavy:

Legal Services – Litigation Counsel (TransCanada Energy Ltd.)

On behalf of Osler, Hoskin & Harcourt LLP (Osler), thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to provide advice to the OPA on managing the dispute with TransCanada Energy Ltd. to avoid litigation, and if necessary to defend any actions against the OPA to protect the interests of the ratepayer.

We would welcome the opportunity to continue to build on our current relationship with the OPA by working with you on this matter. We look forward to discussing this mandate further with you, and invite you to call me at (416) 862-5859 if you require any additional information.

Yours very truly,

Rocco Sebastiano
RMS:es

Attachments

**PROPOSAL FOR
LEGAL SERVICES TO
THE ONTARIO POWER AUTHORITY
TO ADVISE THE OPA ON POTENTIAL CLAIMS BY
TRANSCANADA ENERGY LTD.**

OCTOBER 25, 2010

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Executive Summary

Thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to advise the OPA on potential claims by TransCanada Energy Ltd. (TCE) as a result of the Government of Ontario's announcement of the intended cancellation of the Southwest GTA CES Contract between TCE and the OPA. We would welcome the opportunity to advise you on this matter and build on our current relationship with the OPA.

Osler would be ideally suited to advise you on the potential claim by TCE for several reasons:

- Osler's Litigation Department is one of the largest and most accomplished dispute resolution teams in Canada. Years of careful recruiting and rigorous training has allowed us to develop deep expertise in complex commercial and government litigation. We have provided litigation advice to numerous clients on extremely complex, high-stakes disputes, and have advised several government corporations and agencies on the cancellation of major power and infrastructure projects,

We have also advised other government corporations and agencies, such as Atomic Energy of Canada and the Toronto Transit Commission, in the cancellation of major infrastructure projects by governments. In addition, we also have extensive litigation experience with issues of Crown and Crown agency liability as it relates to the cancellation of government contracts, and the potential for claims made under trade agreements such as under the Agreement on Internal Trade and the North American Free Trade Agreement (NAFTA) as a result of government action.

- We have a strong understanding of the electricity sector in Ontario. We have acted for the OPA in numerous procurements as well as sole-source negotiations, and have a strong understanding of the need to take into consideration the costs being passed on to the ratepayer while implementing the OPA's mandate.

We also understand the economics of Suppliers as we have acted for successful proponents on the development and operation of multiple generating facilities in the Province. We understand the sequencing, scheduling and cost expenditure curves of a developer in building a combined cycle generating facility; we are also very aware of the implications of delays to projects (such as municipal law issues), which enables us to assist with claims analysis and any discounting of potential claims to account for the likelihood that the project would have faced insurmountable delays.

- We would expect that at some stage, whether through negotiations or litigation, independent experts in damage quantification may be involved in the resolution of TCE's potential claim. Through our experience in complex commercial litigation, we have extensive expertise in working with independent consultants on loss quantification issues.
- We have an unsurpassed understanding of the OPA's forms of electricity generating contracts, both CES-style and power purchase agreements. We developed the original CES-style contract with the Exhibit J calculations of Contingent Support Payments and Revenue Sharing Payments while acting as counsel to the Ministry of Energy (Ontario) on the 2500 MW RFP.

If retained by the OPA, we would be in a position to immediately begin advising the OPA on this matter, and would not require the OPA to incur the time and associated expense with us coming up to speed on the underlying agreement. On the basis of the information provided to us to date, we believe that TCE may attempt to argue that the cancellation of the Southwest GTA Contract constitutes a "Discriminatory Action" and that the exclusion of consequential damages (including loss of profits) set out in Section 14.1 of the contract does not apply in such a case.

- In addition to the above experience, there would also be significant synergies if we are retained for this matter as we are currently counsel to the OPA on other potential claims made by TCE under Section 1.6 of the Southwest GTA Contract in respect of recent changes to the IESO market rules. By retaining us on this matter, we may be able to obtain a more advantageous result for the OPA by providing a comprehensive approach to addressing outstanding disputes with TCE rather than resolving each dispute individually.

Overall, our extensive involvement in advising the OPA and private-sector developers, and our extensive background as described in this Proposal, will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner. The OPA's legal requirements will be best served by a client team comprising partners with the requisite industry expertise, supported by experienced associates who can function efficiently and at a lower cost.

In advance of further discussions with you under this external counsel process, we would like to clarify that, as is customary for such proposals, we are participating in this process on the understanding that: (i) our discussions will not constitute a solicitor/client relationship on this project unless and until we are formally retained; and (iii) in the event that you do not retain us, you will not allege that our participation in this process constitutes a conflict in our acting for another third party in relation to this project.

A. Description of Background and Qualifications

1. Proposed Team

We propose that the core group of the client team for the project comprise Rocco Sebastiano, Richard Wong, and Elliot Smith as solicitors, and Brett Ledger, Paul Ivanoff and Evan Thomas, as litigators. We also propose to involve Riyaz Dattu, an expert in Crown liability, government procurement and international trade agreements, to the extent any issues on these subjects arise.

We propose that Rocco Sebastiano will be the partner in charge of this matter. An integrated team of both the solicitors and the litigators would work together to provide the OPA with advice on this matter. In the early stages, we would expect the solicitors would take on a greater role, working closely with the litigators, and if the matter proceeded to formal dispute resolution, we would expect an increasing role for the litigators on the team.

Paul has experience with the CES-style form of contract

and is an experienced litigator who has advised on commercial disputes, including several which have gone to the Supreme Court of Canada. In particular, Brett has extensive litigation experience in the energy sector, having provided advice to clients such as Atomic Energy of Canada Limited, Irving Oil, and Imperial Oil on disputes and litigation relating to many major commercial matters and on the cancellation of certain major projects. Evan formerly worked at the IESO and has published a number of papers on deregulated electricity marketplaces.

2. Relevant Experience and Notable Litigation and Transactions

Extensive Litigation Experience

•

We believe this most recent work is closely related to the potential claims by TCE as both relate to the Supplier's economics under the contract, which is a concept we have undertaken considerable efforts to understand and explore in connection with the CES-style contracts.

- ***Experience with Notable Litigation Matters.*** We have advised on numerous significant litigation matters that demonstrate the nature and extent of our expertise in advising the OPA in any potential claim by TCE. In particular, we have advised clients on legal issues and claims relating to the cancellation of major energy and infrastructure projects. A few examples of this experience include acting for:
 - **Atomic Energy of Canada (AECL)** in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **AECL** in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
 - -
 - **The Toronto Transit Commission (TTC)** on claims by contractors and suppliers relating to the cancellation of the Eglinton Subway by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and equipment supply contracts and defend potential claims relating thereto.
 - **Veco Corporation** in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- ***Experience with Crown Liability and Trade Agreements.*** A government-initiated cancellation of a contract of this nature has the potential to trigger the application of Crown liability, and if TCE has any major US shareholders, a claim may also be initiated under the North American Free Trade Agreement (NAFTA). Osler lawyers have acted in more international trade litigation matters than any other Canadian firm, and have extensive experience with dispute resolution panels including under NAFTA. We also have extensive experience advising both the Crown and private parties on issues of Crown liability.
- ***Other Commercial Litigation Experience.*** We have provided advice to clients on a number of complex litigation matters, including the Greater Toronto Airports Authority, on a number of commercial and construction disputes arising out of the New Terminal Development Project and the redevelopment of Terminal 3 at Pearson International Airport. We advised the TTC on several claims arising from the development and construction of the Sheppard

Subway, including a claim for \$43 million on the Don Mills Station. Other significant litigation retainers include advising Inco/Voisey's Bay Nickel Company on the termination of a supply contract for business-critical equipment, and the recovery of the equipment, in the context of significant delay costs, and also on deficiencies in the design of a conveyor system; and advising Stone & Webster Canada L.P. on disputes relating to construction at the Lambton and Nanticoke Power Generating Stations.

Strong Understanding of the Electricity Sector in Ontario

•

Not only do we understand the commercial and legal risk allocations between the Buyer and Supplier under these contracts (including such issues as the payment mechanisms and formulas in Exhibit J of the CES, EMCES, ACES, and other related contracts, the development and operational covenants, as well as the force majeure, damages and discriminatory action provisions), but we also understand the policy framework and rationales underlying the formulation of such provisions and have a practical sense of the appropriateness of such provisions in light of the state of the generation development industry and the OPA's role under the contracts for such developments.

Unsurpassed Knowledge of the OPA's Electricity Generating Contracts

- ***Development of the CES Contract.*** In our role as counsel to the Ministry of Energy (Ontario), we developed the original Clean Energy Supply (CES)-style contract for the 2,500 MW RFP.

we thoroughly understand the entire contract, and in particular, the economics contemplated by Exhibit J, and can leverage this understanding in any negotiations we undertake with TCE.

General Electricity Industry Expertise

A summary of our representative matters and project work most relevant to the work that will likely be required in connection with the defense of any possible claims by TCE is set out below. As well, we encourage you to contact Kevin Dick, Richard Duffy and Barbara Ellard who are very familiar with our experience and the quality of our legal services.

Representative Litigation and Project Matters

Relevant litigation and project related matters in which our lawyers have advised clients on major power and infrastructure projects, include:

- **Atomic Energy of Canada (AECL).** Our lawyers have advised AECL on numerous matters, including:
 - **Claims relating to the Cancellation of MAPLE Reactors** – We advised AECL in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **Pickering A Restart Project** – We advised AECL in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
- **Toronto Transit Commission** – We advised the Toronto Transit Commission (TTC) on claims by contractors, equipment and material suppliers relating to the cancellation of the **Eglinton Subway** by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and supply contracts and defend potential claims relating thereto.
- **Veco Corporation** – We advised Veco Corporation (Veco) in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- **Pristine Power Inc.** We have advised Pristine on the development, financing, construction and operation of the East Windsor Cogeneration Centre and the York Energy Centre.

Market Rules relating to generator cost guarantees, including claims by TCE for both the Southwest GTA Facility and the Halton Hills Facility, and an indirect claim by TCE through its 50% ownership interest in Portlands Energy Centre LP.

-
- **GTA West Trafalgar RFP** – We advised on all aspects of this procurement, including the development of specific rated criteria used in the evaluation of proposals. We implemented further revisions to the CES Contract for use on the GTA West Trafalgar CES Contract to deal with specific issues such as revenues from and ownership of future contract related products.
- **Portlands Energy Centre** - We negotiated a further modified form of ACES Contract for this project to permit either an initial simple-cycle mode of operation or in the event of certain delays in achieving this milestone, providing temporary generation through the use of 12 rental mobile gas turbine generators. We also negotiated further amendments to this ACES Contract in order to implement a gas management plan which results in a sharing of gas supply and transportation risks between the Buyer and the Supplier in exchange for a reduction in the Supplier's over-all net revenue requirement.
-
- **Early Movers** – We developed and negotiated a modified form of CES Contract for use on a number of early mover projects (including Coral's Brighton Beach Project, TransAlta's Sarnia Regional Cogeneration Centre and three Toromont combined heat and power projects). The EMCES Contract introduced the directed dispatch concept in order to meet the Ministry of Energy's directive to the OPA to displace coal.
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-
-

nine hydroelectric generating stations in northern Ontario, totalling over 1,000 MW owned and to be operated by Ontario Power Generation Inc. pursuant to the directive issued by the Ministry of Energy (Ontario) on December 20, 2007.

- **Ministry of Energy (Ontario).** We have advised the Ministry of Energy on four major Requests for Proposals (RFPs) relating to electricity generation, being the RFP for 300 MW of renewable electricity generation (RES I RFP), the RFP for 2,500 MW of clean generating capacity or demand-side projects (2,500 MW RFP) to address Ontario's growing electricity capacity needs, the RFP for up to 1,000 MW of renewable electricity generation for facilities between 20 MW and 200 MW (RES II RFP) and the draft RFP for up to 200 MW of renewable electricity generation for facilities between 0.25 MW and 19.99 MW (the original RES III RFP). On the 2,500 MW RFP, we developed and drafted the CES Contract, including the development of the innovative contract for differences model based on imputed production as set out in Exhibit J of the CES Contract. We also provided advice to the Ministry and the OPA relating to the negotiated cancellation of the **Eastern Power** contracts for **Greenfield North GS** and **Greenfield South GS**.

Please refer to the resumes attached to this submission for a description of other relevant transactions, project work and claims that our core team of lawyers have advised on.

3. Potential Conflicts

We do not expect that we would have any conflicts of interest in providing legal services to the OPA in relation to this matter. On the contrary, we believe our work regarding the potential claims in connection with recent IESO Market Rule changes provides synergistic benefits to the OPA.

B. Cost

Osler's service team for the OPA would follow our core service philosophy for delivering quality work, responsive service, timely communications and controlled costs. To ensure that we effectively manage the cost of providing our services to you, we will involve, whenever possible, associates at a more junior level and with correspondingly lower hourly rates.

Hourly rates (in Canadian dollars) for the lawyers in the proposed core service team are as follows:

Lawyer	Hourly Rate (2010)
Rocco Sebastiano	\$750
Richard Wong	\$600
Elliot Smith	\$365
Brett Ledger	\$900
Paul Ivanoff	\$650
Evan Thomas	\$405
Riyaz Dattu	\$775

We expect that initially the majority of the work would be done by Elliot and Rocco with advice from Richard, Brett and Paul. If the potential claims proceed to dispute resolution under the arbitration provisions of Section 16.2 of the contract or to litigation in court proceedings, we expect that Brett, Paul and Evan would have an increasing role in the conduct of this matter, with the drafting of litigation documents being done by Evan under the supervision of Brett and Paul. To the extent that any issues arise under NAFTA, or relating to liability of the Crown or Crown agencies, Riyaz would also be consulted.

These hourly rates will apply without a retainer or a minimum quantity of hours. Should the matter proceed to litigation, we may also engage law clerks whose hourly rates vary from \$115 to \$315.

We believe that our extensive involvement in advising the OPA, the Government of Ontario and private sector owners and developers on the Clean Energy Supply form of contract will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner, and in particular, as we ran the Southwest GTA procurement, we are intimately familiar with that form of contract. Furthermore, as we are currently advising the OPA on other potential claims by TCE, we have already considered many of the issues relating to liability under the contract including as it relates to the Supplier's economics and the waiver of indirect and consequential damages. Therefore, there is no learning curve on our end, which will result in a significant cost savings to the OPA. This, combined with our extensive litigation expertise, will allow us to quickly and efficiently begin the process of advising the OPA on any potential claims by TCE.

The Request for Submissions also requests information regarding the cost of disbursements. We do not anticipate any disbursements relating to travel and accommodations. Also, we do not charge clients for the use of meeting rooms in our client centre. With respect to other disbursements such as printing of documents and long distance calls, our disbursements are charged out essentially at cost without any additional mark-up.

C. Resumes

Rocco M. Sebastiano



416-862-5859

rsebastiano@osler.com

Education

- 1992 Osgoode Hall Law School, LL.B.
- 1989 Professional Engineers Ontario, P.Eng.
- 1985 University of Toronto, B.A.Sc. (Engineering Science Nuclear and Thermal Power)

Year of Call

1994 Ontario

Rocco M. Sebastiano is the Chair of the firm's Energy – Power Group and a partner in the firm's Construction and Infrastructure Group. He is a qualified and experienced professional engineer who, prior to joining the firm, was employed as a nuclear design engineer and reactor safety analyst in the Nuclear Division of Ontario Hydro. Rocco's practice concentrates on energy, construction law and engineering and infrastructure matters. He has extensive experience on a wide range of major projects and has acted for various project participants, including owners, developers, contractors, operators, lenders, subcontractors, architects and engineers.

Rocco's project experience on power and infrastructure development includes advising the Ontario Power Authority, Hydro One, the Ontario Ministry of Energy and Atomic Energy of Canada Limited on matters such as the planning, procurement, development, engineering, construction, contracting, refurbishment and financing of natural gas, co-generation, nuclear, wind and hydro power generation projects and transmission and distribution systems.

Typical services include advising with respect to the structuring and development of the project, risk identification, allocation and management, tendering and procurement documents, permitting, licensing and approvals, corporate and project financing aspects and agreements, engineering, procurement and construction (EPC) contracts, power purchase agreements, energy supply contracts, transmission services agreements, refurbishment contracts, equipment procurement, operating and maintenance agreements, and other related commercial and technical contracts.

Professional Affiliations

- Law Society of Upper Canada
- Professional Engineers Ontario
- Canadian Bar Association
- The Canadian Council for Public-Private Partnerships
- Canadian Construction Association
- Ontario Energy Association

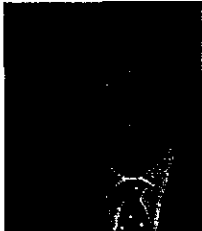
Representative Work

Rocco has advised on a number of major power generating and transmission projects such as:

- The **Ontario Power Authority** on numerous new generation and demand managements projects, including:

- **Atomic Energy of Canada Limited** on the **Ontario Nuclear Procurement Project**, the refurbishment and retubing of CANDU nuclear reactors at the **Bruce A Nuclear Generating Station** and **Pickering A Nuclear Generating Station** in Ontario and the **Pt. Lepreau Nuclear Generating Station** in New Brunswick and on the development, construction, commercial arrangements and subsequent cancellation of the **MAPLE Reactors** and associated radioisotope production facility at its Chalk River Research Facility.
- **East Windsor Cogeneration** in respect of the procurement and development of the East Windsor Cogeneration Centre in Windsor, Ontario pursuant to the Ontario Power Authority's **CHP I RFP**.
- The **Ministry of Energy (Ontario)** on the **Renewable Energy Supply (RES I and RES II) Procurements**, including consultations with the **IESO** and **Hydro One** on the review of transmission queue issues and the development of transmission and distribution constraint models and restricted transmission sub-zones for the planning and procurement of new renewable generating facilities.

Richard G.C. Wong



416-862-6467
rwong@osler.com

Education

1995 University of Toronto, J.D.
1996 University of Toronto, B.A (Economics)

Year of Call

1997 Ontario
2000 New York

Richard Wong is a partner in the firm's Construction and Infrastructure Group with an emphasis on power and infrastructure development including the procurement, development, contracting and financing of nuclear, natural gas, co-generation, hydro, wind and other generation projects and the planning and development of the related systems. In particular, Richard's services include reviewing, negotiating and drafting equipment and other supply agreements, design agreements, EPC contracts, procurement documents (e.g. RFI/RFP/Tenders), power and capacity purchase agreements, engineering service and consulting agreements, construction management agreements, and other related corporate/commercial and technical agreements including joint venture agreements, development agreements, operation and maintenance agreements and supply agreements.

Professional Affiliations

- Law Society of Upper Canada
- Canadian Bar Association
- Ontario Bar Association
- New York State Bar Association
- Korean Canadian Lawyers Association

Representative Work

Richard has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement and contract documents for the Southwest GTA procurement process, which resulted in the procurement of the 900 MW Oakville Generating Station.

- **The Ministry of Energy (Ontario) on the New Clean Generation & Demand-Side Projects (2500 MW) Procurement**, including the development of the procurement process, the Clean Energy Supply Contract, consultations with the **IESO** and **Hydro One** on transmission constraint issues, regulatory and commercial treatment of transmission connection and system upgrade costs under the Transmission System Code, and the development of the restricted transmission sub-zones in the evaluation model in the RFP.
- **Toronto Transit Commission** on the development and disputes relating to the Sheppard Subway project and the cancellation of the Eglinton Subway project.
- **TransÉnergie U.S. Ltd.** on the **New Jersey Cable Transmission Project**, New Jersey and New York, including the procurement and open-season process, project financing, negotiation of the EPC contract with ABB Inc. and the transmission services agreement.
- **Hydro One Inc. and TransÉnergie U.S. Ltd.** on the **Lake Erie Link Electricity Transmission Project**, Ontario and Pennsylvania, including project structuring, permitting, licensing and related regulatory matters, system connection issues, development, procurement and open-season process, negotiation of the EPC contract with ABB Inc. and the development of the transmission services agreement.

Elliot A. Smith



416.862.6435
esmith@osler.com

Education

2004 University of Waterloo, B.A.Sc., Honours (Systems Design Engineering)
2007 University of Toronto, J.D.

Year of Call

2008 Ontario

Elliot Smith is an associate in the firm's Business Law Department in the Toronto office, where he is active in the Energy (Power) and Construction & Infrastructure Specialty Groups. Elliot works extensively on major infrastructure projects, providing assistance with project development, procurement, contract negotiation and administration issues. Elliot's practice has a strong emphasis on the procurement and construction of power plants, including combined heat and power, energy from waste, wind, solar and other renewable projects, as well as the development and negotiation of power and capacity purchase agreements.

