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1. AACC will be 481 MW;
2. Target Capital Cost of \$475 million;
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4. Contract term of 25 year; and
5. The provincial government will not pass a regulation, similar to that which was enacted for the NYR project, to exempt the project from the *Planning Act*. In recognition of the fact that TCE will still have permitting and approvals risk we need to change the second paragraph in the "Permits and Approvals" section of the first counter-proposal. We need to state that in the event that the K-W peaking plant does not proceed, we will enter into good faith negotiations with TCE for: (i) the recovery of the OGS sunk costs; (ii) prudently incurred expenditures on the K-W peaking plant; and, (iii) the financial value of the OGS contract.

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Thank you,

Michael

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)

Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 9:23 AM
To: Michael Killeavy
Subject: RE: TCE Matter - OPA Second Counter-Proposal

I know that...just wanted to make it clear for the future....

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: Martes, 19 de Abril de 2011 09:21 a.m.
To: JoAnne Butler
Subject: Re: TCE Matter - OPA Second Counter-Proposal

Sorry. I didn't mean otherwise.

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

From: JoAnne Butler
Sent: Tuesday, April 19, 2011 09:18 AM
To: Michael Killeavy; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Ivanoff, Paul' <PIvanoff@osler.com>; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

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From: Michael Killeavy
Sent: Lunes, 18 de Abril de 2011 04:24 p.m.
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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

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Aleksandar Kojic

From: Deborah Langelaan
Sent: April 19, 2011 9:33 AM
To: Michael Killeavy
Subject: Fw: TCE Matter - OPA Second Counter-Proposal

Do you think the Board will turn it down?

From: JoAnne Butler
Sent: Tuesday, April 19, 2011 09:18 AM
To: Michael Killeavy; 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Ivanoff, Paul' <PIvanoff@osler.com>; Susan Kennedy
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 9:51 AM
To: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

It's difficult to say. I think it's going to be sent out today. Give me a call in my office if you can.

Michael Killeavy, LL.B., MBA, P.Eng.
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From: Michael Killeavy
Sent: Lunes, 18 de Abril de 2011 04:24 p.m.
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelan; JoAnne Butler
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 10:00 AM
To: 'safouh@smsenergy-engineering.com'
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal
Attachments: #20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE.DOC; WSComparison_#20297127v8_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal-#20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE.PDF

Safouh,

The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

Michael

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From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

Please find enclosed a second counter-proposal to TCE which reflects the points raised in the email below. As the OPA only delivered the first counterproposal in draft form, we have taken that draft and revised it to reflect the changed parameters. I have also included a blackline to the first counterproposal for ease of reference.

Regards, Rocco

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by [0.000 012 681 3] multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?]

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of **[250 MW]** at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of **[500 MW]** at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NO_x and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [0.000 012 681 3]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 10:00 AM
To: 'safouh@smsenergy-engineering.com'
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal
Attachments: #20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE.DOC; WSComparison_#20297127v8_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal-#20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE.PDF

Safouh,

The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

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
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

Please find enclosed a second counter-proposal to TCE which reflects the points raised in the email below. As the OPA only delivered the first counterproposal in draft form, we have taken that draft and revised it to reflect the changed parameters. I have also included a blackline to the first counterproposal for ease of reference.

Regards, Rocco

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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

There have been some developments on this file over the last few days. It has been decided that the OPA will make a second counter-proposal to TCE. The second counter-proposal will be identical to the first counter-proposal with the exception of:

1. AACC will be 481 MW;
2. Target Capital Cost of \$475 million;
3. Net Revenue Requirement of \$14,922/MW-month, which is inclusive of the OGS sunk costs estimated now at \$37 million;
4. Contract term of 25 year; and
5. The provincial government will not pass a regulation, similar to that which was enacted for the NYR project, to exempt the project from the *Planning Act*. In recognition of the fact that TCE will still have permitting and approvals risk we need to change the second paragraph in the "Permits and Approvals" section of the first counter-proposal. We need to state that in the event that the K-W peaking plant does not proceed, we will enter into good faith negotiations with TCE for: (i) the recovery of the OGS sunk costs; (ii) prudently incurred expenditures on the K-W peaking plant; and, (iii) the financial value of the OGS contract.

During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

We would like to receive a draft of this second counter-proposal before 10am tomorrow. If this isn't possible, please let me know in advance.

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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M5H 1T1
416-969-6288
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by [0.000 012 681 3] multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?]

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [250 MW] at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of [500 MW] at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + \$25,000,000) × 0.50

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [0.000 012 681 3]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000 plus \$37,000,000, (ii) fifty percent of the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with prudently incurred in the development of the Replacement Project. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 10.000 012 681 31 multiplied by the amount by which such costs are less than \$37,000,000.
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7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a

Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

INTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of **[250 MW]** at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of **[500 MW]** at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be~~
 - ~~(i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is

Draft & Privileged

not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

Draft & Privileged

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 12,500 <u>14,922</u> / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 <u>481</u> MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A": TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of ~~\$375,000,000~~475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + \$25,000,000) × 0.50

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by ~~[0.000 012 681 3-3]~~. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the

Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

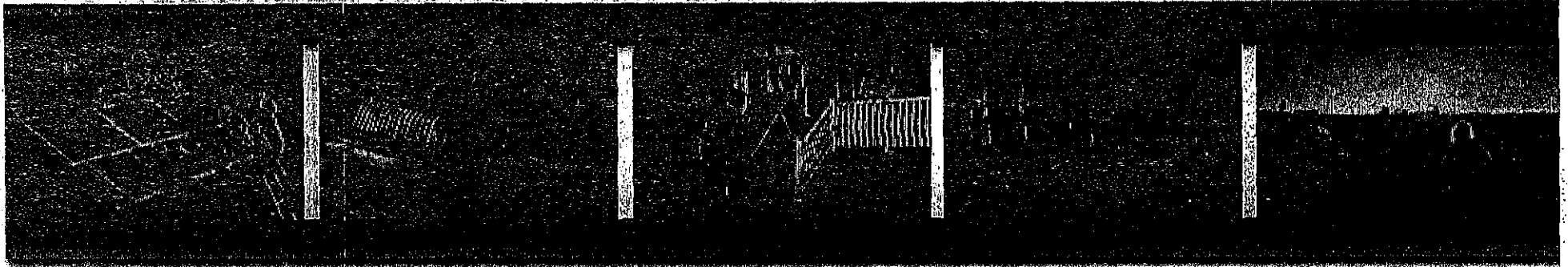
Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 10:01 AM
To: JoAnne Butler
Subject: DRAFT BOD Presentation for 20 April 2011
Attachments: OGS_BOD_CM_20110420 v1.pptx

As requested.

Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

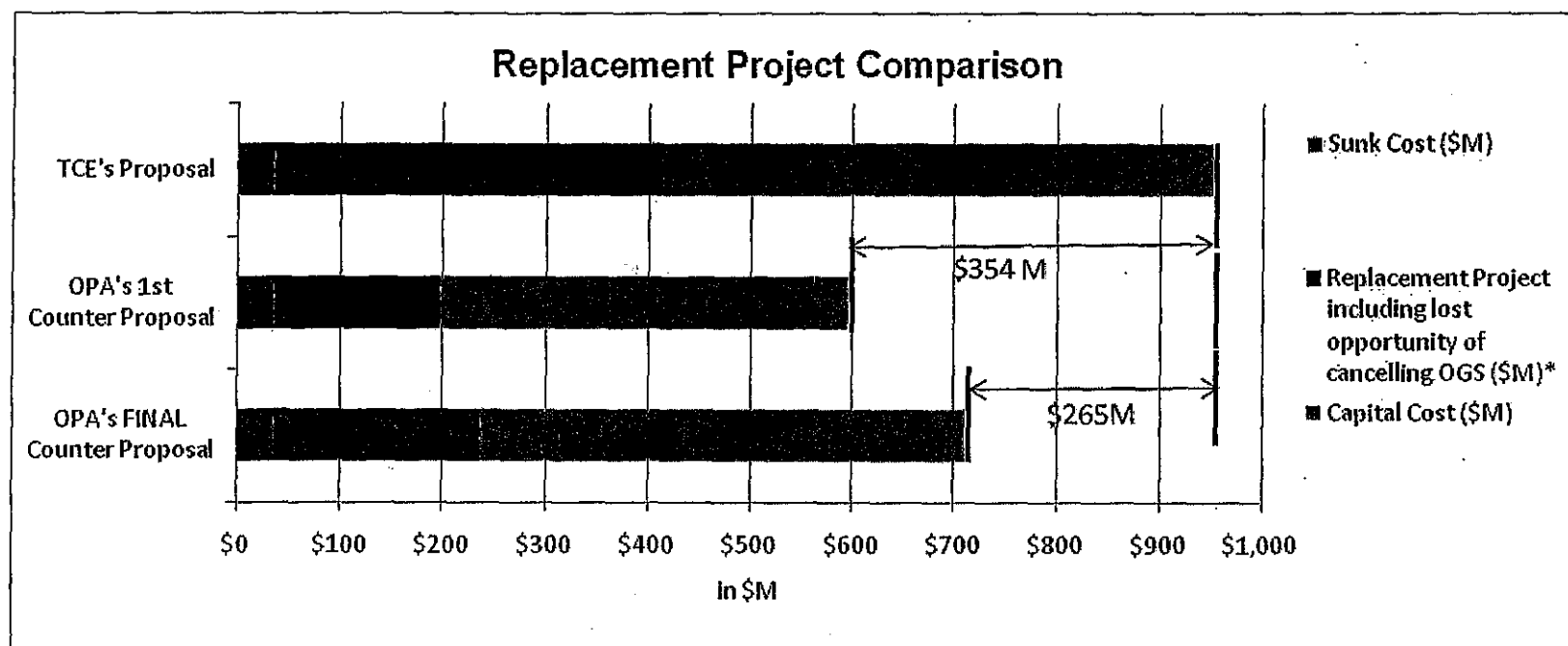
Status

- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- OPA was asked by the government to make a second counter-proposal to TCE.

OPA Second Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	OPA Second Counter Proposal	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years	25 Years	25 Years	Precedent – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm. We are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE.

Quantum Comparison



Next Steps

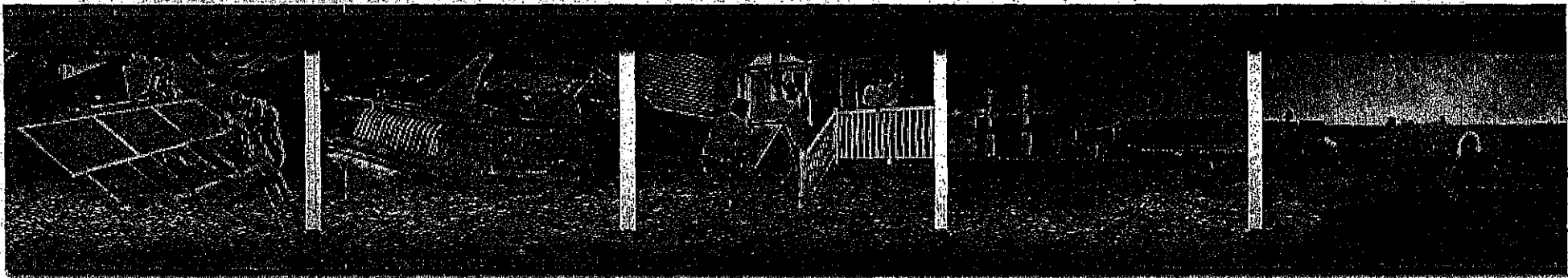


Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 10:48 AM
To: JoAnne Butler
Attachments: OGS_BOD_CM_20110406 v8.pptx

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Michael Killeavy, LL.B., MBA, P.Eng.
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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

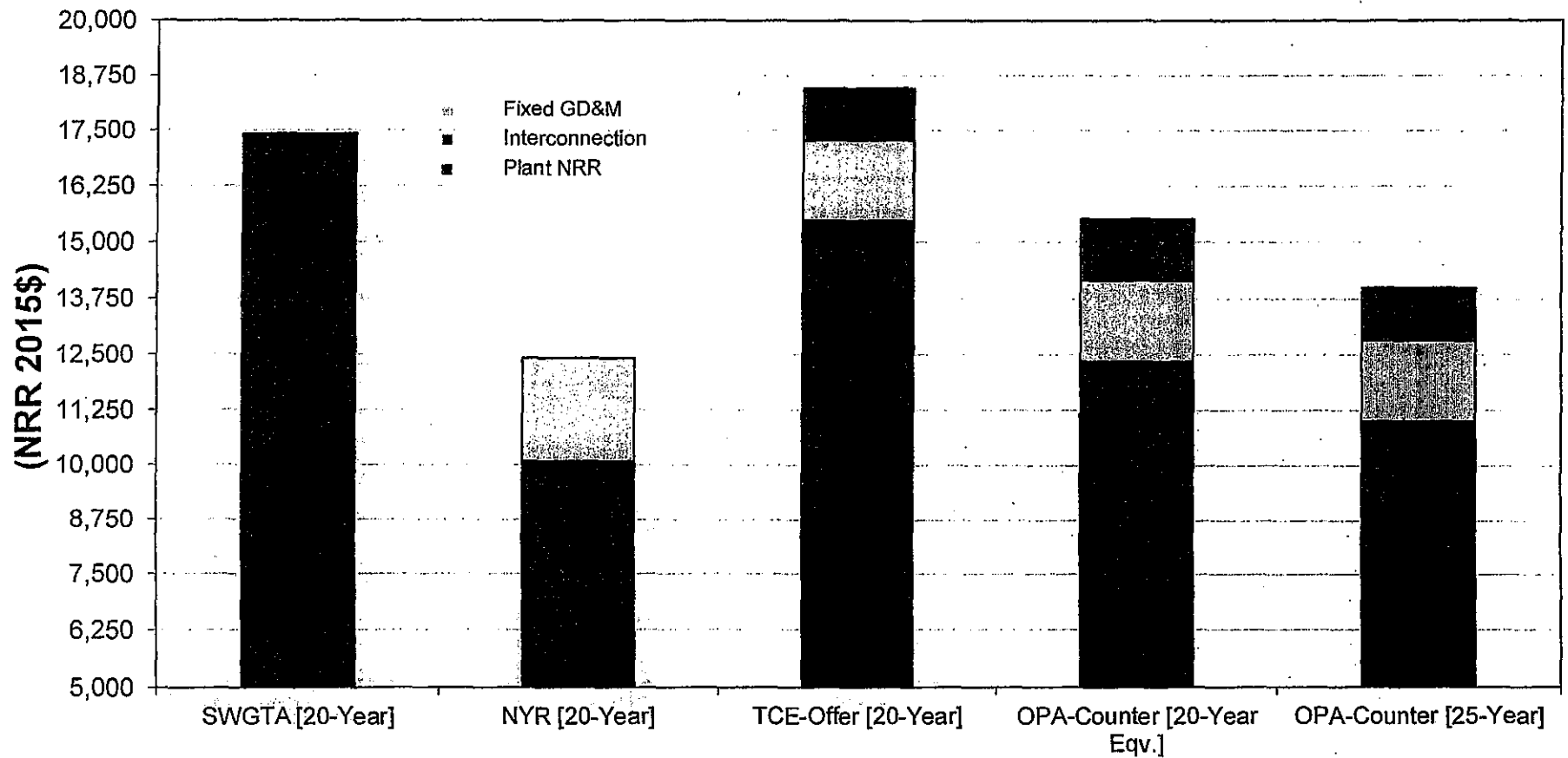
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- We will wait for specific feedback from TCE.