Prior to joining Osler, Elliot worked at a number of institutions involved in the deregulated Ontario electricity market, including Ontario Power Generation and the Independent Electricity System Operator. He also worked at the Ontario Power Authority, where he assisted with the development of a regional electricity supply plan.

Representative Work

Elliot has advised on a number of major power and infrastructure developments for such clients as:

- **Pristine Power**, on the ongoing construction and equipment procurement for power projects in Ontario.

- **Ontario Ministry of Energy** in its Request for Proposals for 2,500 MW of New Clean Generation and Demand-side Projects for the procurement of 2,235 MW of new gas-fuelled combined cycle generating facilities in various locations throughout Ontario under the terms of the Clean Energy Supply (CES) Contract, including the development of the restricted transmission sub-zones in the evaluation model.

Brett Ledger



**Partner,
Litigation**
Toronto

416.862.6687
bledger@osler.com

Education
University of Windsor, LL.B.
University of Toronto, B.A.

Bar Admission(s)
Ontario (1979)

Practice Area(s): Litigation; Pensions & Benefits; Class Action

Brett specializes in corporate and commercial litigation with an emphasis on energy, environmental and general corporate litigation as well as class actions and administrative proceedings. His practice is national in scope and he has appeared before the courts of most provinces in Canada and the Supreme Court of Canada. Brett acts for some of Canada's largest energy and national resource companies on a wide variety of litigious matters, including Atomic Energy of Canada, Imperial Oil and Irving Oil. He also regularly acts as litigation counsel to many of Canada's major corporations and pension funds and has been involved in many of the leading pension decisions before the courts and pension tribunals. In addition, Brett has instructed at Osgoode Hall Law School's Intensive Trial Advocacy Program.

Recent Matters

- *MDS Nordion v. Atomic Energy of Canada Limited* – acting for AECL in connection with matters relating to the MAPLE Reactors and the associated New Processing Facility in Chalk River
- *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* 2004 SCC 54 – pension litigation in the Supreme Court of Canada relating to partial windup and surplus.
- *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 – acting for Atomic Energy of Canada Limited in the Supreme Court of Canada regarding confidentiality orders in environmental cases.
- *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.) – pension plan partial windup.
- *Imperial Oil Limited v. The Nova Scotia Superintendent of Pensions et al.*, (1995) 126 D.L.R. (4th) 343 (N.S.C.A.) – pension plan partial windup.
- *Smith v. Michelin North America* (2008) 71 C.C.P.B. 161- Nova Scotia Court of Appeal decision regarding contribution holidays.
- *Burke v. Hudson Bay Co.* (2008) ONCA 690– Court of Appeal representative action regarding surplus entitlement on sale of business.
- *Labrador Innu Assn. v. Newfoundland* (1077) 152 D.L.R. (4th) 50– Newfoundland Court of Appeal – aboriginal claims case relating to development of the Voisey's Bay Mine in Labrador.

- *Citizens' Mining council of Newfoundland & Labrador v. Canada* [1999] F.C.J. No. 23 – Environmental assessment case in the Federal Court regarding environmental assessment of mining development.
- *Hembruff v. OMERS* (2005) O.A.C. 234 – Ontario Court of Appeal decision regarding fiduciary duties of pension administrators.
- *Lacroix v CMHC* (2009) 73 C.C.P.B. 224 and *Lloyd v. Imperial Oil Limited* (1999) 23 C.C.P.B. 39 – counsel in Ontario and Alberta pension class actions dealing with surplus and plan amendments.

Paul Ivanoff



**Partner,
Litigation**
Toronto

416.862.4223
pivanoff@osler.com

Education

University of New Brunswick, LL.B.
York University, B.A.

Bar Admission

Ontario (1993)

Practice Area(s): Litigation; Construction; Infrastructure

Paul's practice involves the litigation, arbitration and mediation of disputes arising out of construction and infrastructure projects. He also provides contract administration advice during the course of completion of projects. Paul's practice covers all aspects of construction law including contractual disputes involving construction contracts and specifications, construction liens, mortgage priorities, delay claims, bidding and tendering disputes, negligence, bond claims, and construction trusts. He advises all project participants on disputes related to a broad range of construction projects including the design and construction of airport facilities, power plants, highways, industrial facilities, commercial buildings, civil works facilities and subways. Paul is certified as a Specialist in Construction Law by the Law Society of Upper Canada.

Recent Matters

- **Greater Toronto Airports Authority** in numerous claims relating to the design, construction and maintenance of air terminal facilities
- **CH2M Hill and Veco Corporation** in an Ontario action involving allegations of conspiracy, fraud and oppression, which focussed on the propriety of the Ontario courts assuming jurisdiction over the dispute
- **Stone & Webster Canada L.P.** in disputes relating to the installation of Selective Catalytic Reduction (SCR) equipment at Ontario Power Generating Stations
- A project owner in an action involving the construction of a co-generation power plant
- A leading engineering firm in a multi-party Ontario action involving allegations of negligence and breach of contract relating to the design and construction of an industrial processing system
- An Ontario municipality in connection with procurement advice relating to bidding and tendering issues
- A nuclear technology and engineering company in a dispute relating to the supply and installation of equipment
- A leading Canadian contractor in various claims and disputes relating to roadway construction
- Automobile manufacturers in various disputes relating to projects undertaken at automobile assembly facilities

Evan Thomas



**Associate,
Litigation**
Toronto

416.862.4907
ethomas@osler.com

Education

University of Toronto, J.D.
London School of Economics, M.Sc. (Economics)
University of British Columbia, B.A. (Hons.)

Bar Admission(s)

Ontario (2007)

Practice Area(s): Litigation

Evan practises general corporate/commercial litigation and has experience in franchise, construction, privacy, insolvency, and information technology matters. He has appeared before the Information and Privacy Commission (Ontario) and the Ontario Superior Court of Justice (Civil and Commercial Lists). Prior to attending law school, Evan worked in the information technology sector and has an avid interest in e-discovery issues and other uses of technology in litigation. As an articling student, Evan was seconded to the mergers & acquisitions group at RBC Financial Group.

Recent Matters

- Various proceedings pending in Ontario related to the recovery of assets in Canada for the benefit of victims of a multi-billion dollar Ponzi scheme.
- A cross-border insolvency proceeding under the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code.
- The successful response to a motion for an interlocutory injunction to restrain the termination of a subcontract on a \$70-million information technology project.
- The defence of an ongoing action for over \$100 million in damages by a wholesaler following the termination of a distribution relationship.
- The successful response to an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* to the Information and Privacy Commission (Ontario).

Publications/Events/Education

- *Regional Electricity Market Integration: A Comparative Perspective, Competition and Regulation in Network Industries*, Volume 8 (2007) No. 2 (co-authored).
- *To Notify or Not to Notify: Responding to Data Breach Incidents*, February 2007 (co-authored with Jennifer Dolman).
- *Beyond Gridlock: The Case for Greater Integration of Regional Electricity Markets*, C.D. Howe Institute Commentary, March 2006 (co-authored).

Riyaz Dattu



**Partner,
Corporate**
Toronto

416.862.6569
rdattu@osler.com

Education
Osgoode Hall Law School, LL.M.
University of Toronto, LL.B.

Bar Admission(s)
Ontario (1984)

Practice Area(s): International Trade

Riyaz advises multinational and domestic businesses on international trade policy and investment matters, international trade strategies and market-access concerns. On international trade regulations, he advises on all aspects of economic sanctions, export and import controls, national security, anti-bribery laws, government procurement, customs laws, transfer pricing and trade remedies such as anti-dumping, countervailing and safeguard measures. Riyaz also acts as counsel in international trade and investment disputes involving the application of trade laws and regulations and the enforcement of treaties. He has acted as counsel from the time of the very earliest WTO disputes concerning Canada, and the first two investment arbitrations under Canada's bilateral investment promotion and protection treaties. During his more than 25 years of practice, Riyaz has advised and represented leading businesses in a full range of industry sectors.

Recent Matters

Riyaz has been counsel in more than 50 Canadian and international trade remedies proceedings (and one-third of all initial investigations commenced since 1992 under Canada's trade remedies laws), 13 challenges under Chapter 19 of NAFTA and the Canada-United States Free Trade Agreement (including one-half of all Canadian proceedings under NAFTA that were completed) and in excess of 40 proceedings before the Federal Court of Canada. He has acted in most of the significant trade remedies cases litigated in Canada, and has also argued landmark cases before NAFTA Panels and the Federal Court of Canada.

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: October 25, 2010 5:08 PM
To: Michael Killeavy
Subject: RE: OPA Litigation Counsel on Potential Claims by TCE

Michael,

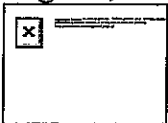
I was having some problems with MS Outlook on my computer. Would you please confirm that you received our proposal.

Thanks, Rocco

From: Sebastiano, Rocco
Sent: Monday, October 25, 2010 5:00 PM
To: Michael Killeavy (Michael.killeavy@powerauthority.on.ca)
Subject: PA Litigation Counsel on Potential Claims by TCE

Michael, here is our proposal.

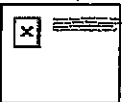
Regards, Rocco.



Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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



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soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

Aleksandar Kojic

From: Deborah Langelaan
Sent: October 26, 2010 8:57 AM
To: JoAnne Butler; Michael Killeavy
Cc: Michael Lyle
Subject: TCE OGS

JoAnne and Michael;

TCE requested this afternoon's conference call to discuss their position with Mitsubishi regarding the gas turbines. TCE has a face-to-face meeting with Mitsubishi on Friday in Orlando and they would like to discuss some of the possible options/outcomes that could be tabled and what the OPA's position is.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

Aleksandar Kojic

From: Michael Killeavy
Sent: October 26, 2010 8:58 AM
To: Deborah Langelaan; JoAnne Butler
Cc: Michael Lyle
Subject: RE: TCE OGS

Thank you.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Deborah Langelaan
Sent: October 26, 2010 8:57 AM
To: JoAnne Butler; Michael Killeavy
Cc: Michael Lyle
Subject: TCE OGS

JoAnne and Michael;

TCE requested this afternoon's conference call to discuss their position with Mitsubishi regarding the gas turbines. TCE has a face-to-face meeting with Mitsubishi on Friday in Orlando and they would like to discuss some of the possible options/outcomes that could be tabled and what the OPA's position is.

Deb

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Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

Aleksandar Kojic

From: JoAnne Butler
Sent: October 26, 2010 9:00 AM
To: Deborah Langelaan; Michael Killeavy
Cc: Michael Lyle
Subject: RE: TCE OGS

Ok by me...

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Deborah Langelaan
Sent: Martes, 26 de Octubre de 2010 08:57 a.m.
To: JoAnne Butler; Michael Killeavy
Cc: Michael Lyle
Subject: TCE OGS

JoAnne and Michael;

TCE requested this afternoon's conference call to discuss their position with Mitsubishi regarding the gas turbines. TCE has a face-to-face meeting with Mitsubishi on Friday in Orlando and they would like to discuss some of the possible options/outcomes that could be tabled and what the OPA's position is.

Deb

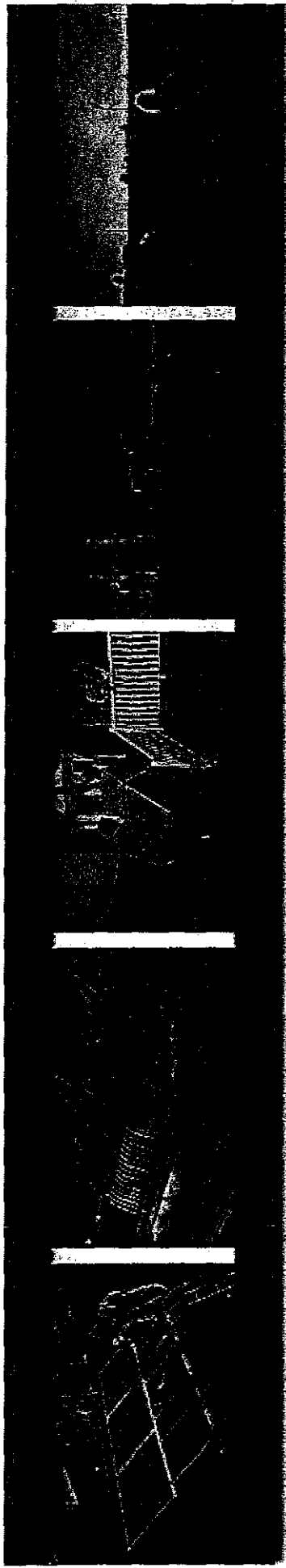
Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

Aleksandar Kojic

From: Michael Killeavy
Sent: October 27, 2010 1:33 PM
To: Deborah Langelaan
Subject: Revised Presentation - TCE Cambridge Site
Attachments: TCE Cambridge Site 27 Oct 2010.ppt
Importance: High

Here is a revised presentation showing the school location.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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michael.killeavy@powerauthority.on.ca



TransCanada Energy Cambridge Site

Gas-Fired Generation Option

27 October 2010

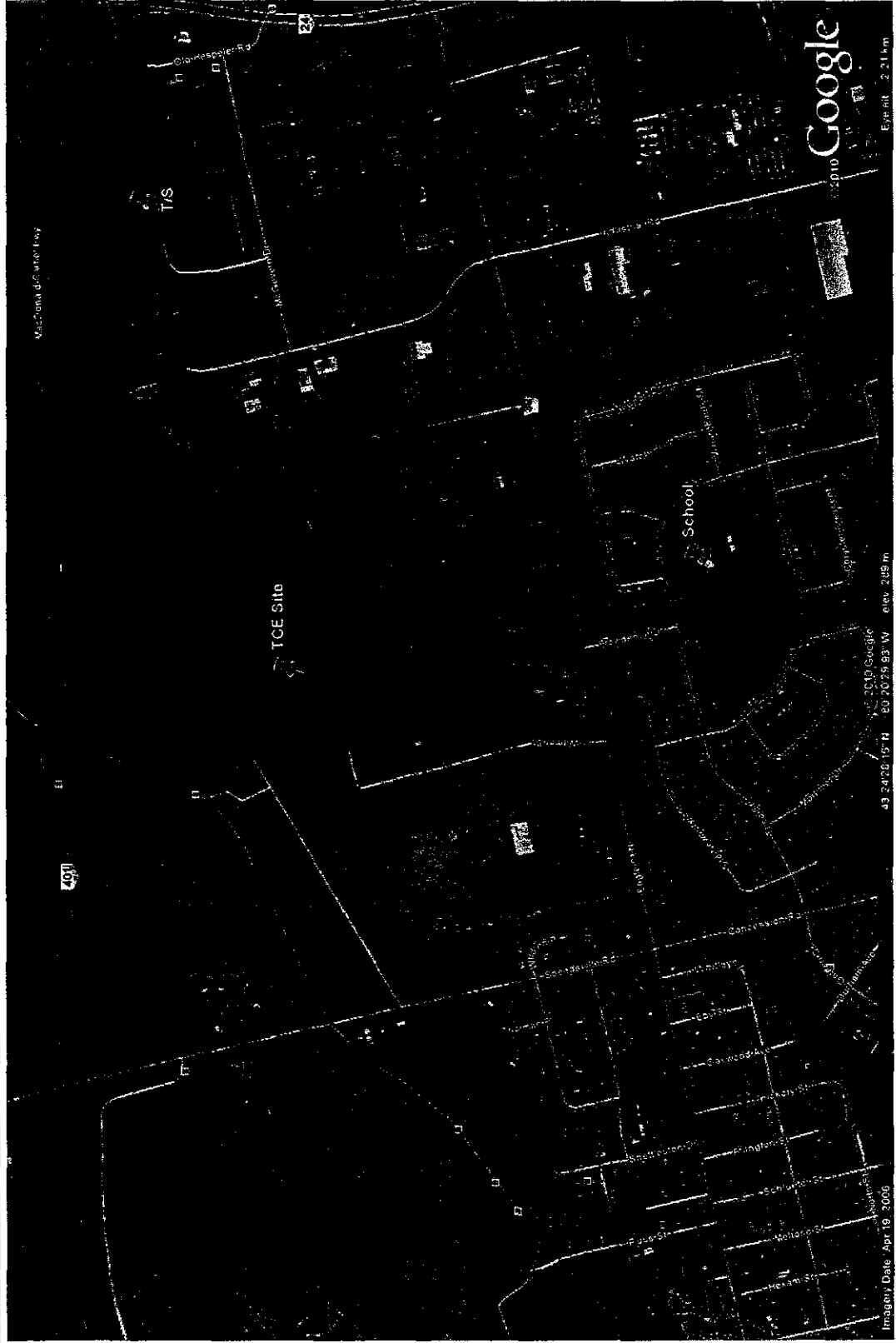
Site Information

- TransCanada Energy (“TCE”) has a potential site for gas-fired generation in Cambridge. It is located in the community of Preston.
- The site consists of the lands fronting Eagle Street North Cambridge, Ontario consisting of Lots 21 and 22, Registrar’s Complied plan 1364 and Block 23, Plan 1427 City of Cambridge, Province of Ontario.
- The municipal address is 475 Witmer St. Cambridge.

Site Information

- Distance to closest resident (from facility equipment) is approximately 300 m.
- Distance to closest school (from facility equipment) is approximately 475 m.
- Proximity to Grand River is approximately 1.5 miles –
The site would be in the lands granted under the
Haldimand Proclamation.

Site Map



Aleksandar Kojic

From: Deborah Langelaan
Sent: October 27, 2010 1:40 PM
To: Michael Killeavy
Subject: RE: Revised Presentation - TCE Cambridge Site

Looks good.

During our meeting on Oct. 19th TCE advised that their parcel of land is 50 acres and it is already zoned for generation. Also, the site is in a Conservative riding and has been since 1995. Union Gas will have to undertake a significant pipeline upgrade to feed the plant

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Michael Killeavy
Sent: October 27, 2010 1:33 PM
To: Deborah Langelaan
Subject: Revised Presentation - TCE Cambridge Site
Importance: High

Here is a revised presentation showing the school location.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

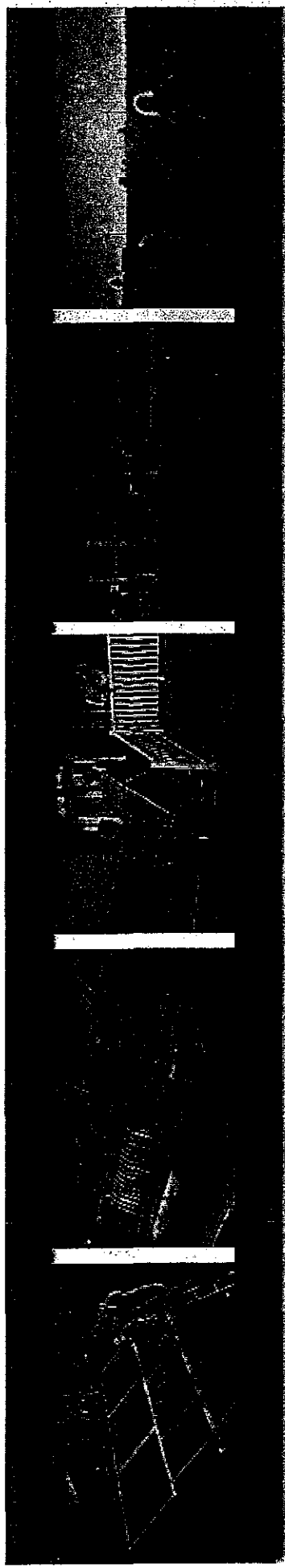
Aleksandar Kojic

From: Michael Killeavy
Sent: October 27, 2010 1:59 PM
To: Deborah Langelaan
Subject: REVISED TCE KW Site Presentation
Attachments: TCE Cambridge Site 27 Oct 2010.ppt

Importance: High

I added in the information you gave me, except the political stuff. Thx

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca



TransCanada Energy Cambridge Site

Gas-Fired Generation Option

27 October 2010

Site Information

- TransCanada Energy (“TCE”) has a potential site for gas-fired generation in Cambridge. It is located in the community of Preston.
- The site is 50 acres in size and the existing zoning permits construction of generation.
- Union Gas will need to build gas infrastructure to supply gas to the site.