OPA Counter-Proposal

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NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
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Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

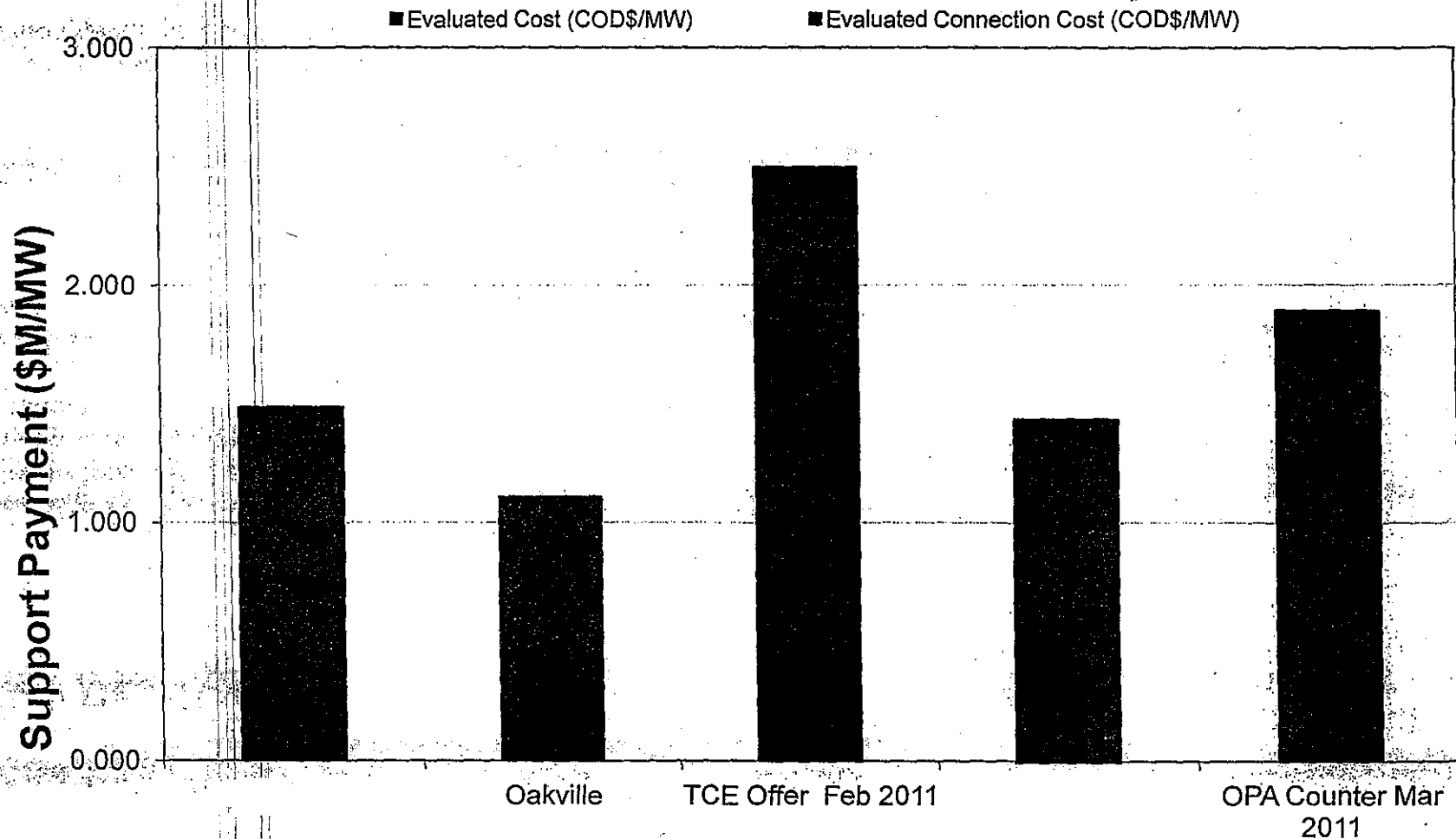
Net Revenue Requirement

NRR Comparison



PV of Annual Payments Based on NRR

OPA Contracts Evaluated Cost Comparison



Development Risk Mitigation

Risk Description	Owner	Mitigation Strategies
<i>Planning Act Approvals</i> , e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc.	Ministry of Municipal Affairs and Housing	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of the Act.
<i>Development Charges Act</i> charges levied	Ministry of Municipal Affairs and Housing	There is no power to exempt a developer, but regulation can be passed to influence the factors used.
<i>Building Code Act</i> Permits	Ministry of Municipal Affairs and Housing	Exempting regulation can be enacted under s. 34(19) of the Act.
<i>Environmental Assessment Act</i> Environmental Screening Process	Ministry of the Environment	Exempting regulation under Part IV of the Act.
<i>Environmental Protection Act</i> Certificates of Approval	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act