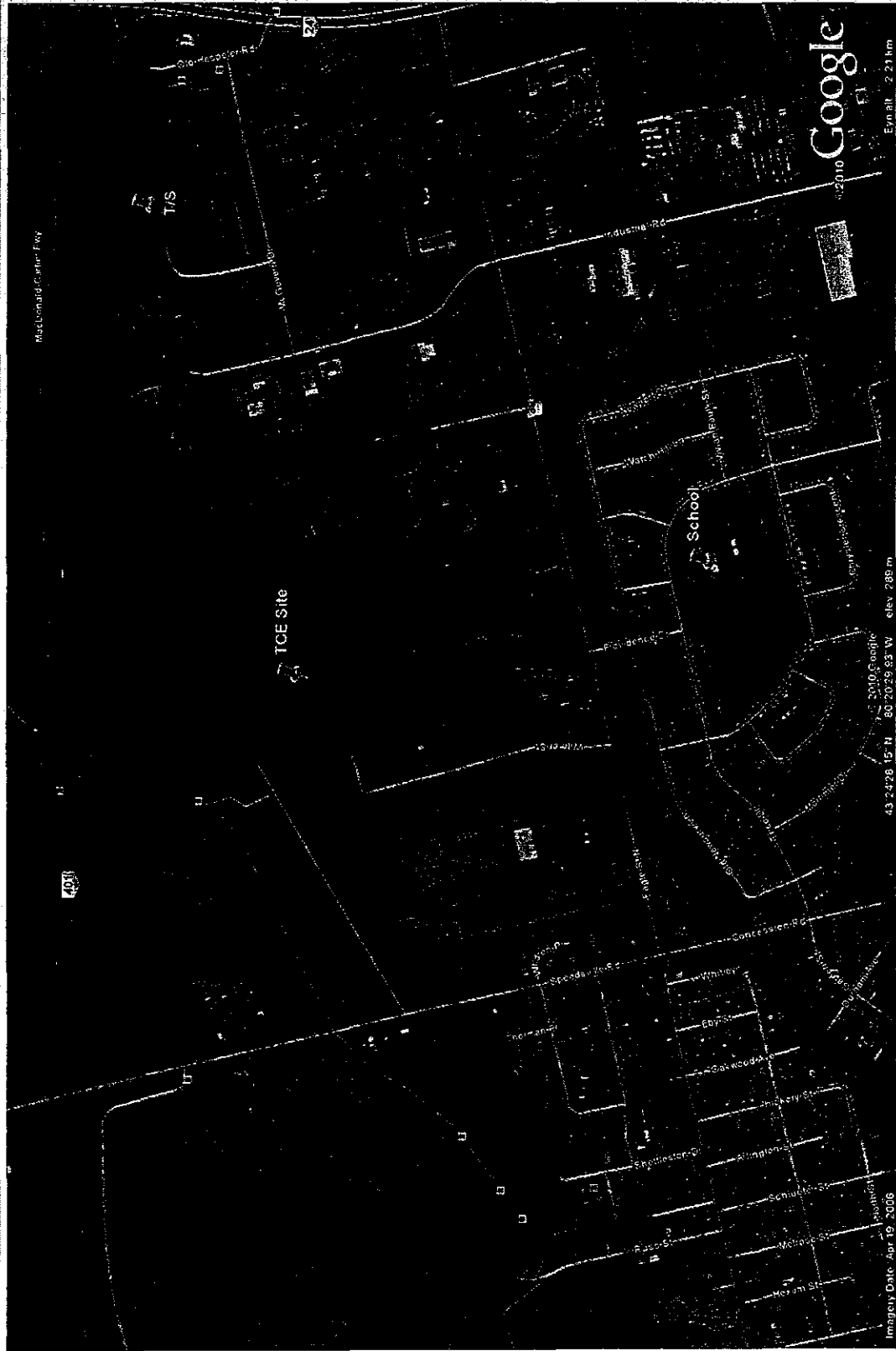
Site Information

- The site consists of the lands fronting Eagle Street North Cambridge, Ontario consisting of Lots 21 and 22, Registrar's Complied plan 1364 and Block 23, Plan 1427 City of Cambridge, Province of Ontario.
- The municipal address is 475 Witmer St. Cambridge.

Site Information

- Distance to closest resident (from facility equipment) is approximately 300 m.
- Distance to closest school (from facility equipment) is approximately 475 m.
- Proximity to Grand River is approximately 1.5 miles – The site would be in the lands granted under the Haldimand Proclamation.

Site Map



Aleksandar Kojic

From: Michael Lyle
Sent: October 27, 2010 3:08 PM
To: Deborah Langelaan
Cc: JoAnne Butler; Michael Killeavy
Subject: Re: Follow up

Depends what comes out of further discussions with Govt. I would just buy time with TCE right now. Advise that we will get back to them tomorrow afternoon.

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

From: Deborah Langelaan
To: Michael Lyle
CC: JoAnne Butler; Michael Killeavy
Sent: Wed Oct 27 14:55:30 2010
Subject: Fw: Follow up

Michael;

TCE is requesting guidance from the OPA for it's meeting with MPS on Friday. How do you propose we respond?

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Wed Oct 27 14:27:06 2010
Subject: Follow up

Good afternoon Deborah. As discussed on our conference call yesterday, I am following up to see if the OPA can provide TransCanada with their guidance on the MPS discussions. We could schedule a call for later this afternoon if that is convenient.

Regards,

Terry

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

Aleksandar Kojic

From: Michael Killeavy
Sent: October 27, 2010 5:03 PM
To: JoAnne Butler
Subject: Re: Cambridge- Questions from OPA

Not by much, though.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: JoAnne Butler
To: Michael Killeavy
Sent: Wed Oct 27 17:02:10 2010
Subject: Re: Cambridge- Questions from OPA

Better..

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

From: Michael Killeavy
To: Ben Chin
CC: JoAnne Butler; Michael Lyle; Deborah Langelaan
Sent: Wed Oct 27 16:59:15 2010
Subject: Fw: Cambridge- Questions from OPA

Please see below. TCE is moving the footprint of the plant on the site. It changes the earlier reported distances from homes and the school.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: John Mikkelsen <john_mikkelsen@transcanada.com>
To: Michael Killeavy; Terri Steeves <terri_steeves@transcanada.com>

CC: Terry Bennett <terry_bennett@transcanada.com>

Sent: Wed Oct 27 16:56:02 2010

Subject: RE: Cambridge- Questions from OPA

Michael,

Further to our voice mail we think that the plant could be constructed on the northeast corner of the site and increase the setback. That would change the number presented earlier as follows:

Distance to closest resident (from facility equipment): ~ 300 to ~ 600 m

Distance to closest school (from facility equipment): ~ 475 to ~ 800 m

FYI

John Mikkelsen, P.Eng.

Manager, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

We have moved! Please note the new address above

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]

Sent: Wednesday, October 27, 2010 12:50 PM

To: Terri Steeves

Cc: Terry Bennett; John Mikkelsen

Subject: RE: Cambridge- Questions from OPA

CONFIDENTIAL AND WITHOUT PREJUDICE

In addition to the site attached, we are actively looking at other opportunities in the area, but do not have detailed information at this time.

Terri

From: John Mikkelsen
Sent: Wednesday, October 27, 2010 10:17 AM
To: Terri Steeves
Cc: Terry Bennett
Subject: Cambridge- Questions from OPA

Terri,

Here are quick answers to Michael's questions:

Distance to closest resident (from facility equipment): ~ 300 m

Distance to closest school (from facility equipment): ~ 475 m

Proximity to Grand River (Is it in the Haldimand Tract?): ~1.5 miles - The site would be in the lands granted under the Haldimand Proclamation

Municipal Address: 475 Witmer St. Cambridge

Property Details:

Lands fronting Eagle Street North Cambridge, Ontario consisting of Lots 21 and 22, Registrar's Complied plan 1364 and Block 23, Plan 1427 City of Cambridge, Province of Ontario.

I have attached a file showing the location of the property.

FYI

John Mikkelsen, P.Eng.

Manager, Eastern Canada, Power Development

Terri,

Thank you for this. Could you send the map as a .jpeg so that I can insert it easily into a PPT presentation?

Thanks,

Michael

Michael Killeavy, LL.B., MBA, P.Eng.

Director, Contract Management

Ontario Power Authority

120 Adelaide Street West, Suite 1600

Toronto, Ontario M5H 1T1

416-969-6288 (voice)

416-969-6071 (fax)

416-520-9788 (cell)

michael.killeavy@powerauthority.on.ca

From: Terri Steeves [mailto:terri_steeves@transcanada.com]

Sent: October 27, 2010 12:45 PM

To: Michael Killeavy

Cc: Terry Bennett

Subject: FW: Cambridge- Questions from OPA

Confidential and Without Prejudice

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

We have moved! Please note the new address above

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 28, 2010 10:28 AM
To: Michael Lyle
Cc: Susan Kennedy; JoAnne Butler; Deborah Langelaan; Ziyaad Mia; Derek Leung
Subject: Selection of Litigation Counsel ...

Importance: High

Categories: Orange Category

Mike,

The evaluation team met this morning, and our consensus decision on the selection of litigation counsel is:

1. TCE matter – Osler;

I have asked each firm to provide a draft retainer letter consistent with the terms of our request for submissions and their respective responses back.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Deborah Langelaan
Sent: October 28, 2010 11:47 AM
To: Michael Killeavy
Subject: TCE Sunk Costs - Confidential
Attachments: Sunk Costs.xls

Michael;

I used the spreadsheet TCE provided the OPA at our first meeting to form the basis of the costs.

With respect to the question regarding MPS providing a credit to TCE to apply against future purchases:

- during our meeting on Oct. 19th TCE mentioned that if MPS isn't amenable to switching machines then their inclination is to cancel the gas turbine order altogether
- during our conference call on Oct. 26th TCE advised the OPA that during their face-to-face meeting with MPS they priority would be to seek a 60 day no harm contract suspension and if MPS not amenable to this then they will want to cancel the gas turbine order but will confer with OPA before making their final decision.

Deb

**Oakville Generating Station
Estimation of Sunk Costs (\$MM)**

Based on Preliminary Estimates Provided by TransCanada Energy on October 19, 2010

Description of Costs	Paid to end of September 2010	Forecast to end of October 2010	If MPS Gas Turbines Cancelled by end of October 2010
Equipment*	26.5	42.0	93.0
EPC	4.0	4.0	4.0
Internal	14.0	15.0	16.0
Land**	9.0	9.0	14.0
Other	0.5	0.5	0.5
IDC	3.0	3.0	3.5
Total	57.0	73.5	131.0

*MPS Agreement requires \$20MM milestone pymt. end of Oct., ratcheted cancellation pymts. are 5% - 15% per month of total cost (\$180MM)

**Ford land costs could range between \$9MM & \$56MM

Aleksandar Kojic

From: Michael Killeavy
Sent: October 28, 2010 11:53 AM
To: Michael Lyle
Subject: FW: TCE Sunk Costs - Confidential
Attachments: Sunk Costs.xls

Mike,

Here's the information on sunk costs and turbine credits. I have a call in with regard to the approvals at the K-W site.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Deborah Langelaan
Sent: October 28, 2010 11:47 AM
To: Michael Killeavy
Subject: TCE Sunk Costs - Confidential

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**Ford land costs could range between \$9MM & \$56MM

Aleksandar Kojic

From: Michael Killeavy
Sent: October 28, 2010 12:28 PM
To: Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter ...

Importance: High

Mike,

I spoke with TCE a few minutes ago.

TCE has not begun any permitting for the K-W site. It has done only some preliminary site characterization work.

With regard to obtaining a credit against future turbine purchases, TCE says that Mitsubishi has consistently said "no" to anything like that. TCE says that Mitsubishi's position is that it proceeds with the purchase of the turbines or cancels the agreement and pays the cancellation fee.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: October 28, 2010 4:09 PM
To: Michael Lyle
Subject: RE: Follow up

Is there an update on this item? Can we say anything to TCE?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

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

From: Michael Lyle
Sent: October 27, 2010 3:08 PM
To: Deborah Langelaan
Cc: JoAnne Butler; Michael Killeavy
Subject: Re: Follow up

Depends what comes out of further discussions with Govt. I would just buy time with TCE right now. Advise that we will get back to them tomorrow afternoon.

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

From: Deborah Langelaan
To: Michael Lyle
CC: JoAnne Butler; Michael Killeavy
Sent: Wed Oct 27 14:55:30 2010
Subject: Fw: Follow up

Michael;

TCE is requesting guidance from the OPA for it's meeting with MPS on Friday. How do you propose we respond?

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Wed Oct 27 14:27:06 2010
Subject: Follow up

Good afternoon Deborah. As discussed on our conference call yesterday, I am following up to see if the OPA can provide TransCanada with their guidance on the MPS discussions. We could schedule a call for later this afternoon if that is convenient.

Regards,

Terry

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 28, 2010 7:27 PM
To: Deborah Langelaan
Subject: Re: TCE

Me either, so I didn't respond. They might be looking for direction or approval from us about what to do. We can discuss in the morning.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Deborah Langelaan
To: Michael Killeavy
Sent: Thu Oct 28 19:22:03 2010
Subject: Fw: TCE

Michael;

I'm not sure on what to make of Mike's e-mail.

Deb

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

From: Michael Lyle
To: Michael Killeavy; Deborah Langelaan
Sent: Thu Oct 28 18:43:03 2010
Subject: TCE

It appears that TCE is sitting down with Mitsibushi now to see if they can negotiate an extension. Looks like they will want to loop back with us in morning re options.

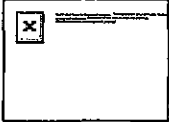
Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: October 29, 2010 9:32 AM
To: Michael Killeavy
Subject: Draft Engagement Letter for SWGTA TEC Matter
Attachments: Engagement Letter - OPA.pdf, OslerClientServiceTerms.pdf

Michael,

As requested, please find enclosed a draft engagement letter for the SWGTA TCE matter. Please let me know if you have any comments on it.

Thanks, Rocco



Rocco Sebastiano
Partner

416.862.5859 DIRECT
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Osler, Hoskin & Harcourt LLP
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October 29, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com
Our Matter Number: ●

SENT BY COURIER

Mr. Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Dear Mr. Killeavy:

Thank you for retaining Osler, Hoskin & Harcourt LLP ("Osler") to provide legal services to you in connection with the Request for Submissions regarding litigation counsel in defending potential actions against the OPA by TransCanada Energy Ltd. I will have primary responsibility for seeing that your legal needs are met, will supervise all legal work in connection with this retainer and determine appropriate additional staffing. For your record keeping purposes, the file name we have assigned to this matter is **[Cancellation of Southwest GTA CES Contract with TransCanada Energy Ltd.]** and the file number is ●.

We are pleased you have retained us to assist with this matter, and would like to take this opportunity to confirm further details of the engagement. Please refer to our Client Service Terms for additional standard information about our role, how we staff engagements, fees and disbursements and other terms that will apply to this and any matter in which you engage us. We have agreed to the following amendments to the Client Service Terms:

- (1) In the second paragraph of Section 2 – Scope of Our Role, the first sentence shall be amended to read: "Our role is to provide legal advice and legal services to you commensurate with the highest standards of professional practice and at all times, in accordance with the requirements of the Law Society of Upper Canada."
- (2) In the second paragraph of Section 4 – Fees and Disbursements, with respect to factors 1 through 5, we agree that our final fee shall not be increased above our hourly rates on account of these factors without the OPA's prior consent.

A copy of our standard Client Service Terms is attached. The terms of this letter take precedence over the Client Service Terms to the extent of any inconsistency.

1. Conflicts

We have conducted a review of our records to confirm that representing you in this matter will not create a legal conflict with the interests of any of our other existing clients.

2. Fees

Our fees are generally based upon the time spent by lawyers and other legal professionals on your behalf and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals, as well as general economic factors. The names and current billing rates for some of the legal professionals expected to work on this matter are set forth in a list attached to this letter.

3. Term

We agree with you that the term of the retainer will be for a period of 12 months (which may be extended, as needed, upon written notice by you), unless terminated in accordance with Section 9 of the Client Service Terms.

If you have any concerns regarding our representation of you or the terms of our engagement, please contact me.

Yours very truly,

Rocco Sebastiano
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

PRINCIPLE LAWYERS AND HOURLY RATES

<u>Lawyer</u>	<u>Hourly Rate (2010)</u>
Rocco Sebastiano	\$750.00
Richard Wong	\$600.00
Elliot Smith	\$365.00
Brett Ledger	\$900.00
Paul Ivanoff	\$650.00
Evan Thomas	\$405.00
Riyaz Dattu	\$775.00

Client Service Terms

Thank you for choosing Osler, Hoskin & Harcourt LLP to act as your counsel.

These standard client service terms will apply to any matter in which you engage us. These standard terms are subject to any other terms that may be agreed upon between you and Osler, Hoskin & Harcourt LLP.

We look forward to working with you.

1. Your Service Team

An Osler partner will be assigned to take primary responsibility for seeing that your legal needs are met and for supervising all legal work we undertake on your behalf. The responsible partner will also determine the appropriate additional staffing for each matter you entrust to us. Lawyers and other legal professionals will be assigned to assist with each matter on the basis of their experience and expertise, the nature and scope of the issues and the time constraints imposed by the situation.

In Canada, Osler has offices in Calgary, Toronto, Ottawa and Montreal. In the United States, Osler has an office in New York. The Canadian and US offices are operated by closely affiliated partnerships that share information, expertise and database systems to enhance client service. From time to time, legal professionals located in offices other than the office primarily working with you may be assigned to assist. When we refer to "Osler" we are referring to both of these partnerships and all of these offices, and when we refer to an "Osler partner" or "Osler lawyers" we are referring to lawyers in any of these offices. All Osler lawyers are bound by obligations to protect client confidentiality and solicitor-client or attorney-client privilege under applicable law.

In addition, please note that certain specialized areas of law, such as tax law, are complex and constantly changing, and often involve sub-specialty areas in which Osler lawyers have worked to develop in-depth expertise. As a result, the individuals engaged in resolving a specific legal matter may find it useful to consult with other Osler lawyers and other legal professionals regarding particular issues. We have found that drawing upon the expertise of colleagues, when appropriate, enables us to provide a higher quality of advice at a lower cost to you than strictly limiting the number of individuals involved in a particular matter.

We are always pleased to discuss the staffing of a particular transaction or other matter with you.

2. Scope of Our Role

The scope of our role for each specific matter you entrust to us will be confirmed in continued communications between us as work progresses. We will not expand the scope of our engagement without instructions from you. In particular, we will not advise you in respect of the tax aspects of a matter unless it is specifically agreed that tax services will be included in the engagement.

Our role is to provide legal advice and legal services to you. Although we will use every effort to help you achieve your financial and business objectives for any transaction or other matter, you should rely on your internal experts or other external advisors for financial and business advice.

We will accept instructions from anyone within your organization who has apparent authority in connection with the matter at hand, unless you instruct us otherwise.

3. How We Manage Conflicts

We have clients who rely upon us for general representation and clients to whom we provide representation regarding discrete matters. It is possible that an adverse relationship may exist or may develop in the future between you and another of our clients.

In retaining us, you consent and agree that we may represent other clients (some of whom may be engaged in business activities competitive to yours) on matters that may be considered adverse to you or your interests, so long as we have not been engaged by you on the specific matter for which the other client seeks representation. Furthermore, you agree that you will not assert that our representation of you constitutes a basis for disqualifying us from representing another client in any such matter.

However, be assured that we have comprehensive policies and procedures in place for the creation and maintenance of "ethical walls", when required, between Osler lawyers representing clients whose matters may be adverse in interest. In common with our treatment of the confidential information of all of our clients, at no time will any of your confidential information be disclosed to or used for the benefit of any other client.

You may wish to obtain independent legal advice as to the implications of your agreement to these terms.

4. Fees and Disbursements

Our fees are generally based on the time spent by lawyers and others on your behalf, and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals and staff, as well as general economic factors. At your request, the responsible partner may provide you with more specific details on our rates.

Although time expended is a significant factor in determining our fees, there may be circumstances in which our final fee takes into account other factors, including:

1. The experience, reputation and abilities of those rendering our services;
2. The amount at issue;
3. Particularly favourable results obtained;
4. Time limitations imposed by you or by the circumstances of the matter; and
5. Whether working on the matter will preclude or limit us from rendering services to other clients.

Our fees will not be affected by the failure of a transaction to be completed.

Generally our accounts are issued monthly. All of our accounts are due and payable on receipt. If an account is not paid within 30 days, we may charge interest at an annual rate in accordance with the rules that

govern the professional conduct of lawyers, from the date the account is issued until the date paid.

In addition to our professional fees, our accounts will include disbursements incurred by us on your behalf, such as long-distance telephone charges, photocopying and facsimile charges; charges for courier, messenger and other communication services; computer database access; charges for legal research; travel expenses; necessary non-legal staff overtime incurred on your behalf; postage; filing fees, paid to government agencies; and other out-of-pocket costs incurred on your behalf. For larger disbursements, we may seek funds from you in advance or forward invoices to you for direct payment.

You will be responsible for payment of the fees and disbursements of other law firms retained by us on your behalf to provide advice on the laws of other jurisdictions. Also, the fees and disbursements of experts or other third-party service providers retained by us on your behalf will be your responsibility. These experts' or other service providers' fees and disbursements may be billed to you directly, or we may forward their invoices to you for direct payment by you to them.

5. Limited Liability Partnership

Osler is a registered limited liability partnership (LLP) (in Ontario and New York, respectively). A partner in an LLP is not personally liable for any debts, obligations or liabilities of the LLP that arise from any negligent act or omission by another partner or by any person under that other partner's direct supervision or control. Partners of an LLP are personally liable only for their own actions and omissions, and for the actions and omissions of those they directly supervise or control.

6. Privacy

In the course of acting for you, you may disclose to us (and we may collect, use and disclose) personal information that is subject to applicable privacy protection laws. We will collect, use or disclose that personal information for the sole purpose of providing our services to you. You can review a copy of our Privacy Statement on osler.com, or contact a member of your legal service team.

7. Our Client and Our Reporting Obligations

When we are engaged to act on behalf of an organization, our obligations are to that organization and not the directors, officers, employees or other agents who retain us and provide us with instructions or to whom we may provide advice. In accordance with the rules that govern the professional conduct of lawyers, if we have any evidence of wrong-doing by or on behalf of the organization, or any officer, director, employee or agent of the organization, we may be obligated to report the wrong-doing to appropriate senior officers or directors of the organization.

8. Electronic Communications

We will communicate with you and provide documents to you through various forms of electronic communications, including email through the public Internet. You may also correspond or provide documents to us through electronic means. Those electronic communications may contain information or documents that are confidential or privileged, unless you instruct us not to send such information or documents electronically.

There is a risk that any such electronic communications may be intercepted or interfered with by third parties or may contain computer viruses. In addition, we employ filtering techniques (e.g.,

anti-spam software) which might interfere with the timely delivery of electronic communications you send to us. Neither of us will be responsible to the other, or have any liability for any actions of any third parties, with respect to electronic communications either of us might send the other, or for any delay or non-delivery, or other damage caused in connection with an electronic communication.

If you would prefer that any correspondence or documents sent to you be transmitted with a greater degree of certainty or protection (e.g., encryption), please let us know. In addition, if you have any concerns or doubts about the authenticity or timing of any electronic communication purportedly sent by us, please contact us immediately.

9. Termination

You may terminate your engagement of us for any reason by giving us written notice to that effect. On such termination, all unpaid legal fees and disbursements become immediately due and payable, whether or not an account for them has yet been issued.

We may stop performing legal services and terminate our legal representation of you for any reason in accordance with the rules that govern the professional conduct of lawyers, including for unanticipated conflicts of interest or unpaid legal fees and disbursements.

Unless our engagement has been previously terminated, our representation of you will cease upon the issuance by us of our final account for services to you. If, upon termination or completion of a matter, you wish to have any documentation returned to you, please advise us. Otherwise, any documentation that you have provided to us and the work product completed for you will be dealt with in accordance with our records retention program. Please note that for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or dispose of this documentation.

After completing any particular matter, changes may occur in the applicable laws or regulations, or their interpretation, that could affect your current or future rights, obligations and liabilities. We have no continuing obligation to advise you with respect to future legal developments, unless we are specifically engaged to do so after the completion of the matter at hand.

10. Governing Law and Arbitration

The terms of our engagement by you will be governed by the laws applicable in the jurisdiction in which the partner responsible for your matter works.

To the extent that any services are provided to you from the Osler New York office, and a dispute arises relating to our fees, you may have the right to arbitration to resolve the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of New York, a copy of which will be provided to you upon request.

11. For More Information

The foregoing will be the agreed terms of service between us as we continue to work together unless, as mentioned above, they become subject to any other terms that we may agree upon.

If you have any questions or concerns regarding our work on your behalf or the terms of our engagement, please feel free, at any time, to contact the partner responsible for our relationship with you.

Aleksandar Kojic

From: Michael Killeavy
Sent: October 29, 2010 10:11 AM
To: Susan Kennedy
Cc: Deborah Langelaan; Derek Leung
Subject: FW: Draft Engagement Letter for SWGTA TEC Matter
Attachments: Engagement Letter - OPA.pdf; OslerClientServiceTerms.pdf; 4882838_4.pdf

Importance: High

Susan,

Could you please review the attached draft retainer letter from Osler for the TCE matter? The rates in the table match what was in the response we received from them (attached).

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: October 29, 2010 9:32 AM
To: Michael Killeavy
Subject: Draft Engagement Letter for SWGTA TEC Matter

Michael,

As requested, please find enclosed a draft engagement letter for the SWGTA TCE matter. Please let me know if you have any comments on it.

Thanks, Rocco

OSLER

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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

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soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

October 29, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com
Our Matter Number: ●

SENT BY COURIER

Mr. Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Dear Mr. Killeavy:

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We are pleased you have retained us to assist with this matter, and would like to take this opportunity to confirm further details of the engagement. Please refer to our Client Service Terms for additional standard information about our role, how we staff engagements, fees and disbursements and other terms that will apply to this and any matter in which you engage us. We have agreed to the following amendments to the Client Service Terms:

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A copy of our standard Client Service Terms is attached. The terms of this letter take precedence over the Client Service Terms to the extent of any inconsistency.

1. **Conflicts**

We have conducted a review of our records to confirm that representing you in this matter will not create a legal conflict with the interests of any of our other existing clients.

2. **Fees**

Our fees are generally based upon the time spent by lawyers and other legal professionals on your behalf and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals, as well as general economic factors. The names and current billing rates for some of the legal professionals expected to work on this matter are set forth in a list attached to this letter.

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We agree with you that the term of the retainer will be for a period of 12 months (which may be extended, as needed, upon written notice by you), unless terminated in accordance with Section 9 of the Client Service Terms.

If you have any concerns regarding our representation of you or the terms of our engagement, please contact me.

Yours very truly,

Rocco Sebastiano
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

PRINCIPLE LAWYERS AND HOURLY RATES

<u>Lawyer</u>	<u>Hourly Rate (2010)</u>
Rocco Sebastiano	\$750.00
Richard Wong	\$600.00
Elliot Smith	\$365.00
Brett Ledger	\$900.00
Paul Ivanoff	\$650.00
Evan Thomas	\$405.00
Riyaz Dattu	\$775.00

A. Description of Background and Qualifications

1. Proposed Team

We propose that the core group of the client team for the project comprise Rocco Sebastiano, Richard Wong, and Elliot Smith as solicitors, and Brett Ledger, Paul Ivanoff and Evan Thomas, as litigators. We also propose to involve Riyaz Dattu, an expert in Crown liability, government procurement and international trade agreements, to the extent any issues on these subjects arise.

We propose that Rocco Sebastiano will be the partner in charge of this matter. An integrated team of both the solicitors and the litigators would work together to provide the OPA with advice on this matter. In the early stages, we would expect the solicitors would take on a greater role, working closely with the litigators, and if the matter proceeded to formal dispute resolution, we would expect an increasing role for the litigators on the team.

Rocco has extensive experience working with the CES-style contract as he was responsible for developing the form of contract for the Ministry of Energy in the 2500 MW CES RFP, and for leading and co-ordinating the legal services

Richard was lead counsel on the Southwest GTA procurement, and Elliot assisted Richard in the procurement and has used the Southwest GTA form of contract as a precedent for other OPA matters, and therefore all three are extremely familiar with the contract at issue.

Paul has experience with the CES-style form of contract

and he has many years of experience with litigation related to construction and infrastructure projects. Brett is the former chair of our litigation department and is an experienced litigator who has advised on commercial disputes, including several which have gone to the Supreme Court of Canada. In particular, Brett has extensive litigation experience in the energy sector, having provided advice to clients such as Atomic Energy of Canada Limited, Irving Oil, and Imperial Oil on disputes and litigation relating to many major commercial matters and on the cancellation of certain major projects. Evan formerly worked at the IESO and has published a number of papers on deregulated electricity marketplaces.

2. Relevant Experience and Notable Litigation and Transactions

As summarized above, our experience in the following matters will be of particular advantage in advising the OPA on the potential claims by TCE resulting from the Government of Ontario's announced intention to cancel the Southwest GTA CES Contract:

Extensive Litigation Experience

- ***Litigation Experience on Behalf of the OPA.*** We have advised the OPA on a number of disputes that had the potential to result in litigation, and have successfully avoided litigation in each case.

which were very similar in form to the Southwest GTA Contract, as well as in threatened litigation by Enbridge in relation to the termination of its participation in the Goreway Station project.

- We would expect that at some stage, whether through negotiations or litigation, independent experts in damage quantification may be involved in the resolution of TCE's potential claim. Through our experience in complex commercial litigation, we have extensive expertise in working with independent consultants on loss quantification issues.
- We have an unsurpassed understanding of the OPA's forms of electricity generating contracts, both CES-style and power purchase agreements. We developed the original CES-style contract with the Exhibit J calculations of Contingent Support Payments and Revenue Sharing Payments while acting as counsel to the Ministry of Energy (Ontario) on the 2500 MW RFP. We have been responsible for all significant evolutions of the Exhibit J payment mechanism for subsequent OPA procurements,

- We acted for the OPA on the procurement in Southwest GTA which led to the awarding of the Southwest GTA Contract to TCE. As a result, we are intimately familiar with the contract itself, as well as the dynamics between the parties. If retained by the OPA, we would be in a position to immediately begin advising the OPA on this matter, and would not require the OPA to incur the time and associated expense with us coming up to speed on the underlying agreement. On the basis of the information provided to us to date, we believe that TCE may attempt to argue that the cancellation of the Southwest GTA Contract constitutes a "Discriminatory Action" and that the exclusion of consequential damages (including loss of profits) set out in Section 14.1 of the contract does not apply in such a case.
- In addition to the above experience, there would also be significant synergies if we are retained for this matter as we are currently counsel to the OPA on other potential claims made by TCE under Section 1.6 of the Southwest GTA Contract (as well as the Halton Hills and the Portlands Energy Centre agreements) in respect of recent changes to the IESO market rules. By retaining us on this matter, we may be able to obtain a more advantageous result for the OPA by providing a comprehensive approach to addressing outstanding disputes with TCE rather than resolving each dispute individually.

Overall, our extensive involvement in advising the OPA and private-sector developers, and our extensive background as described in this Proposal, will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner. The OPA's legal requirements will be best served by a client team comprising partners with the requisite industry expertise, supported by experienced associates who can function efficiently and at a lower cost.

In advance of further discussions with you under this external counsel process, we would like to clarify that, as is customary for such proposals, we are participating in this process on the understanding that: (i) our discussions will not constitute a solicitor/client relationship on this project unless and until we are formally retained; and (iii) in the event that you do not retain us, you will not allege that our participation in this process constitutes a conflict in our acting for another third party in relation to this project.

Subway, including a claim for \$43 million on the Don Mills Station. Other significant litigation retainers include advising Inco/Voisey's Bay Nickel Company on the termination of a supply contract for business-critical equipment, and the recovery of the equipment, in the context of significant delay costs; and also on deficiencies in the design of a conveyor system; and advising Stone & Webster Canada L.P. on disputes relating to construction at the Lambton and Nanticoke Power Generating Stations.

Strong Understanding of the Electricity Sector in Ontario

Not only do we understand the commercial and legal risk allocations between the Buyer and Supplier under these contracts (including such issues as the payment mechanisms and formulas in Exhibit J of the CES, EMCES, ACES, and other related contracts, the development and operational covenants, as well as the force majeure, damages and discriminatory action provisions), but we also understand the policy framework and rationales underlying the formulation of such provisions and have a practical sense of the appropriateness of such provisions in light of the state of the generation development industry and the OPA's role under the contracts for such developments.

Unsurpassed Knowledge of the OPA's Electricity Generating Contracts

- ***Development of the CES Contract.*** In our role as counsel to the Ministry of Energy (Ontario), we developed the original Clean Energy Supply (CES)-style contract for the 2,500 MW RFP.

(ACES Contract), which incorporated the requirement to implement a simple cycle mode of operation prior to achieving the combined cycle mode of operation. We subsequently developed the GTA West Trafalgar form of CES-style contract, which we were then retained to adapt into a Peaking Generation Contract,

We adapted this contract for the Southwest GTA procurement,

As a result of this extensive experience with the CES-style contract, we thoroughly understand the entire contract, and in particular, the economics contemplated by Exhibit J, and can leverage this understanding in any negotiations we undertake with TCE.

We believe this most recent work is closely related to the potential claims by TCE as both relate to the Supplier's economics under the contract, which is a concept we have undertaken considerable efforts to understand and explore in connection with the CES-style contracts.

- ***Experience with Notable Litigation Matters.*** We have advised on numerous significant litigation matters that demonstrate the nature and extent of our expertise in advising the OPA in any potential claim by TCE. In particular, we have advised clients on legal issues and claims relating to the cancellation of major energy and infrastructure projects. A few examples of this experience include acting for:
 - **Atomic Energy of Canada (AECL)** in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **AECL** in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
 - **Bruce Power** in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
 - **The Toronto Transit Commission (TTC)** on claims by contractors and suppliers relating to the cancellation of the Eglinton Subway by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and equipment supply contracts and defend potential claims relating thereto.
 - **Veco Corporation** in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- ***Experience with Crown Liability and Trade Agreements.*** A government-initiated cancellation of a contract of this nature has the potential to trigger the application of Crown liability, and if TCE has any major US shareholders, a claim may also be initiated under the North American Free Trade Agreement (NAFTA). Osler lawyers have acted in more international trade litigation matters than any other Canadian firm, and have extensive experience with dispute resolution panels including under NAFTA. We also have extensive experience advising both the Crown and private parties on issues of Crown liability.
- ***Other Commercial Litigation Experience.*** We have provided advice to clients on a number of complex litigation matters, including the Greater Toronto Airports Authority, on a number of commercial and construction disputes arising out of the New Terminal Development Project and the redevelopment of Terminal 3 at Pearson International Airport. We advised the TTC on several claims arising from the development and construction of the Sheppard

Executive Summary

Thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to advise the OPA on potential claims by TransCanada Energy Ltd. (TCE) as a result of the Government of Ontario's announcement of the intended cancellation of the Southwest GTA CES Contract between TCE and the OPA. We would welcome the opportunity to advise you on this matter and build on our current relationship with the OPA.

Osler would be ideally suited to advise you on the potential claim by TCE for several reasons:

- Osler's Litigation Department is one of the largest and most accomplished dispute resolution teams in Canada. Years of careful recruiting and rigorous training has allowed us to develop deep expertise in complex commercial and government litigation. We have provided litigation advice to numerous clients on extremely complex, high-stakes disputes, and have advised several government corporations and agencies on the cancellation of major power and infrastructure projects,

Greenfield South power projects.

The underlying contract in each such case is similar in form to the Southwest GTA CES Contract. We have also advised other government corporations and agencies, such as Atomic Energy of Canada and the Toronto Transit Commission, in the cancellation of major infrastructure projects by governments. In addition, we also have extensive litigation experience with issues of Crown and Crown agency liability as it relates to the cancellation of government contracts, and the potential for claims made under trade agreements such as under the Agreement on Internal Trade and the North American Free Trade Agreement (NAFTA) as a result of government action.

- We have a strong understanding of the electricity sector in Ontario. We have acted for the OPA in numerous procurements as well as sole-source negotiations, and have a strong understanding of the need to take into consideration the costs being passed on to the ratepayer while implementing the OPA's mandate. Additionally, we have also liaised between the OPA and the Ministry of Energy on a number of initiatives,

We also understand the economics of Suppliers as we have acted for successful proponents on the development and operation of multiple generating facilities in the Province. We understand the sequencing, scheduling and cost expenditure curves of a developer in building a combined cycle generating facility; we are also very aware of the implications of delays to projects (such as municipal law issues), which enables us to assist with claims analysis and any discounting of potential claims to account for the likelihood that the project would have faced insurmountable delays.

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**PROPOSAL FOR
LEGAL SERVICES TO
THE ONTARIO POWER AUTHORITY
TO ADVISE THE OPA ON POTENTIAL CLAIMS BY
TRANSCANADA ENERGY LTD.**

OCTOBER 25, 2010

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

October 25, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com

Toronto

Montréal

Ottawa

Calgary

New York

Confidential

Delivered by Email

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

Attention: Michael Killeavy

Dear Mr. Killeavy:

Legal Services – Litigation Counsel (TransCanada Energy Ltd.)

On behalf of Osler, Hoskin & Harcourt LLP (Osler), thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to provide advice to the OPA on managing the dispute with TransCanada Energy Ltd. to avoid litigation, and if necessary to defend any actions against the OPA to protect the interests of the ratepayer.

We would welcome the opportunity to continue to build on our current relationship with the OPA by working with you on this matter. We look forward to discussing this mandate further with you, and invite you to call me at (416) 862-5859 if you require any additional information.

Yours very truly,

Rocco Sebastiano
RMS:es

Attachments

govern the professional conduct of lawyers, from the date the account is issued until the date paid.

In addition to our professional fees, our accounts will include disbursements incurred by us on your behalf, such as long-distance telephone charges, photocopying and facsimile charges; charges for courier, messenger and other communication services; computer database access; charges for legal research; travel expenses; necessary non-legal staff overtime incurred on your behalf; postage; filing fees paid to government agencies; and other out-of-pocket costs incurred on your behalf. For larger disbursements, we may seek funds from you in advance or forward invoices to you for direct payment.

You will be responsible for payment of the fees and disbursements of other law firms retained by us on your behalf to provide advice on the laws of other jurisdictions. Also, the fees and disbursements of experts or other third-party service providers retained by us on your behalf will be your responsibility. These experts' or other service providers' fees and disbursements may be billed to you directly, or we may forward their invoices to you for direct payment by you to them.

5. Limited Liability Partnership

Osler is a registered limited liability partnership (LLP) (in Ontario and New York, respectively). A partner in an LLP is not personally liable for any debts, obligations or liabilities of the LLP that arise from any negligent act or omission by another partner or by any person under that other partner's direct supervision or control. Partners of an LLP are personally liable only for their own actions and omissions, and for the actions and omissions of those they directly supervise or control.

6. Privacy

In the course of acting for you, you may disclose to us (and we may collect, use and disclose) personal information that is subject to applicable privacy protection laws. We will collect, use or disclose that personal information for the sole purpose of providing our services to you. You can review a copy of our Privacy Statement on osler.com, or contact a member of your legal service team.

7. Our Client and Our Reporting Obligations

When we are engaged to act on behalf of an organization, our obligations are to that organization and not the directors, officers, employees or other agents who retain us and provide us with instructions or to whom we may provide advice. In accordance with the rules that govern the professional conduct of lawyers, if we have any evidence of wrong-doing by or on behalf of the organization, or any officer, director, employee or agent of the organization, we may be obligated to report the wrong-doing to appropriate senior officers or directors of the organization.

8. Electronic Communications

We will communicate with you and provide documents to you through various forms of electronic communications, including email through the public Internet. You may also correspond or provide documents to us through electronic means. Those electronic communications may contain information or documents that are confidential or privileged, unless you instruct us not to send such information or documents electronically.

There is a risk that any such electronic communications may be intercepted or interfered with by third parties or may contain computer viruses. In addition, we employ filtering techniques (e.g.,

anti-spam software) which might interfere with the timely delivery of electronic communications you send to us. Neither of us will be responsible to the other, or have any liability for any actions of any third parties, with respect to electronic communications either of us might send the other, or for any delay or non-delivery, or other damage caused in connection with an electronic communication.

If you would prefer that any correspondence or documents sent to you be transmitted with a greater degree of certainty or protection (e.g., encryption), please let us know. In addition, if you have any concerns or doubts about the authenticity or timing of any electronic communication purportedly sent by us, please contact us immediately.

9. Termination

You may terminate your engagement of us for any reason by giving us written notice to that effect. On such termination, all unpaid legal fees and disbursements become immediately due and payable, whether or not an account for them has yet been issued.

We may stop performing legal services and terminate our legal representation of you for any reason in accordance with the rules that govern the professional conduct of lawyers, including for unanticipated conflicts of interest or unpaid legal fees and disbursements.

Unless our engagement has been previously terminated, our representation of you will cease upon the issuance by us of our final account for services to you. If, upon termination or completion of a matter, you wish to have any documentation returned to you, please advise us. Otherwise, any documentation that you have provided to us and the work product completed for you will be dealt with in accordance with our records retention program. Please note that for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or dispose of this documentation.

After completing any particular matter, changes may occur in the applicable laws or regulations, or their interpretation, that could affect your current or future rights, obligations and liabilities. We have no continuing obligation to advise you with respect to future legal developments, unless we are specifically engaged to do so after the completion of the matter at hand.