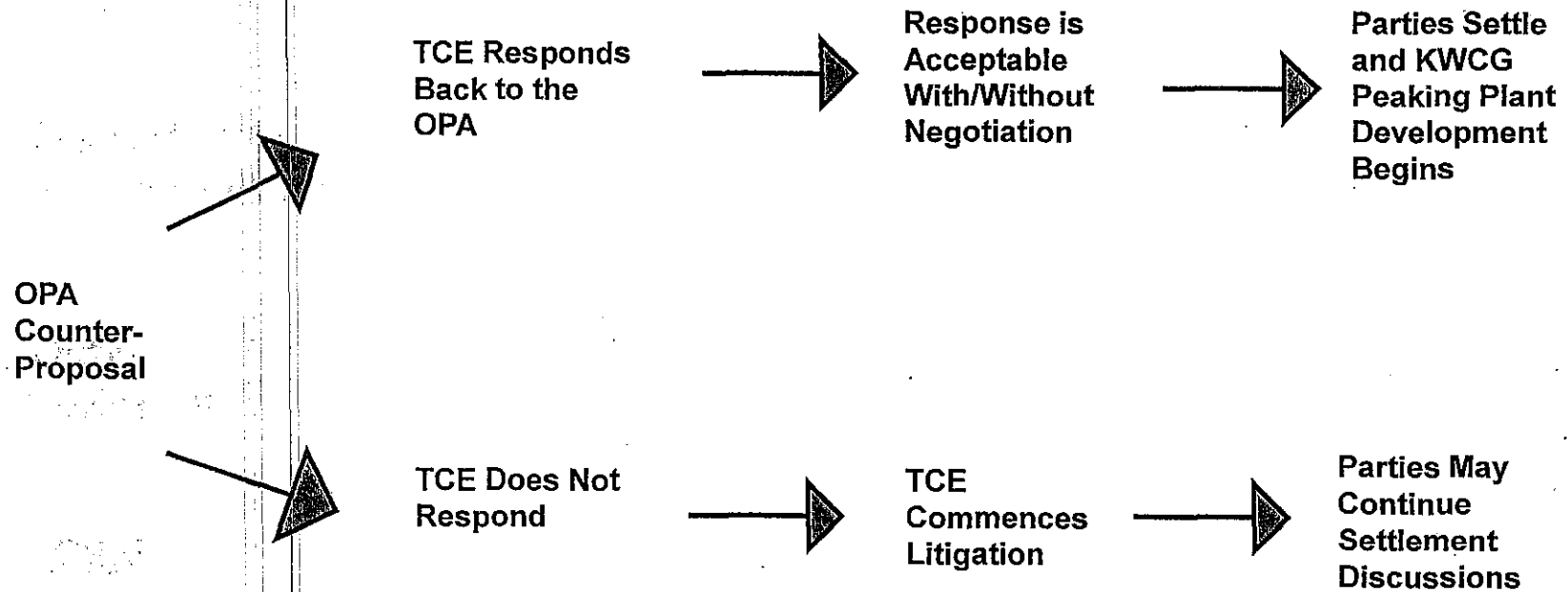
Development Risk Mitigation

Risk Description	Owner	Mitigation Strategies
<i>Ontario Water Resources Act</i> Approvals	Ministry of the Environment	Exempting regulation.
<i>Ontario Energy Board Act</i> Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.
Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
Municipal Act Municipal By-Laws e.g., PM2.5 enacted pursuant to s. 10 and s. 11 of the Act. US EPA will not regulate PM2.5 until at least 2013/2014. MOE has no intention of regulating in Ontario.	Ministry of Municipal Affairs and Housing/Ministry of the Environment	Section 451.1(1) allows for a regulation to impose limits on municipal powers, however, the regulation is deemed to be revoked after 18 months. Legislation might be required to permanently override a municipal by-law.

Development Risk Mitigation

Risk Description	Owner	Mitigation Strategies
<i>First Nations – Duty to consult</i>	TCE/OPA/Government	First Nations need to be consulted and engaged in the development of the project

Possible Outcomes



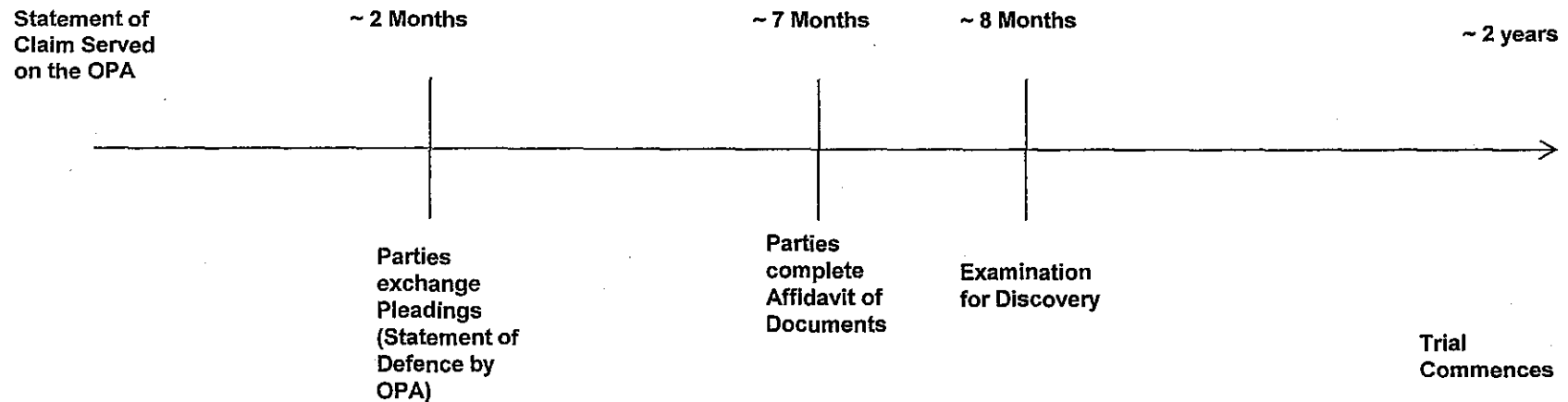
OGS Contract is Not Terminated

- It is likely that TCE will commence a lawsuit to recover its OGS sunk costs and financial value of the contract. We may proceed to trial or settle.
- Litigation counsel has advised us that we likely will be liable for the OGS sunk costs.
- It is less certain that we would be liable for lost profits under the contract and for any claimed residual value.
- TCE will need to prove its damages vis-a-vis financial value of the contract – this may be difficult for it to do.

OGS Contract is Terminated

- We will enter into a substantive contract with TCE to develop and operate the KWCG peaking plant.
- We will get a full and final release on all OGS-related claims as part of the settlement.
- The contract will likely have terms that are the same as, or similar to, our existing gas-fired generation contracts, e.g., NYR Peaking Contract.
- This will include a termination right in favour of the OPA/TCE if a force majeure persists for 2 years. TCE could terminate if the force majeure persisted for more than a year. We would need to pay TCE for OGS if this happened.

Potential Litigation Timeline



Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:07 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal,

Just a quick clarification, do you want SMS to complete the seasonal capacities in Schedule B1 based on the revised AACC. If so, do you want us to propose figures for the purpose of negotiating with TCE?

Below is a list of items that should be revised. We will revise and send back to you the Word document with track changes to incorporate the items below.

- Item 7 of the Letter to Pourbaix: the 90% capacity check test criteria is no longer practical and this should be revised to 95%
- Section II of Schedule A: the minimum of 500 MW at 35C under N-2, we will bullet the "500" with NTD
- Section II of Schedule A: Season 3 of not less than 480 MW, we will bullet the "480" or alternatively we can propose "470"

I am assuming the OPA, through the Implementation Agreement and as further information is provided by TCE, will be able to refine the heat rate figures in Schedule B1. Alternatively, you may want us to revise the figures before submission of the 2nd counter offer to TCE.

Please let me know your feedback on the above and will revise the Schedules accordingly.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 10:00 AM
To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal

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The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
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416-969-6288
416-520-9788 (CELL)

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

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Regards, Rocco

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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4. Contract term of 25 year; and
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During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

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de le divulguer sans autorisation.

Aleksandar Kojic

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Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 10:00 AM
To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal

Safouh,

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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)

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

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Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
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Subject: TCE Matter - OPA Second Counter-Proposal

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Aleksandar Kojic

From: Michael Killeavy
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From: JoAnne Butler
Sent: April 19, 2011 11:18 AM
To: Michael Killeavy
Subject: Board Presentation
Attachments: OGS_BOD_CM_20110420 v1.pptx

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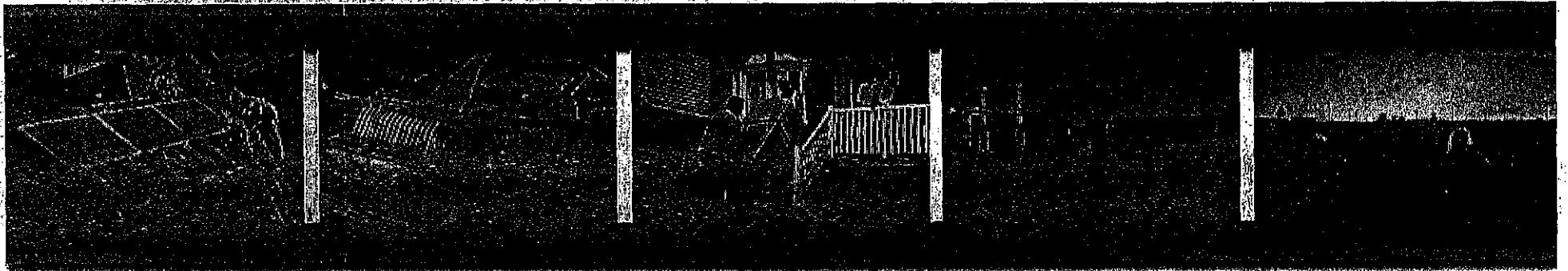
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416-969-6071 Fax.
joanne.butler@powerauthority.on.ca



**Winding Up of the Oakville
Generating Station (OGS) Contract
Board of Directors – For Information**

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

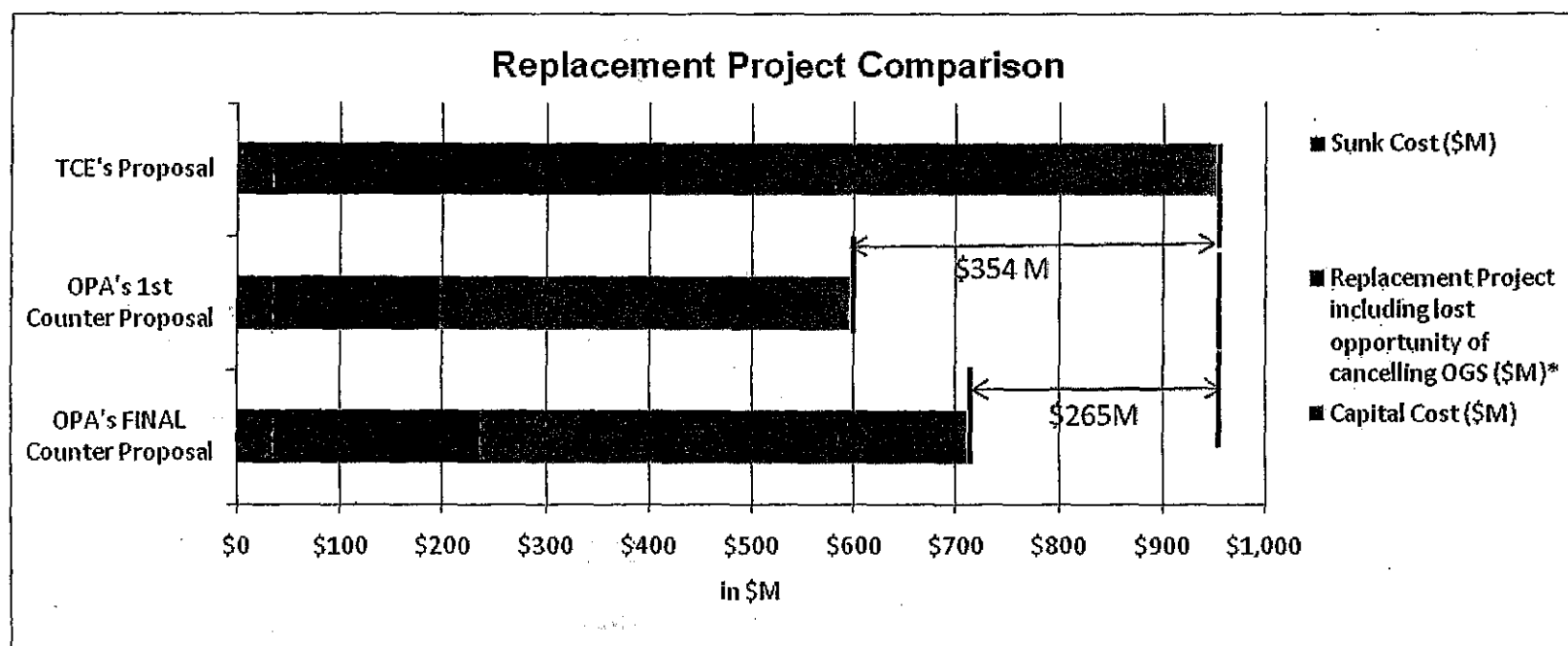
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OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April 21, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Extension	25 Years	25 Years	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. - Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years - no returns	Amortize over 25 years - no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent - Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

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TCE Proposal	37	375	540	
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Attachments: OGS_BOD_CM_20110420 v1.pptx