10. Governing Law and Arbitration

The terms of our engagement by you will be governed by the laws applicable in the jurisdiction in which the partner responsible for your matter works.

To the extent that any services are provided to you from the Osler New York office, and a dispute arises relating to our fees, you may have the right to arbitration to resolve the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of New York, a copy of which will be provided to you upon request.

11. For More Information

The foregoing will be the agreed terms of service between us as we continue to work together unless, as mentioned above, they become subject to any other terms that we may agree upon.

If you have any questions or concerns regarding our work on your behalf or the terms of our engagement, please feel free, at any time, to contact the partner responsible for our relationship with you.

Client Service Terms

Thank you for choosing Osler, Hoskin & Harcourt LLP to act as your counsel.

These standard client service terms will apply to any matter in which you engage us. These standard terms are subject to any other terms that may be agreed upon between you and Osler, Hoskin & Harcourt LLP.

We look forward to working with you.

1. Your Service Team

An Osler partner will be assigned to take primary responsibility for seeing that your legal needs are met and for supervising all legal work we undertake on your behalf. The responsible partner will also determine the appropriate additional staffing for each matter you entrust to us. Lawyers and other legal professionals will be assigned to assist with each matter on the basis of their experience and expertise, the nature and scope of the issues and the time constraints imposed by the situation.

In Canada, Osler has offices in Calgary, Toronto, Ottawa and Montreal. In the United States, Osler has an office in New York. The Canadian and US offices are operated by closely affiliated partnerships that share information, expertise and database systems to enhance client service. From time to time, legal professionals located in offices other than the office primarily working with you may be assigned to assist. When we refer to "Osler" we are referring to both of these partnerships and all of these offices, and when we refer to an "Osler partner" or "Osler lawyers" we are referring to lawyers in any of these offices. All Osler lawyers are bound by obligations to protect client confidentiality and solicitor-client or attorney-client privilege under applicable law.

In addition, please note that certain specialized areas of law, such as tax law, are complex and constantly changing, and often involve specialty areas in which Osler lawyers have worked to develop in-depth expertise. As a result, the individuals engaged in resolving a specific legal matter may find it useful to consult with other Osler lawyers and other legal professionals regarding particular issues. We have found that drawing upon the expertise of colleagues, when appropriate, enables us to provide a higher quality of advice at a lower cost to you than strictly limiting the number of individuals involved in a particular matter.

We are always pleased to discuss the staffing of a particular transaction or other matter with you.

2. Scope of Our Role

The scope of our role for each specific matter you entrust to us will be confirmed in continued communications between us as work progresses. We will not expand the scope of our engagement without instructions from you. In particular, we will not advise you in respect of the tax aspects of a matter unless it is specifically agreed that tax services will be included in the engagement.

Our role is to provide legal advice and legal services to you. Although we will use every effort to help you achieve your financial and business objectives for any transaction or other matter, you should rely on your internal experts or other external advisors for financial and business advice.

We will accept instructions from anyone within your organization who has apparent authority in connection with the matter at hand, unless you instruct us otherwise.

3. How We Manage Conflicts

We have clients who rely upon us for general representation and clients to whom we provide representation regarding discrete matters. It is possible that an adverse relationship may exist or may develop in the future between you and another of our clients.

In retaining us, you consent and agree that we may represent other clients (some of whom may be engaged in business activities competitive to yours) on matters that may be considered adverse to you or your interests, so long as we have not been engaged by you on the specific matter for which the other client seeks representation. Furthermore, you agree that you will not assert that our representation of you constitutes a basis for disqualifying us from representing another client in any such matter.

However, be assured that we have comprehensive policies and procedures in place for the creation and maintenance of "ethical walls", when required, between Osler lawyers representing clients whose matters may be adverse in interest. In common with our treatment of the confidential information of all of our clients, at no time will any of your confidential information be disclosed to or used for the benefit of any other client.

You may wish to obtain independent legal advice as to the implications of your agreement to these terms.

4. Fees and Disbursements

Our fees are generally based on the time spent by lawyers and others on your behalf, and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals and staff, as well as general economic factors. At your request, the responsible partner may provide you with more specific details on our rates.

Although time expended is a significant factor in determining our fees, there may be circumstances in which our final fee takes into account other factors, including:

1. The experience, reputation and abilities of those rendering our services;
2. The amount at issue;
3. Particularly favourable results obtained;
4. Time limitations imposed by you or by the circumstances of the matter; and
5. Whether working on the matter will preclude or limit us from rendering services to other clients.

Our fees will not be affected by the failure of a transaction to be completed.

Generally our accounts are issued monthly. All of our accounts are due and payable on receipt. If an account is not paid within 30 days, we may charge interest at an annual rate in accordance with the rules that

General Electricity Industry Expertise

A summary of our representative matters and project work most relevant to the work that will likely be required in connection with the defense of any possible claims by TCE is set out below. As well, we encourage you to contact Kevin Dick, Richard Duffy and Barbara Ellard who are very familiar with our experience and the quality of our legal services.

Representative Litigation and Project Matters

Relevant litigation and project related matters in which our lawyers have advised clients on major power and infrastructure projects, include:

- **Atomic Energy of Canada (AECL).** Our lawyers have advised AECL on numerous matters, including:
 - **Claims relating to the Cancellation of MAPLE Reactors** – We advised AECL in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **Pickering A Restart Project** – We advised AECL in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
- **Bruce Power Limited Partnership** – We are acting for Bruce Power in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
- **Toronto Transit Commission** – We advised the Toronto Transit Commission (TTC) on claims by contractors, equipment and material suppliers relating to the cancellation of the Eglinton Subway by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and supply contracts and defend potential claims relating thereto.
- **Veco Corporation** – We advised Veco Corporation (Veco) in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- **Pristine Power Inc.** We have advised Pristine on the development, financing, construction and operation of the East Windsor Cogeneration Centre and the York Energy Centre.
- **Ontario Power Authority.** Our lawyers have advised the OPA on numerous matters, including:

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Market Rules relating to generator cost guarantees, including claims by TCE for both the Southwest GTA Facility and the Halton Hills Facility, and an indirect claim by TCE through its 50% ownership interest in Portlands Energy Centre LP.

- **Southwest GTA RFP** – We advised the OPA on the Southwest GTA RFP, in which TCE was chosen as the selected proponent. Contract issues included modifying the form of CES Contract to reflect an all-in gas management approach.
- **GTA West Trafalgar RFP** – We advised on all aspects of this procurement, including the development of specific rated criteria used in the evaluation of proposals. We implemented further revisions to the CES Contract for use on the GTA West Trafalgar CES Contract to deal with specific issues such as revenues from and ownership of future contract related products.
- **Portlands Energy Centre** - We negotiated a further modified form of ACES Contract for this project to permit either an initial simple-cycle mode of operation or in the event of certain delays in achieving this milestone, providing temporary generation through the use of 12 rental mobile gas turbine generators. We also negotiated further amendments to this ACES Contract in order to implement a gas management plan which results in a sharing of gas supply and transportation risks between the Buyer and the Supplier in exchange for a reduction in the Supplier's over-all net revenue requirement.
- **Goreway Station** - We negotiated a modified form of CES Contract in order to permit this facility to initially operate in simple-cycle mode while the combined-cycle aspect of the facility was still under construction. This resulted in the development of the Accelerated Clean Energy Supply (ACES) Contract. We also provided advice to the OPA in connection with threatened claims by Enbridge resulting from the termination of its participation in this project, and successfully avoided any litigation.
- **Early Movers** – We developed and negotiated a modified form of CES Contract for use on a number of early mover projects (including Coral's Brighton Beach Project, TransAlta's Sarnia Regional Cogeneration Centre and three Toromont combined heat and power projects). The EMCES Contract introduced the directed dispatch concept in order to meet the Ministry of Energy's directive to the OPA to displace coal.
- **Standard Form Peaking Generation Contract** - We advised the OPA in the development of a new form of contract structure for the OPA.

We incorporated the unique requirements of a peaking facility, such as gas risk, gas management, and must-offer obligations, and incorporated extensive stakeholder feedback.

- **Ministry of Energy (Ontario).** We have advised the Ministry of Energy on four major Requests for Proposals (RFPs) relating to electricity generation, being the RFP for 300 MW of renewable electricity generation (RES I RFP), the RFP for 2,500 MW of clean generating capacity or demand-side projects (2,500 MW RFP) to address Ontario's growing electricity capacity needs, the RFP for up to 1,000 MW of renewable electricity generation for facilities between 20 MW and 200 MW (RES II RFP) and the draft RFP for up to 200 MW of renewable electricity generation for facilities between 0.25 MW and 19.99 MW (the original RES III RFP). On the 2,500 MW RFP, we developed and drafted the CES Contract, including the development of the innovative contract for differences model based on imputed production as set out in Exhibit J of the CES Contract.
Ministry and the OPA relating to the negotiated cancellation of
Greenfield South GS.

Please refer to the resumes attached to this submission for a description of other relevant transactions, project work and claims that our core team of lawyers have advised on.

3. Potential Conflicts

We do not expect that we would have any conflicts of interest in providing legal services to the OPA in relation to this matter. On the contrary, we believe our work regarding the potential claims in connection with recent IESO Market Rule changes provides synergistic benefits to the OPA.

B. Cost

Osler's service team for the OPA would follow our core service philosophy for delivering quality work, responsive service, timely communications and controlled costs. To ensure that we effectively manage the cost of providing our services to you, we will involve, whenever possible, associates at a more junior level and with correspondingly lower hourly rates.

Hourly rates (in Canadian dollars) for the lawyers in the proposed core service team are as follows:

Lawyer	Hourly Rate (2010)
Rocco Sebastiano	\$750
Richard Wong	\$600
Elliot Smith	\$365
Brett Ledger	\$900
Paul Ivanoff	\$650
Evan Thomas	\$405
Riyaz Dattu	\$775

We expect that initially the majority of the work would be done by Elliot and Rocco with advice from Richard, Brett and Paul. If the potential claims proceed to dispute resolution under the arbitration provisions of Section 16.2 of the contract or to litigation in court proceedings, we expect that Brett, Paul and Evan would have an increasing role in the conduct of this matter, with the drafting of litigation documents being done by Evan under the supervision of Brett and Paul. To the extent that any issues arise under NAFTA, or relating to liability of the Crown or Crown agencies, Riyaz would also be consulted.

These hourly rates will apply without a retainer or a minimum quantity of hours. Should the matter proceed to litigation, we may also engage law clerks whose hourly rates vary from \$115 to \$315.

We believe that our extensive involvement in advising the OPA, the Government of Ontario and private sector owners and developers on the Clean Energy Supply form of contract will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner, and in particular, as we ran the Southwest GTA procurement, we are intimately familiar with that form of contract. Furthermore, as we are currently advising the OPA on other potential claims by TCE, we have already considered many of the issues relating to liability under the contract including as it relates to the Supplier's economics and the waiver of indirect and consequential damages. Therefore, there is no learning curve on our end, which will result in a significant cost savings to the OPA. This, combined with our extensive litigation expertise, will allow us to quickly and efficiently begin the process of advising the OPA on any potential claims by TCE.

The Request for Submissions also requests information regarding the cost of disbursements. We do not anticipate any disbursements relating to travel and accommodations. Also, we do not charge clients for the use of meeting rooms in our client centre. With respect to other disbursements such as printing of documents and long distance calls, our disbursements are charged out essentially at cost without any additional mark-up.

C. Resumes

Rocco M. Sebastiano



416-862-5859

rsebastiano@osler.com

Education

- 1992 Osgoode Hall Law School, LL.B.
- 1989 Professional Engineers Ontario, P.Eng.
- 1985 University of Toronto, B.A.Sc. (Engineering Science
Nuclear and Thermal Power)

Year of Call

1994 Ontario

Rocco M. Sebastiano is the Chair of the firm's Energy – Power Group and a partner in the firm's Construction and Infrastructure Group. He is a qualified and experienced professional engineer who, prior to joining the firm, was employed as a nuclear design engineer and reactor safety analyst in the Nuclear Division of Ontario Hydro. Rocco's practice concentrates on energy, construction law and engineering and infrastructure matters. He has extensive experience on a wide range of major projects and has acted for various project participants, including owners, developers, contractors, operators, lenders, subcontractors, architects and engineers.

Rocco's project experience on power and infrastructure development includes advising the Ontario Power Authority, Hydro One, the Ontario Ministry of Energy and Atomic Energy of Canada Limited on matters such as the planning, procurement, development, engineering, construction, contracting, refurbishment and financing of natural gas, co-generation, nuclear, wind and hydro power generation projects and transmission and distribution systems.

Typical services include advising with respect to the structuring and development of the project, risk identification, allocation and management, tendering and procurement documents, permitting, licensing and approvals, corporate and project financing aspects and agreements, engineering, procurement and construction (EPC) contracts, power purchase agreements, energy supply contracts, transmission services agreements, refurbishment contracts, equipment procurement, operating and maintenance agreements, and other related commercial and technical contracts.

Professional Affiliations

- Law Society of Upper Canada
- Professional Engineers Ontario
- Canadian Bar Association
- The Canadian Council for Public-Private Partnerships
- Canadian Construction Association
- Ontario Energy Association

Representative Work

Rocco has advised on a number of major power generating and transmission projects such as:

- The **Ontario Power Authority** on numerous new generation and demand managements projects, including:

- **Southwest GTA RFP** and **CES** contract for up to 850 MW of gas fired generation.

- **Atomic Energy of Canada Limited** on the **Ontario Nuclear Procurement Project**, the refurbishment and retubing of CANDU nuclear reactors at the **Bruce A Nuclear Generating Station** and **Pickering A Nuclear Generating Station** in Ontario and the **Pt. Lepreau Nuclear Generating Station** in New Brunswick and on the development, construction, commercial arrangements and subsequent cancellation of the **MAPLE Reactors** and associated radioisotope production facility at its Chalk River Research Facility.
- **East Windsor Cogeneration** in respect of the procurement and development of the East Windsor Cogeneration Centre in Windsor, Ontario pursuant to the Ontario Power Authority's **CHP I RFP**.
- The **Ministry of Energy (Ontario)** on the **Renewable Energy Supply (RES I and RES II) Procurements**, including consultations with the **IESO** and **Hydro One** on the review of transmission queue issues and the development of transmission and distribution constraint models and restricted transmission sub-zones for the planning and procurement of new renewable generating facilities.

- **The Ministry of Energy (Ontario) on the New Clean Generation & Demand-Side Projects (2500 MW) Procurement**, including the development of the procurement process, the Clean Energy Supply Contract, consultations with the IESO and Hydro One on transmission constraint issues, regulatory and commercial treatment of transmission connection and system upgrade costs under the Transmission System Code, and the development of the restricted transmission sub-zones in the evaluation model in the RFP.
- **Toronto Transit Commission** on the development and disputes relating to the Sheppard Subway project and the cancellation of the Eglinton Subway project.
- **TransÉnergie U.S. Ltd.** on the **New Jersey Cable Transmission Project**, New Jersey and New York, including the procurement and open-season process, project financing, negotiation of the EPC contract with ABB Inc. and the transmission services agreement.
- **Hydro One Inc. and TransÉnergie U.S. Ltd.** on the **Lake Erie Link Electricity Transmission Project**, Ontario and Pennsylvania, including project structuring, permitting, licensing and related regulatory matters, system connection issues, development, procurement and open-season process, negotiation of the EPC contract with ABB Inc. and the development of the transmission services agreement.

Richard G.C. Wong



416-862-6467
rwong@osler.com

Education

1995 University of Toronto, J.D.
1996 University of Toronto, B.A (Economics)

Year of Call

1997 Ontario
2000 New York

Richard Wong is a partner in the firm's Construction and Infrastructure Group with an emphasis on power and infrastructure development including the procurement, development, contracting and financing of nuclear, natural gas, co-generation, hydro, wind and other generation projects and the planning and development of the related systems. In particular, Richard's services include reviewing, negotiating and drafting equipment and other supply agreements, design agreements, EPC contracts, procurement documents (e.g. RFI/RFP/Tenders), power and capacity purchase agreements, engineering service and consulting agreements, construction management agreements, and other related corporate/commercial and technical agreements including joint venture agreements, development agreements, operation and maintenance agreements and supply agreements.

Professional Affiliations

- Law Society of Upper Canada
- Canadian Bar Association
- Ontario Bar Association
- New York State Bar Association
- Korean Canadian Lawyers Association

Representative Work

Richard has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement and contract documents for the Southwest GTA procurement process, which resulted in the procurement of the 900 MW Oakville Generating Station.
- **Ontario Power Authority** in i
- **East Windsor Cogeneration** in the development of the 84 MW East Windsor Cogeneration Centre in Windsor

- **Ontario Power Authority** in its development,

- **Ontario Power Authority** in

- **Ontario Ministry of Energy** on the Renewables I Request for Proposals in the procurement of 10 wind power projects across Ontario totalling 395 MW under the terms of the Renewable Energy Supply (RES) I Contract with Ontario Electricity Financial Corporation.
- **Ontario Ministry of Energy** on the Renewables II Request for Proposals in the procurement of eight wind power projects across Ontario totalling 955 MW under the terms of the RES II Contract with the Ontario Power Authority, including the development of the restricted transmission sub-zones in the Renewables II RFP and the review of transmission queue issues with the IESO.
- Review and analysis for **Hydro One** of the Ontario Power Authority's discussion papers regarding Transmission Planning and Development for the development of the Integrated Power System Plan.
- **Ontario Ministry of Energy** on the Renewables III Request for Proposals in the procurement for up to 200 MW of renewable generating facilities, that are under 20 MW in size.
- **Ontario Power Authority**

- **Ontario Power Authority**

- **Ontario Ministry of Energy** in its Request for Proposals for 2,500 MW of New Clean Generation and Demand-side Projects for the procurement of 2,235 MW of new gas-fuelled combined cycle generating facilities in various locations throughout Ontario under the terms of the Clean Energy Supply (CES) Contract, including the development of the restricted transmission sub-zones in the evaluation model.

Elliot A. Smith



416.862.6435
esmith@osler.com

Education

2004 University of Waterloo, B.A.Sc., Honours (Systems Design Engineering)

2007 University of Toronto, J.D.

Year of Call

2008 Ontario

Elliot Smith is an associate in the firm's Business Law Department in the Toronto office, where he is active in the Energy (Power) and Construction & Infrastructure Specialty Groups. Elliot works extensively on major infrastructure projects, providing assistance with project development, procurement, contract negotiation and administration issues. Elliot's practice has a strong emphasis on the procurement and construction of power plants, including combined heat and power, energy from waste, wind, solar and other renewable projects, as well as the development and negotiation of power and capacity purchase agreements.

Prior to joining Osler, Elliot worked at a number of institutions involved in the deregulated Ontario electricity market, including Ontario Power Generation and the Independent Electricity System Operator. He also worked at the Ontario Power Authority, where he assisted with the development of a regional electricity supply plan.

Representative Work

Elliot has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement process for a combined cycle power generation facility in **Southwest GTA**, which will include the development and finalization of an appropriate form of contract.
- **Pristine Power**, on the ongoing construction and equipment procurement for power projects in Ontario.

Brett Ledger



**Partner,
Litigation**
Toronto

416.862.6687
bledger@osler.com

Education
University of Windsor, LL.B.
University of Toronto, B.A.

Bar Admission(s)
Ontario (1979)

Practice Area(s): Litigation; Pensions & Benefits; Class Action

Brett specializes in corporate and commercial litigation with an emphasis on energy, environmental and general corporate litigation as well as class actions and administrative proceedings. His practice is national in scope and he has appeared before the courts of most provinces in Canada and the Supreme Court of Canada. Brett acts for some of Canada's largest energy and national resource companies on a wide variety of litigious matters, including Atomic Energy of Canada, Imperial Oil and Irving Oil. He also regularly acts as litigation counsel to many of Canada's major corporations and pension funds and has been involved in many of the leading pension decisions before the courts and pension tribunals. In addition, Brett has instructed at Osgoode Hall Law School's Intensive Trial Advocacy Program.

Recent Matters

- *MDS Nordion v. Atomic Energy of Canada Limited* – acting for AECL in connection with matters relating to the MAPLE Reactors and the associated New Processing Facility in Chalk River
- *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* 2004 SCC 54 – pension litigation in the Supreme Court of Canada relating to partial windup and surplus.
- *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 – acting for Atomic Energy of Canada Limited in the Supreme Court of Canada regarding confidentiality orders in environmental cases.
- *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.) – pension plan partial windup.
- *Imperial Oil Limited v. The Nova Scotia Superintendent of Pensions et al.*, (1995) 126 D.L.R. (4th) 343 (N.S.C.A.) – pension plan partial windup.
- *Smith v. Michelin North America* (2008) 71 C.C.P.B. 161- Nova Scotia Court of Appeal decision regarding contribution holidays.
- *Burke v. Hudson Bay Co.* (2008) ONCA 690– Court of Appeal representative action regarding surplus entitlement on sale of business.
- *Labrador Inuit Assn. v. Newfoundland* (1077) 152 D.L.R. (4th) 50– Newfoundland Court of Appeal – aboriginal claims case relating to development of the Voisey's Bay Mine in Labrador.