Here is the slide presentation with my suggested changes made. Thx

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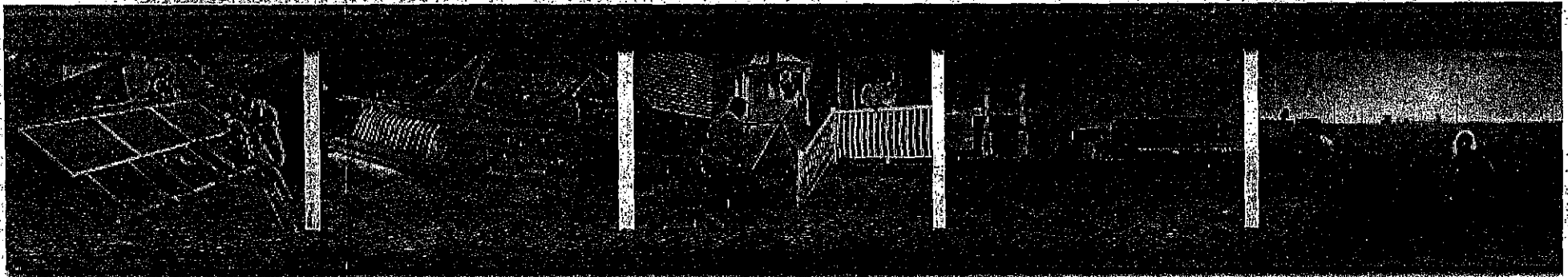
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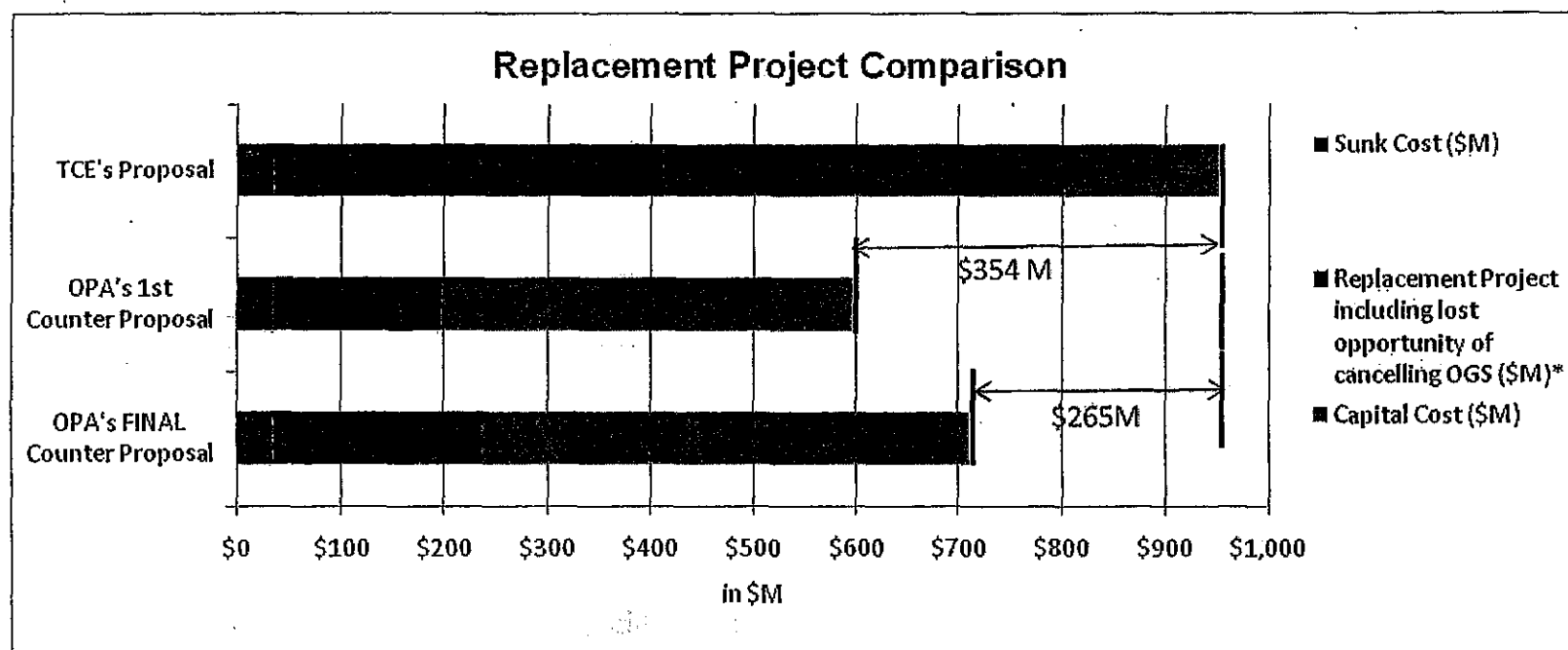
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Sent: April 19, 2011 11:48 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal
Attachments: #20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE (SMS).DOC

Micheal:

As requested, attached you will find our revisions to Schedule A. We have not made any changes to the capacity check test factor of 90%.

I trust you will find the attached in order and if you have any question, please feel free to contact me at any time.

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DRAFT: APRIL 18, 2011, 7:15 PM

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by [0.000 012 681 3] multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?] [See below]

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [250 MW] at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; {NTD: Planning studies used 35 °C. Contract FM temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.}
- (b) be able to provide a minimum of [~~500~~ 500 MW] at 35 °C under N-2 System Conditions; {NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should be used}
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

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III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving

the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~

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- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [0.000 012 681 3]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 12:01 PM
To: 'Safouh Soufi'
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

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
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:48 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal:

As requested, attached you will find our revisions to Schedule A. We have not made any changes to the capacity check test factor of 90%.

I trust you will find the attached in order and if you have any question, please feel free to contact me at any time.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 11:10 AM
To: Safouh Soufi
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

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I'm sorry for the confusion. I don't need you to complete the seasonal capacities or heat rates. It was more the specification-related content.

Michael

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From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:07 AM
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Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal,

Just a quick clarification, do you want SMS to complete the seasonal capacities in Schedule B1 based on the revised AACC. If so, do you want us to propose figures for the purpose of negotiating with TCE?

Below is a list of items that should be revised. We will revise and send back to you the Word document with track changes to incorporate the items below.

- Item 7 of the Letter to Pourbaix: the 90% capacity check test criteria is no longer practical and this should be revised to 95%
- Section II of Schedule A: the minimum of 500 MW at 35C under N-2, we will bullet the "500" with NTD
- Section II of Schedule A: Season 3 of not less than 480 MW, we will bullet the "480" or alternatively we can propose "470"

I am assuming the OPA, through the Implementation Agreement and as further information is provided by TCE, will be able to refine the heat rate figures in Schedule B1. Alternatively, you may want us to revise the figures before submission of the 2nd counter offer to TCE.

Please let me know your feedback on the above and will revise the Schedules accordingly.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 10:00 AM
To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal

Safouh,

The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

Michael

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

Please find enclosed a second counter-proposal to TCE which reflects the points raised in the email below. As the OPA only delivered the first counterproposal in draft form, we have taken that draft and revised it to reflect the changed parameters. I have also included a blackline to the first counterproposal for ease of reference.

Regards, Rocco

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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

There have been some developments on this file over the last few days. It has been decided that the OPA will make a second counter-proposal to TCE. The second counter-proposal will be identical to the first counter-proposal with the exception of:

1. AACC will be 481 MW;
2. Target Capital Cost of \$475 million;
3. Net Revenue Requirement of \$14,922/MW-month, which is inclusive of the OGS sunk costs estimated now at \$37 million;
4. Contract term of 25 year; and
5. The provincial government will not pass a regulation, similar to that which was enacted for the NYR project, to exempt the project from the *Planning Act*. In recognition of the fact that TCE will still have permitting and approvals risk we need to change the second paragraph in the "Permits and Approvals" section of the first counter-proposal. We need to state that in the event that the K-W peaking plant does not proceed, we will enter into good faith negotiations with TCE for: (i) the recovery of the OGS sunk costs; (ii) prudently incurred expenditures on the K-W peaking plant; and, (iii) the financial value of the OGS contract.

During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

We would like to receive a draft of this second counter-proposal before 10am tomorrow. If this isn't possible, please let me know in advance.

Thank you,

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de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 12:07 PM
To: 'Sebastiano, Rocco'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; 'Ron Clark'; 'Safouh Soufi'
Subject: FW: TCE Matter - OPA Second Counter-Proposal
Attachments: #20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE (SMS).DOC

Tracking:	Recipient	Recall
	'Sebastiano, Rocco'	
	'Smith, Elliot'	
	Susan Kennedy	Succeeded: 19/04/2011 12:18 PM
	JoAnne Butler	Succeeded: 19/04/2011 12:17 PM
	Deborah Langelaan	
	'Ron Clark'	
	'Safouh Soufi'	

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Attached are Safouh's comments on Schedule A in light of the reduction in AACC. Basically, I think we need to insert bullets for capacities as noted by Safouh that ought to be referenced in terms of 30 degrees Celsius and not 35 degrees.