- *Citizens' Mining council of Newfoundland & Labrador v. Canada* [1999] F.C.J. No. 23 – Environmental assessment case in the Federal Court regarding environmental assessment of mining development.
- *Hembruff v. OMERS* (2005) O.A.C. 234 – Ontario Court of Appeal decision regarding fiduciary duties of pension administrators.
- *Lacroix v CMHC* (2009) 73 C.C.P.B. 224 and *Lloyd v. Imperial Oil Limited* (1999) 23 C.C.P.B. 39 – counsel in Ontario and Alberta pension class actions dealing with surplus and plan amendments.

Paul Ivanoff



**Partner,
Litigation**
Toronto

416.862.4223
pivanoff@osler.com

Education
University of New Brunswick, LL.B.
York University, B.A.

Bar Admission
Ontario (1993)

Practice Area(s): Litigation; Construction; Infrastructure

Paul's practice involves the litigation, arbitration and mediation of disputes arising out of construction and infrastructure projects. He also provides contract administration advice during the course of completion of projects. Paul's practice covers all aspects of construction law including contractual disputes involving construction contracts and specifications, construction liens, mortgage priorities, delay claims, bidding and tendering disputes, negligence, bond claims, and construction trusts. He advises all project participants on disputes related to a broad range of construction projects including the design and construction of airport facilities, power plants, highways, industrial facilities, commercial buildings, civil works facilities and subways. Paul is certified as a Specialist in Construction Law by the Law Society of Upper Canada.

Recent Matters

- **Greater Toronto Airports Authority** in numerous claims relating to the design, construction and maintenance of air terminal facilities
- **CH2M Hill and Veco Corporation** in an Ontario action involving allegations of conspiracy, fraud and oppression, which focussed on the propriety of the Ontario courts assuming jurisdiction over the dispute
- **Stone & Webster Canada L.P.** in disputes relating to the installation of Selective Catalytic Reduction (SCR) equipment at Ontario Power Generating Stations
- A project owner in an action involving the construction of a co-generation power plant
- A leading engineering firm in a multi-party Ontario action involving allegations of negligence and breach of contract relating to the design and construction of an industrial processing system
- An Ontario municipality in connection with procurement advice relating to bidding and tendering issues
- A nuclear technology and engineering company in a dispute relating to the supply and installation of equipment
- A leading Canadian contractor in various claims and disputes relating to roadway construction
- Automobile manufacturers in various disputes relating to projects undertaken at automobile assembly facilities

Evan Thomas



**Associate,
Litigation**
Toronto

416.862.4907
ethomas@osler.com

Education

University of Toronto, J.D.
London School of Economics, M.Sc. (Economics)
University of British Columbia, B.A. (Hons.)

Bar Admission(s)

Ontario (2007)

Practice Area(s): Litigation

Evan practises general corporate/commercial litigation and has experience in franchise, construction, privacy, insolvency, and information technology matters. He has appeared before the Information and Privacy Commission (Ontario) and the Ontario Superior Court of Justice (Civil and Commercial Lists). Prior to attending law school, Evan worked in the information technology sector and has an avid interest in e-discovery issues and other uses of technology in litigation. As an articling student, Evan was seconded to the mergers & acquisitions group at RBC Financial Group.

Recent Matters

- Various proceedings pending in Ontario related to the recovery of assets in Canada for the benefit of victims of a multi-billion dollar Ponzi scheme.
- A cross-border insolvency proceeding under the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code.
- The successful response to a motion for an interlocutory injunction to restrain the termination of a subcontract on a \$70-million information technology project.
- The defence of an ongoing action for over \$100 million in damages by a wholesaler following the termination of a distribution relationship.
- The successful response to an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* to the Information and Privacy Commission (Ontario).

Publications/Events/Education

- *Regional Electricity Market Integration: A Comparative Perspective, Competition and Regulation in Network Industries*, Volume 8 (2007) No. 2 (co-authored).
- *To Notify or Not to Notify: Responding to Data Breach Incidents*, February 2007 (co-authored with Jennifer Dolman).
- *Beyond Gridlock: The Case for Greater Integration of Regional Electricity Markets*, C.D. Howe Institute Commentary, March 2006 (co-authored).

Riyaz Dattu



**Partner,
Corporate**
Toronto

416.862.6569
rdattu@osler.com

Education
Osgoode Hall Law School, LL.M.
University of Toronto, LL.B.

Bar Admission(s)
Ontario (1984)

Practice Area(s): International Trade

Riyaz advises multinational and domestic businesses on international trade policy and investment matters, international trade strategies and market-access concerns. On international trade regulations, he advises on all aspects of economic sanctions, export and import controls, national security, anti-bribery laws, government procurement, customs laws, transfer pricing and trade remedies such as anti-dumping, countervailing and safeguard measures. Riyaz also acts as counsel in international trade and investment disputes involving the application of trade laws and regulations and the enforcement of treaties. He has acted as counsel from the time of the very earliest WTO disputes concerning Canada, and the first two investment arbitrations under Canada's bilateral investment promotion and protection treaties. During his more than 25 years of practice, Riyaz has advised and represented leading businesses in a full range of industry sectors.

Recent Matters

Riyaz has been counsel in more than 50 Canadian and international trade remedies proceedings (and one-third of all initial investigations commenced since 1992 under Canada's trade remedies laws), 13 challenges under Chapter 19 of NAFTA and the Canada-United States Free Trade Agreement (including one-half of all Canadian proceedings under NAFTA that were completed) and in excess of 40 proceedings before the Federal Court of Canada. He has acted in most of the significant trade remedies cases litigated in Canada, and has also argued landmark cases before NAFTA Panels and the Federal Court of Canada.

Aleksandar Kojic

From: Amir Shalaby
Sent: October 29, 2010 2:33 PM
To: Deborah Langelaan
Cc: 'John Mikkelsen'; Michael Killeavy; 'Terry Bennett'; Ben Chin; Michael Lyle
Subject: RE: TransCanada -Questions for Amir Shalaby

There are limits on capacity at Preston at about 800 MW. With transmission fixes(namely restringing a 5 Km stretch of a circuit), it can be expanded to the 950 MW range, but we are still checking short circuit and other secondary considerations. So a 2X1 configuration is tight to fit, but it probably can be made to work, perhaps de rated at times. The 2X0 configuration is more appropriate, at least as an initial stage. If quick start option can be ordered into the turbines, that will enhance the utility of 2X0 as a first stage, and eventually the 2X1. The n-1 features of both of these work, we need to split the station on two buses or transformer connection points.

There is less merit in the 1X1 and 1X) options.

Hope this gives you a sense of our current assessments.

amir

From: Deborah Langelaan
Sent: Friday, October 29, 2010 2:13 PM
To: Amir Shalaby
Cc: 'John Mikkelsen'; Michael Killeavy; 'Terry Bennett'
Subject: FW: TransCanada -Questions for Amir Shalaby

Amir;

I am forwarding you TCE's e-mail as requested.

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: October 29, 2010 1:25 PM
To: Deborah Langelaan
Cc: Terri Steeves; John Mikkelsen
Subject: Fw: TransCanada -Questions for Amir Shalaby

Deborah, could you please pass John's email below onto Amir?

Thank you,

Terry

From: John Mikkelsen
Sent: Friday, October 29, 2010 11:04 AM
To: Terry Bennett
Cc: Terri Steeves

Subject: TransCanada -Questions for Amir Shalaby

CONFIDENTIAL – WITHOUT PREJUDICE

Dear Amir,

During our discussion last week you indicated that you wanted to review a couple of things related to the Cambridge generation concept. As I recall you were going to look into the following:

1. You were to review the maximum capacity that could be accommodated at the Cambridge connection point to determine if a 975 MW 2x1 combined cycle facility like the OGS could be fit into the system. Can you please identify the maximum generation capacity that can be connected at Cambridge assuming reasonable upgrades (if required)?
2. Secondly, you would review the need for n-1 redundancy for the generation facility to determine if a single gas turbine solution; either simple cycle or combined cycle; would meet the requirements.

For your guidance I provide a high level summary of the Cambridge configurations assuming we are proceeding with the MHI M501GAC gas turbines:

		2x1	1x1	1x0	2x0
		Combined Cycle		Simple Cycle	
Maximum Output	MW	975	480	250	500
n-1 capacity	MW	480	0	0	250

As we work up various solutions for next week, the answers to these two questions would be very helpful and enable us to reduce the number of permutations to consider.

Many thanks,

John Mikkelsen, P.Eng.
Manager, Eastern Canada, Power Development
TransCanada
Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1
Tel: 416.869.2102
Fax:416.869.2056
Cell:416.559.1664

We have moved! Please note the new address above

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Aleksandar Kojic

From: Michael Killeavy
Sent: October 29, 2010 5:20 PM
To: 'RSebastiano@osler.com'
Cc: Deborah Langelaan
Subject: Fw: TCE Matter ...

I pulled the trigger on the earlier email just as you called.

TCE claims that Mitsubishi Power Systems (MPS) is now more agreeable in terms of providing flexibility around swapping other equipment for the turbines ordered, incremental payments for equipment ordered, adjusting the cancellation fee, etc. This all comes for a price, not surprisingly.

TCE is looking for us to provide it direction on whether we think this is a good deal or not. TCE has continually made attempts to involve us in its mitigation of damages efforts, which we've been resisting.

If there is sufficient flexibility around equipment configuration, it would be good for us because a 450 MW peaking plant is best suited for the K-W site. A larger 900 MW combined-cycle plant can work, but we need to build Tx reinforcement to accommodate such a plant.

The OGS turbines take 43 minutes to start and we only need one for a peaker in K-W, so MPS flexibility helps us out. We understand that there is a 10 minute start option, but it will be an additional cost, too.

We are mindful of TCE's duty to mitigate its damages and are concerned about playing too active a role. In the end, it'll be a business decision I suppose.

This is the context of the letter we may get tonight. TCE folks were in Orlando, FL all day meeting with MPS. We had a without prejudice teleconference with them at 2:30pm today where they laid out the MPS position.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Michael Killeavy
To: 'RSebastiano@osler.com' <RSebastiano@osler.com>
Sent: Fri Oct 29 17:00:53 2010
Subject: TCE Matter ...

Rocco,

We will likely be getting a letter by Mitsubishi to TCE this evening. If you can, we may need you to look at it and provide us with comments and advice.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 1, 2010 7:24 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TCE Matter ...

Any further word from TCE on this?

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, October 29, 2010 5:20 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Fw: TCE Matter ...

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Michael.killeavy@powerauthority.on.ca

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To: 'RSebastiano@osler.com' <RSebastiano@osler.com>
Sent: Fri Oct 29 17:00:53 2010

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de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: November 1, 2010 7:33 PM
To: 'RSebastiano@osler.com'
Cc: Deborah Langelaan
Subject: Re: TCE Matter ...

Not that I'm aware of. I'm off this week, so perhaps Deb can update you. The letter from MPS never showed up over the weekend.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Sebastiano, Rocco <RSebastiano@osler.com>
To: Michael Killeavy
CC: Deborah Langelaan
Sent: Mon Nov 01 19:23:51 2010
Subject: RE: TCE Matter ...

Any further word from TCE on this?

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Friday, October 29, 2010 5:20 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Fw: TCE Matter ...

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Michael.killeavy@powerauthority.on.ca

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Sent: Fri Oct 29 17:00:53 2010
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Aleksandar Kojic

From: Deborah Langelaan
Sent: November 1, 2010 8:14 PM
To: 'rsebastiano@osler.com'
Cc: Michael Killeavy
Subject: Re: TCE Matter ...

Rocco;

Radio silent on TCE's end. As soon as I receive the letter I will forward it to you.

Deb

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

From: Sebastiano, Rocco <RSebastiano@osler.com>
To: Michael Killeavy
CC: Deborah Langelaan
Sent: Mon Nov 01 19:23:51 2010
Subject: RE: TCE Matter ...

Any further word from TCE on this?

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Friday, October 29, 2010 5:20 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Fw: TCE Matter ...

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Michael.killeavy@powerauthority.on.ca

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Aleksandar Kojic

From: Deborah Langelaan
Sent: November 2, 2010 2:53 PM
To: 'Rocco Sebastiano (rsebastiano@osler.com)'
Cc: Michael Killeavy
Subject: FW: Draft Engagement Letter for SWGTA TEC Matter
Attachments: Engagement Letter - OPA.pdf; OslerClientServiceTerms.pdf; 4882838_4.pdf

Importance: High

Rocco;

I've been given the green light by Susan Kennedy to execute the engagement letter but based on your e-mail below it appears that the one you originally provided to the OPA was in draft form. Would you please provide a final version and will you require it to be executed by the OPA?

Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Michael Killeavy
Sent: October 29, 2010 10:11 AM
To: Susan Kennedy
Cc: Deborah Langelaan; Derek Leung
Subject: FW: Draft Engagement Letter for SWGTA TEC Matter
Importance: High

Susan,

Could you please review the attached draft retainer letter from Osler for the TCE matter? The rates in the table match what was in the response we received from them (attached).

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
416-969-6071 (fax)
416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: October 29, 2010 9:32 AM
To: Michael Killeavy
Subject: Draft Engagement Letter for SWGTA TEC Matter

Michael,

As requested, please find enclosed a draft engagement letter for the SWGTA TCE matter. Please let me know if you have any comments on it.

Thanks, Rocco

OSLER

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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

osler.com

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de le divulguer sans autorisation.

October 29, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com
Our Matter Number: ●

SENT BY COURIER

Mr. Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Dear Mr. Killeavy:

Thank you for retaining Osler, Hoskin & Harcourt LLP ("Osler") to provide legal services to you in connection with the Request for Submissions regarding litigation counsel in defending potential actions against the OPA by TransCanada Energy Ltd. I will have primary responsibility for seeing that your legal needs are met, will supervise all legal work in connection with this retainer and determine appropriate additional staffing. For your record keeping purposes, the file name we have assigned to this matter is **[Cancellation of Southwest GTA CES Contract with TransCanada Energy Ltd.]** and the file number is ●.

We are pleased you have retained us to assist with this matter, and would like to take this opportunity to confirm further details of the engagement. Please refer to our Client Service Terms for additional standard information about our role, how we staff engagements, fees and disbursements and other terms that will apply to this and any matter in which you engage us. We have agreed to the following amendments to the Client Service Terms:

- (1) In the second paragraph of Section 2 – Scope of Our Role, the first sentence shall be amended to read: "Our role is to provide legal advice and legal services to you commensurate with the highest standards of professional practice and at all times, in accordance with the requirements of the Law Society of Upper Canada."
- (2) In the second paragraph of Section 4 – Fees and Disbursements, with respect to factors 1 through 5, we agree that our final fee shall not be increased above our hourly rates on account of these factors without the OPA's prior consent.

A copy of our standard Client Service Terms is attached. The terms of this letter take precedence over the Client Service Terms to the extent of any inconsistency.

1. **Conflicts**

We have conducted a review of our records to confirm that representing you in this matter will not create a legal conflict with the interests of any of our other existing clients.

2. **Fees**

Our fees are generally based upon the time spent by lawyers and other legal professionals on your behalf and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals, as well as general economic factors. The names and current billing rates for some of the legal professionals expected to work on this matter are set forth in a list attached to this letter.

3. **Term**

We agree with you that the term of the retainer will be for a period of 12 months (which may be extended, as needed, upon written notice by you), unless terminated in accordance with Section 9 of the Client Service Terms.

If you have any concerns regarding our representation of you or the terms of our engagement, please contact me.

Yours very truly,

Rocco Sebastiano
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

PRINCIPLE LAWYERS AND HOURLY RATES

<u>Lawyer</u>	<u>Hourly Rate (2010)</u>
Rocco Sebastiano	\$750.00
Richard Wong	\$600.00
Elliot Smith	\$365.00
Brett Ledger	\$900.00
Paul Ivanoff	\$650.00
Evan Thomas	\$405.00
Riyaz Dattu	\$775.00

Client Service Terms

Thank you for choosing Osler, Hoskin & Harcourt LLP to act as your counsel.

These standard client service terms will apply to any matter in which you engage us. These standard terms are subject to any other terms that may be agreed upon between you and Osler, Hoskin & Harcourt LLP.

We look forward to working with you.

1. Your Service Team

An Osler partner will be assigned to take primary responsibility for seeing that your legal needs are met and for supervising all legal work we undertake on your behalf. The responsible partner will also determine the appropriate additional staffing for each matter you entrust to us. Lawyers and other legal professionals will be assigned to assist with each matter on the basis of their experience and expertise, the nature and scope of the issues and the time constraints imposed by the situation.

In Canada, Osler has offices in Calgary, Toronto, Ottawa and Montreal. In the United States, Osler has an office in New York. The Canadian and US offices are operated by closely affiliated partnerships that share information, expertise and database systems to enhance client service. From time to time, legal professionals located in offices other than the office primarily working with you may be assigned to assist. When we refer to "Osler" we are referring to both of these partnerships and all of these offices, and when we refer to an "Osler partner" or "Osler lawyers" we are referring to lawyers in any of these offices. All Osler lawyers are bound by obligations to protect client confidentiality and solicitor-client or attorney-client privilege under applicable law.

In addition, please note that certain specialized areas of law, such as tax law, are complex and constantly changing, and often involve sub-specialty areas in which Osler lawyers have worked to develop in-depth expertise. As a result, the individuals engaged in resolving a specific legal matter may find it useful to consult with other Osler lawyers and other legal professionals regarding particular issues. We have found that drawing upon the expertise of colleagues, when appropriate, enables us to provide a higher quality of advice at a lower cost to you than strictly limiting the number of individuals involved in a particular matter.

We are always pleased to discuss the staffing of a particular transaction or other matter with you.

2. Scope of Our Role

The scope of our role for each specific matter you entrust to us will be confirmed in continued communications between us as work progresses. We will not expand the scope of our engagement without instructions from you. In particular, we will not advise you in respect of the tax aspects of a matter unless it is specifically agreed that tax services will be included in the engagement.

Our role is to provide legal advice and legal services to you. Although we will use every effort to help you achieve your financial and business objectives for any transaction or other matter, you should rely on your internal experts or other external advisors for financial and business advice.

We will accept instructions from anyone within your organization who has apparent authority in connection with the matter at hand, unless you instruct us otherwise.

3. How We Manage Conflicts

We have clients who rely upon us for general representation and clients to whom we provide representation regarding discrete matters. It is possible that an adverse relationship may exist or may develop in the future between you and another of our clients.

In retaining us, you consent and agree that we may represent other clients (some of whom may be engaged in business activities competitive to yours) on matters that may be considered adverse to you or your interests, so long as we have not been engaged by you on the specific matter for which the other client seeks representation. Furthermore, you agree that you will not assert that our representation of you constitutes a basis for disqualifying us from representing another client in any such matter.

However, be assured that we have comprehensive policies and procedures in place for the creation and maintenance of "ethical walls", when required, between Osler lawyers representing clients whose matters may be adverse in interest. In common with our treatment of the confidential information of all of our clients, at no time will any of your confidential information be disclosed to or used for the benefit of any other client.

You may wish to obtain independent legal advice as to the implications of your agreement to these terms.

4. Fees and Disbursements

Our fees are generally based on the time spent by lawyers and others on your behalf, and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals and staff, as well as general economic factors. At your request, the responsible partner may provide you with more specific details on our rates.

Although time expended is a significant factor in determining our fees, there may be circumstances in which our final fee takes into account other factors, including:

1. The experience, reputation and abilities of those rendering our services;
2. The amount at issue;
3. Particularly favourable results obtained;
4. Time limitations imposed by you or by the circumstances of the matter; and
5. Whether working on the matter will preclude or limit us from rendering services to other clients.

Our fees will not be affected by the failure of a transaction to be completed.

Generally our accounts are issued monthly. All of our accounts are due and payable on receipt. If an account is not paid within 30 days, we may charge interest at an annual rate in accordance with the rules that

govern the professional conduct of lawyers, from the date the account is issued until the date paid.

In addition to our professional fees, our accounts will include disbursements incurred by us on your behalf, such as long-distance telephone charges, photocopying and facsimile charges; charges for courier, messenger and other communication services; computer database access; charges for legal research; travel expenses; necessary non-legal staff overtime incurred on your behalf; postage; filing fees paid to government agencies; and other out-of-pocket costs incurred on your behalf. For larger disbursements, we may seek funds from you in advance or forward invoices to you for direct payment.

You will be responsible for payment of the fees and disbursements of other law firms retained by us on your behalf to provide advice on the laws of other jurisdictions. Also, the fees and disbursements of experts or other third-party service providers retained by us on your behalf will be your responsibility. These experts' or other service providers' fees and disbursements may be billed to you directly, or we may forward their invoices to you for direct payment by you to them.

5. Limited Liability Partnership

Osler is a registered limited liability partnership (LLP) (in Ontario and New York, respectively). A partner in an LLP is not personally liable for any debts, obligations or liabilities of the LLP that arise from any negligent act or omission by another partner or by any person under that other partner's direct supervision or control. Partners of an LLP are personally liable only for their own actions and omissions, and for the actions and omissions of those they directly supervise or control.

6. Privacy

In the course of acting for you, you may disclose to us (and we may collect, use and disclose) personal information that is subject to applicable privacy protection laws. We will collect, use or disclose that personal information for the sole purpose of providing our services to you. You can review a copy of our Privacy Statement on osler.com, or contact a member of your legal service team.

7. Our Client and Our Reporting Obligations

When we are engaged to act on behalf of an organization, our obligations are to that organization and not the directors, officers, employees or other agents who retain us and provide us with instructions or to whom we may provide advice. In accordance with the rules that govern the professional conduct of lawyers, if we have any evidence of wrong-doing by or on behalf of the organization, or any officer, director, employee or agent of the organization, we may be obligated to report the wrong-doing to appropriate senior officers or directors of the organization.

8. Electronic Communications

We will communicate with you and provide documents to you through various forms of electronic communications, including email through the public Internet. You may also correspond or provide documents to us through electronic means. Those electronic communications may contain information or documents that are confidential or privileged, unless you instruct us not to send such information or documents electronically.

There is a risk that any such electronic communications may be intercepted or interfered with by third parties or may contain computer viruses. In addition, we employ filtering techniques (e.g.,

anti-spam software) which might interfere with the timely delivery of electronic communications you send to us. Neither of us will be responsible to the other, or have any liability for any actions of any third parties, with respect to electronic communications either of us might send the other, or for any delay or non-delivery, or other damage caused in connection with an electronic communication.

If you would prefer that any correspondence or documents sent to you be transmitted with a greater degree of certainty or protection (e.g., encryption), please let us know. In addition, if you have any concerns or doubts about the authenticity or timing of any electronic communication purportedly sent by us, please contact us immediately.

9. Termination

You may terminate your engagement of us for any reason by giving us written notice to that effect. On such termination, all unpaid legal fees and disbursements become immediately due and payable, whether or not an account for them has yet been issued.

We may stop performing legal services and terminate our legal representation of you for any reason in accordance with the rules that govern the professional conduct of lawyers, including for unanticipated conflicts of interest or unpaid legal fees and disbursements.

Unless our engagement has been previously terminated, our representation of you will cease upon the issuance by us of our final account for services to you. If, upon termination or completion of a matter, you wish to have any documentation returned to you, please advise us. Otherwise, any documentation that you have provided to us and the work product completed for you will be dealt with in accordance with our records retention program. Please note that for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or dispose of this documentation.

After completing any particular matter, changes may occur in the applicable laws or regulations, or their interpretation, that could affect your current or future rights, obligations and liabilities. We have no continuing obligation to advise you with respect to future legal developments, unless we are specifically engaged to do so after the completion of the matter at hand.

10. Governing Law and Arbitration

The terms of our engagement by you will be governed by the laws applicable in the jurisdiction in which the partner responsible for your matter works.

To the extent that any services are provided to you from the Osler New York office, and a dispute arises relating to our fees, you may have the right to arbitration to resolve the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of New York, a copy of which will be provided to you upon request.

11. For More Information

The foregoing will be the agreed terms of service between us as we continue to work together unless, as mentioned above, they become subject to any other terms that we may agree upon.

If you have any questions or concerns regarding our work on your behalf or the terms of our engagement, please feel free, at any time, to contact the partner responsible for our relationship with you.

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

October 25, 2010

Rocco Sebastiano
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Toronto

Montréal

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New York

Confidential

Delivered by Email

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

Attention: Michael Killeavy

Dear Mr. Killeavy:

Legal Services – Litigation Counsel (TransCanada Energy Ltd.)

On behalf of Osler, Hoskin & Harcourt LLP (Osler), thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to provide advice to the OPA on managing the dispute with TransCanada Energy Ltd. to avoid litigation, and if necessary to defend any actions against the OPA to protect the interests of the ratepayer.

We would welcome the opportunity to continue to build on our current relationship with the OPA by working with you on this matter. We look forward to discussing this mandate further with you, and invite you to call me at (416) 862-5859 if you require any additional information.

Yours very truly,

Rocco Sebastiano
RMS:es

Attachments

**PROPOSAL FOR
LEGAL SERVICES TO
THE ONTARIO POWER AUTHORITY
TO ADVISE THE OPA ON POTENTIAL CLAIMS BY
TRANSCANADA ENERGY LTD.**

OCTOBER 25, 2010

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Executive Summary

Thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to advise the OPA on potential claims by TransCanada Energy Ltd. (TCE) as a result of the Government of Ontario's announcement of the intended cancellation of the Southwest GTA CES Contract between TCE and the OPA. We would welcome the opportunity to advise you on this matter and build on our current relationship with the OPA.

Osler would be ideally suited to advise you on the potential claim by TCE for several reasons:

- Osler's Litigation Department is one of the largest and most accomplished dispute resolution teams in Canada. Years of careful recruiting and rigorous training has allowed us to develop deep expertise in complex commercial and government litigation. We have provided litigation advice to numerous clients on extremely complex, high-stakes disputes, and have advised several government corporations and agencies on the cancellation of major power and infrastructure projects,

Greenfield South power projects.

We are currently advising the OPA on potential claims by several Suppliers, including TCE, on recent changes to the IESO market rules and Section 1.6 of the Clean Energy Supply (CES) contract. The underlying contract in each such case is similar in form to the Southwest GTA CES Contract. We have also advised other government corporations and agencies, such as Atomic Energy of Canada and the Toronto Transit Commission, in the cancellation of major infrastructure projects by governments. In addition, we also have extensive litigation experience with issues of Crown and Crown agency liability as it relates to the cancellation of government contracts, and the potential for claims made under trade agreements such as under the Agreement on Internal Trade and the North American Free Trade Agreement (NAFTA) as a result of government action.

- We have a strong understanding of the electricity sector in Ontario. We have acted for the OPA in numerous procurements as well as sole-source negotiations, and have a strong understanding of the need to take into consideration the costs being passed on to the ratepayer while implementing the OPA's mandate. Additionally, we have also liaised between the OPA and the Ministry of Energy on a number of initiatives,

where we worked with Ministry officials to ensure our direction was consistent with the Province's objectives. We also understand the economics of Suppliers as we have acted for successful proponents on the development and operation of multiple generating facilities in the Province. We understand the sequencing, scheduling and cost expenditure curves of a developer in building a combined cycle generating facility; we are also very aware of the implications of delays to projects (such as municipal law issues), which enables us to assist with claims analysis and any discounting of potential claims to account for the likelihood that the project would have faced insurmountable delays.

- We would expect that at some stage, whether through negotiations or litigation, independent experts in damage quantification may be involved in the resolution of TCE's potential claim. Through our experience in complex commercial litigation, we have extensive expertise in working with independent consultants on loss quantification issues.
- We have an unsurpassed understanding of the OPA's forms of electricity generating contracts, both CES-style and power purchase agreements. We developed the original CES-style contract with the Exhibit J calculations of Contingent Support Payments and Revenue Sharing Payments while acting as counsel to the Ministry of Energy (Ontario) on the 2500 MW RFP.

tion Contract, the multi-staged imputed production model in the TransAlta New Early Mover Clean Energy Supply (EMCES) contract, and we are presently developing a simplified payment mechanism based on a "Virtual Power Plant" in connection with our

- We acted for the OPA on the procurement in Southwest GTA which led to the awarding of the Southwest GTA Contract to TCE. As a result, we are intimately familiar with the contract itself, as well as the dynamics between the parties. If retained by the OPA, we would be in a position to immediately begin advising the OPA on this matter, and would not require the OPA to incur the time and associated expense with us coming up to speed on the underlying agreement. On the basis of the information provided to us to date, we believe that TCE may attempt to argue that the cancellation of the Southwest GTA Contract constitutes a "Discriminatory Action" and that the exclusion of consequential damages (including loss of profits) set out in Section 14.1 of the contract does not apply in such a case.
- In addition to the above experience, there would also be significant synergies if we are retained for this matter as we are currently counsel to the OPA on other potential claims made by TCE under Section 1.6 of the Southwest GTA Contract
in respect of recent changes to the IESO market rules. By retaining us on this matter, we may be able to obtain a more advantageous result for the OPA by providing a comprehensive approach to addressing outstanding disputes with TCE rather than resolving each dispute individually.

Overall, our extensive involvement in advising the OPA and private-sector developers, and our extensive background as described in this Proposal, will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner. The OPA's legal requirements will be best served by a client team comprising partners with the requisite industry expertise, supported by experienced associates who can function efficiently and at a lower cost.

In advance of further discussions with you under this external counsel process, we would like to clarify that, as is customary for such proposals, we are participating in this process on the understanding that: (i) our discussions will not constitute a solicitor/client relationship on this project unless and until we are formally retained; and (iii) in the event that you do not retain us, you will not allege that our participation in this process constitutes a conflict in our acting for another third party in relation to this project.

A. Description of Background and Qualifications

1. Proposed Team

We propose that the core group of the client team for the project comprise Rocco Sebastiano, Richard Wong, and Elliot Smith as solicitors, and Brett Ledger, Paul Ivanoff and Evan Thomas, as litigators. We also propose to involve Riyaz Dattu, an expert in Crown liability, government procurement and international trade agreements, to the extent any issues on these subjects arise.

We propose that Rocco Sebastiano will be the partner in charge of this matter. An integrated team of both the solicitors and the litigators would work together to provide the OPA with advice on this matter. In the early stages, we would expect the solicitors would take on a greater role, working closely with the litigators, and if the matter proceeded to formal dispute resolution, we would expect an increasing role for the litigators on the team.

Rocco has extensive experience working with the CES-style contract as he was responsible for developing the form of contract for the Ministry of Energy in the 2500 MW CES RFP, and for leading and co-ordinating the legal services to the OPA in the negotiations and procurements for

Richard was lead counsel on the Southwest GTA procurement, and Elliot assisted Richard in the procurement and has used the Southwest GTA form of contract as a precedent for other OPA matters, and therefore all three are extremely familiar with the contract at issue.

Paul has experience with the CES-style form of contract

In addition, Paul advised the

years of experience with litigation related to construction and infrastructure projects. Brett is the former chair of our litigation department and is an experienced litigator who has advised on commercial disputes, including several which have gone to the Supreme Court of Canada. In particular, Brett has extensive litigation experience in the energy sector, having provided advice to clients such as Atomic Energy of Canada Limited, Irving Oil, and Imperial Oil on disputes and litigation relating to many major commercial matters and on the cancellation of certain major projects. Evan formerly worked at the IESO and has published a number of papers on deregulated electricity marketplaces.

2. Relevant Experience and Notable Litigation and Transactions

As summarized above, our experience in the following matters will be of particular advantage in advising the OPA on the potential claims by TCE resulting from the Government of Ontario's announced intention to cancel the Southwest GTA CES Contract:

Extensive Litigation Experience

- ***Litigation Experience on Behalf of the OPA.*** We have advised the OPA on a number of disputes that had the potential to result in litigation, and have successfully avoided litigation in each case. We provided advice Greenfield South GS, which were very similar in form to the Southwest GTA Contract,

We believe this most recent work is closely related to the potential claims by TCE as both relate to the Supplier's economics under the contract, which is a concept we have undertaken considerable efforts to understand and explore in connection with the CES-style contracts.

- ***Experience with Notable Litigation Matters.*** We have advised on numerous significant litigation matters that demonstrate the nature and extent of our expertise in advising the OPA in any potential claim by TCE. In particular, we have advised clients on legal issues and claims relating to the cancellation of major energy and infrastructure projects. A few examples of this experience include acting for:
 - **Atomic Energy of Canada (AECL)** in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **AECL** in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
 - **Bruce Power** in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
 - **The Toronto Transit Commission (TTC)** on claims by contractors and suppliers relating to the cancellation of the Eglinton Subway by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and equipment supply contracts and defend potential claims relating thereto.
 - **Veco Corporation** in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- ***Experience with Crown Liability and Trade Agreements.*** A government-initiated cancellation of a contract of this nature has the potential to trigger the application of Crown liability, and if TCE has any major US shareholders, a claim may also be initiated under the North American Free Trade Agreement (NAFTA). Osler lawyers have acted in more international trade litigation matters than any other Canadian firm, and have extensive experience with dispute resolution panels including under NAFTA. We also have extensive experience advising both the Crown and private parties on issues of Crown liability.
- ***Other Commercial Litigation Experience.*** We have provided advice to clients on a number of complex litigation matters, including the Greater Toronto Airports Authority, on a number of commercial and construction disputes arising out of the New Terminal Development Project and the redevelopment of Terminal 3 at Pearson International Airport. We advised the TTC on several claims arising from the development and construction of the Sheppard

Subway, including a claim for \$43 million on the Don Mills Station. Other significant litigation retainers include advising Inco/Voisey's Bay Nickel Company on the termination of a supply contract for business-critical equipment, and the recovery of the equipment, in the context of significant delay costs, and also on deficiencies in the design of a conveyor system; and advising Stone & Webster Canada L.P. on disputes relating to construction at the Lambton and Nanticoke Power Generating Stations.

Strong Understanding of the Electricity Sector in Ontario

we will bring to bear our considerable understanding of the current electricity marketplace and our in-depth knowledge of the various forms of contracts currently in use in the Ontario electricity market.

Not only do we understand the commercial and legal risk allocations between the Buyer and Supplier under these contracts (including such issues as the payment mechanisms and formulas in Exhibit J of the CES, EMCES, ACES, and other related contracts, the development and operational covenants, as well as the force majeure, damages and discriminatory action provisions), but we also understand the policy framework and rationales underlying the formulation of such provisions and have a practical sense of the appropriateness of such provisions in light of the state of the generation development industry and the OPA's role under the contracts for such developments.

Unsurpassed Knowledge of the OPA's Electricity Generating Contracts

- ***Development of the CES Contract.*** In our role as counsel to the Ministry of Energy (Ontario), we developed the original Clean Energy Supply (CES)-style contract for the 2,500 MW RFP.

CES Contract through the development of the Accelerated Clean Energy Supply Contract (ACES Contract), which incorporated the requirement to implement a simple cycle mode of operation prior to achieving the combined cycle mode of operation. We subsequently developed the GTA West Trafalgar form of CES-style contract, which we were then retained to adapt into a Peaking Generation Contract,

We adapted this contract for the Southwest GTA procurement, and have subsequently made further revisions to this form of contract to develop

As a result of this extensive experience with the CES-style contract, we thoroughly understand the entire contract, and in particular, the economics contemplated by Exhibit J, and can leverage this understanding in any negotiations we undertake with TCE.

General Electricity Industry Expertise

A summary of our representative matters and project work most relevant to the work that will likely be required in connection with the defense of any possible claims by TCE is set out below. As well, we encourage you to contact Kevin Dick, Richard Duffy and Barbara Ellard who are very familiar with our experience and the quality of our legal services.

Representative Litigation and Project Matters

Relevant litigation and project related matters in which our lawyers have advised clients on major power and infrastructure projects, include:

- **Atomic Energy of Canada (AECL).** Our lawyers have advised AECL on numerous matters, including:
 - **Claims relating to the Cancellation of MAPLE Reactors** – We advised AECL in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **Pickering A Restart Project** – We advised AECL in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
- **Bruce Power Limited Partnership** – We are acting for Bruce Power in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
- **Toronto Transit Commission** – We advised the Toronto Transit Commission (TTC) on claims by contractors, equipment and material suppliers relating to the cancellation of the **Eglinton Subway** by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and supply contracts and defend potential claims relating thereto.
- **Veco Corporation** – We advised Veco Corporation (Veco) in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- **Pristine Power Inc.** We have advised Pristine on the development, financing, construction and operation of the East Windsor Cogeneration Centre and the York Energy Centre.
- **Ontario Power Authority.** Our lawyers have advised the OPA on numerous matters, including:

Market Rules relating to generator cost guarantees, including claims by TCE for both the Southwest GTA Facility

- o **Southwest GTA RFP** – We advised the OPA on the Southwest GTA RFP, in which TCE was chosen as the selected proponent. Contract issues included modifying the form of CES Contract to reflect an all-in gas management approach, and incorporating applicable improvements from

– We advised on all aspects of this procurement, including the development of specific rated criteria used in the evaluation of proposals. We implemented further revisions to the

- We negotiated a further modified form of ACES Contract for this project to permit either an initial simple-cycle mode of operation or in the event of certain delays in achieving this milestone,

We also negotiated further amendments to this ACES Contract in order to implement a gas management plan which results in a sharing of gas supply and transportation risks between the Buyer and the Supplier in exchange for a reduction in the Supplier's over-all net revenue requirement.

- We negotiated a modified form of CES Contract in order to permit this facility to initially operate in simple-cycle mode while the combined-cycle aspect of the facility was still under construction. This resulted in the development of the Accelerated Clean Energy Supply (ACES) Contract. We also provided advice to the OPA

- o **Early Movers** – We developed and negotiated a modified form of CES Contract for use on a number of early mover projects (including Coral's Brighton Beach Project, TransAlta's Sarnia Regional Cogeneration Centre and three Toromont combined heat and power projects). The EMCES Contract introduced the directed dispatch concept in order to meet the Ministry of Energy's directive to the OPA to displace coal.
- o **Standard Form Peaking Generation Contract** - We advised the OPA in the development of a new form of contract structure for the OPA, starting from the GTA West Trafalgar CES Contract, which would be appropriate for a natural gas-fired peaking generation facility. We incorporated the unique requirements of a peaking facility, such as gas risk, gas management, and must-offer obligations, and incorporated extensive stakeholder feedback.

nine hydroelectric generating stations in northern Ontario, totalling over 1,000 MW owned and to be operated by Ontario Power Generation Inc. pursuant to the directive issued by the Ministry of Energy (Ontario) on December 20, 2007.

- **Ministry of Energy (Ontario).** We have advised the Ministry of Energy on four major Requests for Proposals (RFPs) relating to electricity generation, being the RFP for 300 MW of renewable electricity generation (RES I RFP), the RFP for 2,500 MW of clean generating capacity or demand-side projects (2,500 MW RFP) to address Ontario's growing electricity capacity needs, the RFP for up to 1,000 MW of renewable electricity generation for facilities between 20 MW and 200 MW (RES II RFP) and the draft RFP for up to 200 MW of renewable electricity generation for facilities between 0.25 MW and 19.99 MW (the original RES III RFP). On the 2,500 MW RFP, we developed and drafted the CES Contract, including the development of the innovative contract for differences model based on imputed production as set out in Exhibit J of the CES Contract. We also provided advice to the Ministry and the OPA relating to the negotiated cancellation of the **Eastern Power** contracts for **Greenfield North GS** and **Greenfield South GS**.

Please refer to the resumes attached to this submission for a description of other relevant transactions, project work and claims that our core team of lawyers have advised on.

3. Potential Conflicts

We do not expect that we would have any conflicts of interest in providing legal services to the OPA in relation to this matter. On the contrary, we believe our work regarding the potential claims in connection with recent IESO Market Rule changes provides synergistic benefits to the OPA.

B. Cost

Osler's service team for the OPA would follow our core service philosophy for delivering quality work, responsive service, timely communications and controlled costs. To ensure that we effectively manage the cost of providing our services to you, we will involve, whenever possible, associates at a more junior level and with correspondingly lower hourly rates.

Hourly rates (in Canadian dollars) for the lawyers in the proposed core service team are as follows:

Lawyer	Hourly Rate (2010)
Rocco Sebastiano	\$750
Richard Wong	\$600
Elliot Smith	\$365
Brett Ledger	\$900
Paul Ivanoff	\$650
Evan Thomas	\$405
Riyaz Dattu	\$775

We expect that initially the majority of the work would be done by Elliot and Rocco with advice from Richard, Brett and Paul. If the potential claims proceed to dispute resolution under the arbitration provisions of Section 16.2 of the contract or to litigation in court proceedings, we expect that Brett, Paul and Evan would have an increasing role in the conduct of this matter, with the drafting of litigation documents being done by Evan under the supervision of Brett and Paul. To the extent that any issues arise under NAFTA, or relating to liability of the Crown or Crown agencies, Riyaz would also be consulted.