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DRAFT: APRIL 18, 2011, 7:15 PM

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

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associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by [0.000 012 681 3] multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?] [See below]

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [250 MW] at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; {NTD: Planning studies used 35 °C. Contract FM temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.}
- (b) be able to provide a minimum of [●500 MW] at 35 °C under N-2 System Conditions; {NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should be used}
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving

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the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~

- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [0.000 012 681 3]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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Aleksandar Kojic

From: Deborah Langelaan
Sent: April 19, 2011 12:15 PM
To: Michael Killeavy
Subject: Re: TCE Matter - OPA Second Counter-Proposal

Why did you send this to Ron?

From: Michael Killeavy
Sent: Tuesday, April 19, 2011 12:07 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ron Clark <rclark@airdberlis.com>; Safouh Soufi <safouh@smsenergy-engineering.com>
Subject: FW: TCE Matter - OPA Second Counter-Proposal

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

Attached are Safouh's comments on Schedule A in light of the reduction in AACC. Basically, I think we need to insert bullets for capacities as noted by Safouh that ought to be referenced in terms of 30 degrees Celsius and not 35 degrees.

Michael Killeavy, LL.B., MBA, P.Eng.
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From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:48 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal:

As requested, attached you will find our revisions to Schedule A. We have not made any changes to the capacity check test factor of 90%.

I trust you will find the attached in order and if you have any question, please feel free to contact me at any time.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 11:10 AM
To: Safouh Soufi

Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Safouh,

I'm sorry for the confusion. I don't need you to complete the seasonal capacities or heat rates. It was more the specification-related content.

Michael

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Just a quick clarification, do you want SMS to complete the seasonal capacities in Schedule B1 based on the revised AACC. If so, do you want us to propose figures for the purpose of negotiating with TCE?

Below is a list of items that should be revised. We will revise and send back to you the Word document with track changes to incorporate the items below.

- Item 7 of the Letter to Pourbaix: the 90% capacity check test criteria is no longer practical and this should be revised to 95%
- Section II of Schedule A: the minimum of 500 MW at 35C under N-2, we will bullet the "500" with NTD
- Section II of Schedule A: Season 3 of not less than 480 MW, we will bullet the "480" or alternatively we can propose "470"

I am assuming the OPA, through the Implementation Agreement and as further information is provided by TCE, will be able to refine the heat rate figures in Schedule B1. Alternatively, you may want us to revise the figures before submission of the 2nd counter offer to TCE.

Please let me know your feedback on the above and will revise the Schedules accordingly.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 10:00 AM
To: safouh@smsenergy-engineering.com

Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal

Safouh,

The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

Michael

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Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

Please find enclosed a second counter-proposal to TCE which reflects the points raised in the email below. As the OPA only delivered the first counterproposal in draft form, we have taken that draft and revised it to reflect the changed parameters. I have also included a blackline to the first counterproposal for ease of reference.

Regards, Rocco

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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

There have been some developments on this file over the last few days. It has been decided that the OPA will make a second counter-proposal to TCE. The second counter-proposal will be identical to the first counter-proposal with the exception of:

1. AACC will be 481 MW;
2. Target Capital Cost of \$475 million;
3. Net Revenue Requirement of \$14,922/MW-month, which is inclusive of the OGS sunk costs estimated now at \$37 million;

4. Contract term of 25 year; and
5. The provincial government will not pass a regulation, similar to that which was enacted for the NYR project, to exempt the project from the *Planning Act*. In recognition of the fact that TCE will still have permitting and approvals risk we need to change the second paragraph in the "Permits and Approvals" section of the first counter-proposal. We need to state that in the event that the K-W peaking plant does not proceed, we will enter into good faith negotiations with TCE for: (i) the recovery of the OGS sunk costs; (ii) prudently incurred expenditures on the K-W peaking plant; and, (iii) the financial value of the OGS contract.

During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

We would like to receive a draft of this second counter-proposal before 10am tomorrow. If this isn't possible, please let me know in advance.

Thank you,

Michael

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de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 12:16 PM
To: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

It should have been Ronak. Can we call her Shirley? It's too much like Ron.

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Cc: Deborah Langelaan; JoAnne Butler

Subject: TCE Matter - OPA Second Counter-Proposal

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

There have been some developments on this file over the last few days. It has been decided that the OPA will make a second counter-proposal to TCE. The second counter-proposal will be identical to the first counter-proposal with the exception of:

1. AACC will be 481 MW;
2. Target Capital Cost of \$475 million;
3. Net Revenue Requirement of \$14,922/MW-month, which is inclusive of the OGS sunk costs estimated now at \$37 million;
4. Contract term of 25 year; and
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During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

We would like to receive a draft of this second counter-proposal before 10am tomorrow. If this isn't possible, please let me know in advance.

Thank you,

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
416-520-9788 (CELL)

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Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 12:17 PM
To: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Thanks

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)
416-967-1947 (FAX)

From: Deborah Langelaan
Sent: April 19, 2011 12:17 PM
To: Michael Killeavy
Subject: Re: TCE Matter - OPA Second Counter-Proposal

I'll ask her.

From: Michael Killeavy
Sent: Tuesday, April 19, 2011 12:16 PM
To: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

It should have been Ronak. Can we call her Shirley? It's too much like Ron.

Michael Killeavy, LL.B., MBA, P.Eng.
~~Director, Contract Management~~
~~Ontario Power Authority~~
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Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Deborah Langelaan
Sent: April 19, 2011 12:15 PM
To: Michael Killeavy
Subject: Re: TCE Matter - OPA Second Counter-Proposal

Why did you send this to Ron?

From: Michael Killeavy
Sent: Tuesday, April 19, 2011 12:07 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ron Clark <rclark@airdberlis.com>; Safouh Soufi <safouh@smsenergy-engineering.com>
Subject: FW: TCE Matter - OPA Second Counter-Proposal

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

Attached are Safouh's comments on Schedule A in light of the reduction in AACC. Basically, I think we need to insert bullets for capacities as noted by Safouh that ought to be referenced in terms of 30 degrees Celsius and not 35 degrees.

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416-967-1947 (FAX)

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:48 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal:

As requested, attached you will find our revisions to Schedule A. We have not made any changes to the capacity check test factor of 90%.

I trust you will find the attached in order and if you have any question, please feel free to contact me at any time.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 11:10 AM
To: Safouh Soufi
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Safouh,

I'm sorry for the confusion. I don't need you to complete the seasonal capacities or heat rates. It was more the specification-related content.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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Ontario Power Authority
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416-969-6288
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From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 19, 2011 11:07 AM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Micheal,

Just a quick clarification, do you want SMS to complete the seasonal capacities in Schedule B1 based on the revised AACC. If so, do you want us to propose figures for the purpose of negotiating with TCE?

Below is a list of items that should be revised. We will revise and send back to you the Word document with track changes to incorporate the items below.