These hourly rates will apply without a retainer or a minimum quantity of hours. Should the matter proceed to litigation, we may also engage law clerks whose hourly rates vary from \$115 to \$315.

We believe that our extensive involvement in advising the OPA, the Government of Ontario and private sector owners and developers on the Clean Energy Supply form of contract will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner, and in particular, as we ran the Southwest GTA procurement, we are intimately familiar with that form of contract. Furthermore, as we are currently advising the OPA on other potential claims by TCE, we have already considered many of the issues relating to liability under the contract including as it relates to the Supplier's economics and the waiver of indirect and consequential damages. Therefore, there is no learning curve on our end, which will result in a significant cost savings to the OPA. This, combined with our extensive litigation expertise, will allow us to quickly and efficiently begin the process of advising the OPA on any potential claims by TCE.

The Request for Submissions also requests information regarding the cost of disbursements. We do not anticipate any disbursements relating to travel and accommodations. Also, we do not charge clients for the use of meeting rooms in our client centre. With respect to other disbursements such as printing of documents and long distance calls, our disbursements are charged out essentially at cost without any additional mark-up.

C. Resumes

Rocco M. Sebastiano



416-862-5859

rsebastiano@osler.com

Education

1992 Osgoode Hall Law School, LL.B.

1989 Professional Engineers Ontario, P.Eng.

1985 University of Toronto, B.A.Sc. (Engineering Science
Nuclear and Thermal Power)

Year of Call

1994 Ontario

Rocco M. Sebastiano is the Chair of the firm's Energy – Power Group and a partner in the firm's Construction and Infrastructure Group. He is a qualified and experienced professional engineer who, prior to joining the firm, was employed as a nuclear design engineer and reactor safety analyst in the Nuclear Division of Ontario Hydro. Rocco's practice concentrates on energy, construction law and engineering and infrastructure matters. He has extensive experience on a wide range of major projects and has acted for various project participants, including owners, developers, contractors, operators, lenders, subcontractors, architects and engineers.

Rocco's project experience on power and infrastructure development includes advising the Ontario Power Authority, Hydro One, the Ontario Ministry of Energy and Atomic Energy of Canada Limited on matters such as the planning, procurement, development, engineering, construction, contracting, refurbishment and financing of natural gas, co-generation, nuclear, wind and hydro power generation projects and transmission and distribution systems.

Typical services include advising with respect to the structuring and development of the project, risk identification, allocation and management, tendering and procurement documents, permitting, licensing and approvals, corporate and project financing aspects and agreements, engineering, procurement and construction (EPC) contracts, power purchase agreements, energy supply contracts, transmission services agreements, refurbishment contracts, equipment procurement, operating and maintenance agreements, and other related commercial and technical contracts.

Professional Affiliations

- Law Society of Upper Canada
- Professional Engineers Ontario
- Canadian Bar Association
- The Canadian Council for Public-Private Partnerships
- Canadian Construction Association
- Ontario Energy Association

Representative Work

Rocco has advised on a number of major power generating and transmission projects such as:

- The **Ontario Power Authority** on numerous new generation and demand managements projects, including:

- **GTA West Trafalgar Clean Energy RFP** and **CES Contract** with TransCanada Energy on the 600 MW combined cycle **Halton Hills Generating Station**.
- **Demand Response Program** for Ontario (250 MW), including the development of the Program Rules and form of Contract for the procurement of the DR3 component of the program.
- **York Region Demand Response Program** (20 MW), including the development and implementation of the program, procurement and form of contract.
- Negotiation of the original **Early Mover CES Contracts** with TransAlta Energy and Coral Energy, respectively, for the Sarnia Regional Cogeneration Plant and the Brighton Beach Power Generating Station.
- **Atomic Energy of Canada Limited** on the **Ontario Nuclear Procurement Project**, the refurbishment and retubing of CANDU nuclear reactors at the **Bruce A Nuclear Generating Station** and **Pickering A Nuclear Generating Station** in Ontario and the **Pt. Lepreau Nuclear Generating Station** in New Brunswick and on the development, construction, commercial arrangements and subsequent cancellation of the **MAPLE Reactors** and associated radioisotope production facility at its Chalk River Research Facility.
- **East Windsor Cogeneration** in respect of the procurement and development of the East Windsor Cogeneration Centre in Windsor, Ontario pursuant to the Ontario Power Authority's **CHP I RFP**.
- The **Ministry of Energy (Ontario)** on the **Renewable Energy Supply (RES I and RES II) Procurements**, including consultations with the **IESO** and **Hydro One** on the review of transmission queue issues and the development of transmission and distribution constraint models and restricted transmission sub-zones for the planning and procurement of new renewable generating facilities.

- **The Ministry of Energy (Ontario) on the New Clean Generation & Demand-Side Projects (2500 MW) Procurement**, including the development of the procurement process, the Clean Energy Supply Contract, consultations with the IESO and Hydro One on transmission constraint issues, regulatory and commercial treatment of transmission connection and system upgrade costs under the Transmission System Code, and the development of the restricted transmission sub-zones in the evaluation model in the RFP.
- **Toronto Transit Commission** on the development and disputes relating to the Sheppard Subway project and the cancellation of the Eglinton Subway project.
- **TransÉnergie U.S. Ltd. on the New Jersey Cable Transmission Project**, New Jersey and New York, including the procurement and open-season process, project financing, negotiation of the EPC contract with ABB Inc. and the transmission services agreement.
- **Hydro One Inc. and TransÉnergie U.S. Ltd. on the Lake Erie Link Electricity Transmission Project**, Ontario and Pennsylvania, including project structuring, permitting, licensing and related regulatory matters, system connection issues, development, procurement and open-season process, negotiation of the EPC contract with ABB Inc. and the development of the transmission services agreement.

Education

Year of Call

Richard Wong is a partner in the firm's Construction and Infrastructure Group with an emphasis on power and infrastructure development including the procurement, development, contracting and financing of nuclear, natural gas, co-generation, hydro, wind and other generation projects and the planning and development of the related systems. In particular, Richard's services include reviewing, negotiating and drafting equipment and other supply agreements, design agreements, EPC contracts, procurement documents (e.g. RFI/RFP/Tenders), power and capacity purchase agreements, engineering service and consulting agreements, construction management agreements, and other related corporate/commercial and technical agreements including joint venture agreements, development agreements, operation and maintenance agreements and supply agreements.

- Law Society of Upper Canada
- Canadian Bar Association
- Ontario Bar Association
- New York State Bar Association
- Korean Canadian Lawyers Association

Richard has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement and contract documents for the Southwest GTA procurement process, which resulted in the procurement of the 900 MW Oakville Generating Station.

- **Ontario Ministry of Energy** on the Renewables I Request for Proposals in the procurement of 10 wind power projects across Ontario totalling 395 MW under the terms of the Renewable Energy Supply (RES) I Contract with Ontario Electricity Financial Corporation.
- **Ontario Ministry of Energy** on the Renewables II Request for Proposals in the procurement of eight wind power projects across Ontario totalling 955 MW under the terms of the RES II Contract with the Ontario Power Authority, including the development of the restricted transmission sub-zones in the Renewables II RFP and the review of transmission queue issues with the IESO.
- Review and analysis for **Hydro One** of the Ontario Power Authority's discussion papers regarding Transmission Planning and Development for the development of the Integrated Power System Plan.
- **Ontario Ministry of Energy** on the Renewables III Request for Proposals in the procurement for up to 200 MW of renewable generating facilities, that are under 20 MW in size.

- **Ontario Ministry of Energy** in its Request for Proposals for 2,500 MW of New Clean Generation and Demand-side Projects for the procurement of 2,235 MW of new gas-fuelled combined cycle generating facilities in various locations throughout Ontario under the terms of the Clean Energy Supply (CES) Contract, including the development of the restricted transmission sub-zones in the evaluation model.

Elliot A. Smith



416.862.6435
esmith@osler.com

Education

2004 University of Waterloo, B.A.Sc., Honours (Systems Design Engineering)
2007 University of Toronto, J.D.

Year of Call

2008 Ontario

Elliot Smith is an associate in the firm's Business Law Department in the Toronto office, where he is active in the Energy (Power) and Construction & Infrastructure Specialty Groups. Elliot works extensively on major infrastructure projects, providing assistance with project development, procurement, contract negotiation and administration issues. Elliot's practice has a strong emphasis on the procurement and construction of power plants, including combined heat and power, energy from waste, wind, solar and other renewable projects, as well as the development and negotiation of power and capacity purchase agreements.

Prior to joining Osler, Elliot worked at a number of institutions involved in the deregulated Ontario electricity market, including Ontario Power Generation and the Independent Electricity System Operator. He also worked at the Ontario Power Authority, where he assisted with the development of a regional electricity supply plan.

Representative Work

Elliot has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement process for a combined cycle power generation facility in Southwest GTA, which will include the development and finalization of an appropriate form of contract.
- **Pristine Power**, on the ongoing construction and equipment procurement for power projects in Ontario.

Brett Ledger



**Partner,
Litigation**
Toronto

416.862.6687
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Education
University of Windsor, LL.B.
University of Toronto, B.A.

Bar Admission(s)
Ontario (1979)

Practice Area(s): Litigation; Pensions & Benefits; Class Action

Brett specializes in corporate and commercial litigation with an emphasis on energy, environmental and general corporate litigation as well as class actions and administrative proceedings. His practice is national in scope and he has appeared before the courts of most provinces in Canada and the Supreme Court of Canada. Brett acts for some of Canada's largest energy and national resource companies on a wide variety of litigious matters, including Atomic Energy of Canada, Imperial Oil and Irving Oil. He also regularly acts as litigation counsel to many of Canada's major corporations and pension funds and has been involved in many of the leading pension decisions before the courts and pension tribunals. In addition, Brett has instructed at Osgoode Hall Law School's Intensive Trial Advocacy Program.

Recent Matters

- *MDS Nordion v. Atomic Energy of Canada Limited* – acting for AECL in connection with matters relating to the MAPLE Reactors and the associated New Processing Facility in Chalk River
- *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* 2004 SCC 54 – pension litigation in the Supreme Court of Canada relating to partial windup and surplus.
- *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 – acting for Atomic Energy of Canada Limited in the Supreme Court of Canada regarding confidentiality orders in environmental cases.
- *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.) – pension plan partial windup.
- *Imperial Oil Limited v. The Nova Scotia Superintendent of Pensions et al.*, (1995) 126 D.L.R. (4th) 343 (N.S.C.A.) – pension plan partial windup.
- *Smith v. Michelin North America* (2008) 71 C.C.P.B. 161- Nova Scotia Court of Appeal decision regarding contribution holidays.
- *Burke v. Hudson Bay Co.* (2008) ONCA 690– Court of Appeal representative action regarding surplus entitlement on sale of business.
- *Labrador Innu Assn. v. Newfoundland* (1077) 152 D.L.R. (4th) 50– Newfoundland Court of Appeal – aboriginal claims case relating to development of the Voisey's Bay Mine in Labrador.

- *Citizens' Mining council of Newfoundland & Labrador v. Canada* [1999] F.C.J. No. 23 – Environmental assessment case in the Federal Court regarding environmental assessment of mining development.
- *Hembruff v. OMERS* (2005) O.A.C. 234 – Ontario Court of Appeal decision regarding fiduciary duties of pension administrators.
- *Lacroix v CMHC* (2009) 73 C.C.P.B. 224 and *Lloyd v. Imperial Oil Limited* (1999) 23 C.C.P.B. 39 – counsel in Ontario and Alberta pension class actions dealing with surplus and plan amendments.

Paul Ivanoff



**Partner,
Litigation**
Toronto

416.862.4223
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Education
University of New Brunswick, LL.B.
York University, B.A.

Bar Admission
Ontario (1993)

Practice Area(s): Litigation; Construction; Infrastructure

Paul's practice involves the litigation, arbitration and mediation of disputes arising out of construction and infrastructure projects. He also provides contract administration advice during the course of completion of projects. Paul's practice covers all aspects of construction law including contractual disputes involving construction contracts and specifications, construction liens, mortgage priorities, delay claims, bidding and tendering disputes, negligence, bond claims, and construction trusts. He advises all project participants on disputes related to a broad range of construction projects including the design and construction of airport facilities, power plants, highways, industrial facilities, commercial buildings, civil works facilities and subways. Paul is certified as a Specialist in Construction Law by the Law Society of Upper Canada.

Recent Matters

- **Greater Toronto Airports Authority** in numerous claims relating to the design, construction and maintenance of air terminal facilities
- **CH2M Hill and Veco Corporation** in an Ontario action involving allegations of conspiracy, fraud and oppression, which focussed on the propriety of the Ontario courts assuming jurisdiction over the dispute
- **Stone & Webster Canada L.P.** in disputes relating to the installation of Selective Catalytic Reduction (SCR) equipment at Ontario Power Generating Stations
- A project owner in an action involving the construction of a co-generation power plant
- A leading engineering firm in a multi-party Ontario action involving allegations of negligence and breach of contract relating to the design and construction of an industrial processing system
- An Ontario municipality in connection with procurement advice relating to bidding and tendering issues
- A nuclear technology and engineering company in a dispute relating to the supply and installation of equipment
- A leading Canadian contractor in various claims and disputes relating to roadway construction
- Automobile manufacturers in various disputes relating to projects undertaken at automobile assembly facilities

Evan Thomas



**Associate,
Litigation**
Toronto

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ethomas@osler.com

Education

University of Toronto, J.D.
London School of Economics, M.Sc. (Economics)
University of British Columbia, B.A. (Hons.)

Bar Admission(s)

Ontario (2007)

Practice Area(s): Litigation

Evan practises general corporate/commercial litigation and has experience in franchise, construction, privacy, insolvency, and information technology matters. He has appeared before the Information and Privacy Commission (Ontario) and the Ontario Superior Court of Justice (Civil and Commercial Lists). Prior to attending law school, Evan worked in the information technology sector and has an avid interest in e-discovery issues and other uses of technology in litigation. As an articling student, Evan was seconded to the mergers & acquisitions group at RBC Financial Group.

Recent Matters

- Various proceedings pending in Ontario related to the recovery of assets in Canada for the benefit of victims of a multi-billion dollar Ponzi scheme.
- A cross-border insolvency proceeding under the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code.
- The successful response to a motion for an interlocutory injunction to restrain the termination of a subcontract on a \$70-million information technology project.
- The defence of an ongoing action for over \$100 million in damages by a wholesaler following the termination of a distribution relationship.
- The successful response to an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* to the Information and Privacy Commission (Ontario).

Publications/Events/Education

- *Regional Electricity Market Integration: A Comparative Perspective, Competition and Regulation in Network Industries*, Volume 8 (2007) No. 2 (co-authored).
- *To Notify or Not to Notify: Responding to Data Breach Incidents*, February 2007 (co-authored with Jennifer Dolman).
- *Beyond Gridlock: The Case for Greater Integration of Regional Electricity Markets*, C.D. Howe Institute Commentary, March 2006 (co-authored).

Riyaz Dattu



**Partner,
Corporate**
Toronto

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rdattu@osler.com

Education
Osgoode Hall Law School, LL.M.
University of Toronto, LL.B.

Bar Admission(s)
Ontario (1984)

Practice Area(s): International Trade

Riyaz advises multinational and domestic businesses on international trade policy and investment matters, international trade strategies and market-access concerns. On international trade regulations, he advises on all aspects of economic sanctions, export and import controls, national security, anti-bribery laws, government procurement, customs laws, transfer pricing and trade remedies such as anti-dumping, countervailing and safeguard measures. Riyaz also acts as counsel in international trade and investment disputes involving the application of trade laws and regulations and the enforcement of treaties. He has acted as counsel from the time of the very earliest WTO disputes concerning Canada, and the first two investment arbitrations under Canada's bilateral investment promotion and protection treaties. During his more than 25 years of practice, Riyaz has advised and represented leading businesses in a full range of industry sectors.

Recent Matters

Riyaz has been counsel in more than 50 Canadian and international trade remedies proceedings (and one-third of all initial investigations commenced since 1992 under Canada's trade remedies laws), 13 challenges under Chapter 19 of NAFTA and the Canada-United States Free Trade Agreement (including one-half of all Canadian proceedings under NAFTA that were completed) and in excess of 40 proceedings before the Federal Court of Canada. He has acted in most of the significant trade remedies cases litigated in Canada, and has also argued landmark cases before NAFTA Panels and the Federal Court of Canada.

Aleksandar Kojic

From: Deborah Langelaan
Sent: November 2, 2010 3:33 PM
To: Michael Lyle; JoAnne Butler; Amir Shalaby; Ben Chin; Michael Killeavy
Subject: FW: MPS Letter Agreement
Attachments: MPS Letter Agreement Oct 29__2010.pdf

Please find attached the Letter Agreement between MPS and TCE that was executed last Friday.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca |

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: November 2, 2010 2:40 PM
To: Deborah Langelaan
Subject: MPS Letter Agreement

Deborah, as a follow up to the call between the OPA and TransCanada last Friday, I am attaching the Letter Agreement between Mitsubishi Power Systems Americas, Inc. (MPS) and TransCanada Energy Ltd.(TCE)

As communicated to the OPA earlier, the options available to us with respect to the MPS gas turbines were to either terminate the contract and face the cancellation charges of approximately \$92 million (45% of the value of the contract), or to allow the contract to continue into November, with the corresponding cancellation fee increasing to approximately \$106 million (or 55% of the value of the contract).

TCE was successful in negotiating terms with MPS with the following provisions:

- Allow the contract to continue, but roll back the cancellation fee to only 50% of the value of the contract for the month of November
- MPS agrees to work with TCE to supply equipment changes for an alternative project -- including a fast start option on the G machine and the option to supply an F class machine
- MPS has exclusive rights to supply the balance of the equipment for the power island, including as necessary, the steam turbine and HRSG, if the event the configuration is a combined cycle.

As discussed and agreed to on our call with the OPA last Friday afternoon, with the OPA's consent and agreement, TCE executed the Letter Agreement with MPS on Friday (October 29) which allows us additional time to identify a viable alternative site.

The agreement commits us to meet with MPS no later than November 19 to determine whether and/or how to proceed beyond this interim agreement.

We look forward to a productive session on Friday.

Regards,

Terry

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization.

If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.



October 29, 2010

MPS Canada, Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3220
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "Contract")

Dear Mr. Ueki,

This letter (this "Letter Agreement") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("Purchaser") and MPS Canada, Inc. (the "Supplier") regarding the Contract.

1. Background. Purchaser has been informed by the Ontario Power Authority (the "OPA") that the Project will not proceed forward based on the current site location designated in the Contract. OPA has requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. Attachment 1 contains a list of the potential alternative projects and potential configurations that TransCanada will pursue with OPA. Therefore, Purchaser hereby suspends Supplier's Work effective immediately until November 30, 2010. As a result of such suspension, the Scheduled Delivery Dates will be redefined and any amounts determined in accordance with Article 14 will be paid.
2. Commitment. The Parties agree to amend the amount of the termination payment included in the Cancellation Schedule in Appendix VI, "Payment and Cancellation Schedule" for the date that corresponds to "Month 15" or November 2010 from "55%" to "50%." The Parties agree to cooperate with each other and use all reasonable good faith efforts to identify a viable alternative project(s). The Parties shall provide updated information to each other regarding the progress of selecting an alternative project(s) and meet no later than November 19, 2010 to further discuss the ongoing status of an alternative project(s). Supplier agrees to provide information to Purchaser to support its efforts to identify an alternative project(s) with the configuration as listed in Attachment 1. Upon identifying an alternative project(s) and site(s), the Parties shall meet on a regular basis to identify and agree upon the changes to the Contract based upon the alternative project(s), including without limitation changes to the equipment delivery schedules and performance guarantees based upon the configuration of the alternative project(s).

Furthermore, Purchaser agrees to work exclusively with Supplier and Supplier agrees to cooperate with Purchaser for furnishing the heat recovery steam generators and steam turbine generators, if such equipment is required by such alternative project(s). For greater clarity, the Parties agree that the obligations to identify an alternative project(s) and to work exclusively with each other for the furnishing of the heat recovery steam generators and steam turbine generators shall terminate if the Contract is terminated.

3. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.
4. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.
5. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.
6. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.
7. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.
8. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.
9. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONFIDENTIAL

*Letter Agreement
between TransCanada Energy Ltd.
and MPS Canada, Inc*

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: 

Name: Terry Bennett

Title: Vice President

Accepted this 29th day of October, 2010.

MPS Canada, Inc.

By: 

Name: Shinichi Ueki

Title: President