- Item 7 of the Letter to Pourbaix: the 90% capacity check test criteria is no longer practical and this should be revised to 95%
- Section II of Schedule A: the minimum of 500 MW at 35C under N-2, we will bullet the "500" with NTD
- Section II of Schedule A: Season 3 of not less than 480 MW, we will bullet the "480" or alternatively we can propose "470"

I am assuming the OPA, through the Implementation Agreement and as further information is provided by TCE, will be able to refine the heat rate figures in Schedule B1. Alternatively, you may want us to revise the figures before submission of the 2nd counter offer to TCE.

Please let me know your feedback on the above and will revise the Schedules accordingly.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: April 19, 2011 10:00 AM
To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan; Ronak Mozayyan; JoAnne Butler
Subject: FW: TCE Matter - OPA Second Counter-Proposal

Safouh,

The OPA has been asked by the government to amend its counter-proposal. Please review the attached revised draft of the OPA counter-proposal. In particular, we have revised the AACC downwards from 500 MW to 481 MW. In light of this change, do any of the capacities in Schedule A to the counter-proposal need to be revised as well?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-520-9788 (CELL)
416-967-1947 (FAX)

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: April 18, 2011 7:33 PM
To: Michael Killeavy; JoAnne Butler
Cc: Deborah Langelaan; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael and JoAnne,

Please find enclosed a second counter-proposal to TCE which reflects the points raised in the email below. As the OPA only delivered the first counterproposal in draft form, we have taken that draft and revised it to reflect the changed parameters. I have also included a blackline to the first counterproposal for ease of reference.

Regards, Rocco

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal

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

There have been some developments on this file over the last few days. It has been decided that the OPA will make a second counter-proposal to TCE. The second counter-proposal will be identical to the first counter-proposal with the exception of:

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permitting and approvals risk we need to change the second paragraph in the "Permits and Approvals" section of the first counter-proposal. We need to state that in the event that the K-W peaking plant does not proceed, we will enter into good faith negotiations with TCE for: (i) the recovery of the OGS sunk costs; (ii) prudently incurred expenditures on the K-W peaking plant; and, (iii) the financial value of the OGS contract.

During our telephone call I misspoke when I said that the provincial government would enact a regulation to exempt the project from the *Planning Act*. It will not do so.

We would like to receive a draft of this second counter-proposal before 10am tomorrow. If this isn't possible, please let me know in advance.

Thank you,

Michael

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 2:34 PM
To: Colin Andersen
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette
Subject: Slide Deck for Tomorrow's Board Meeting
Attachments: OGS_BOD_CM_20110420 v1.pptx

Importance: High

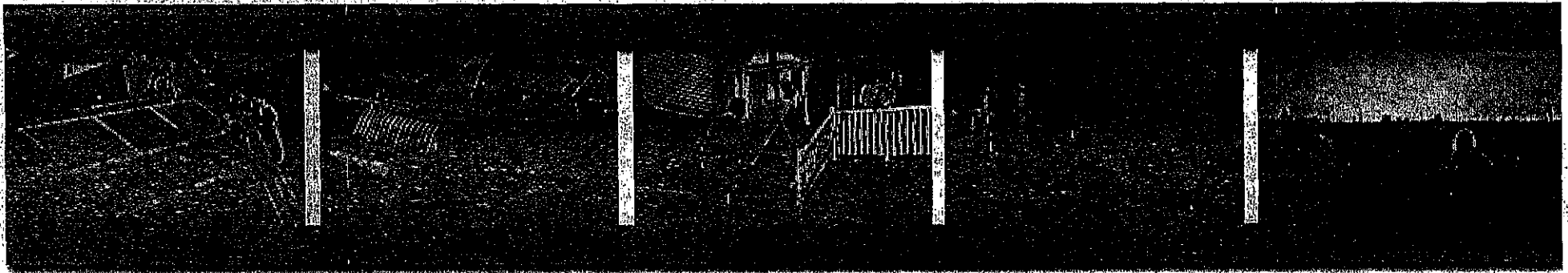
Colin, here are our proposed slides for tomorrow's meeting. John has promised to send them out today so if you have any changes, please let him know.

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

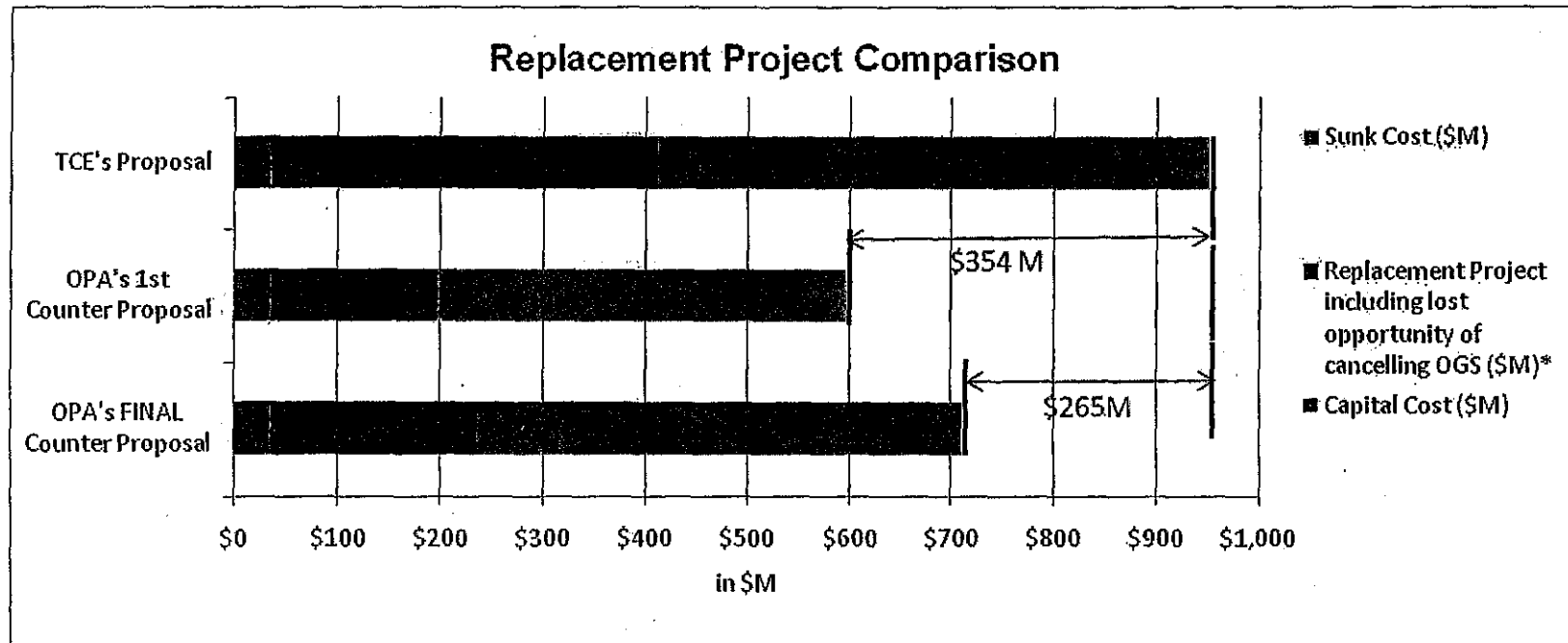
- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
- TCE's approach of "divide and conquer" has worked as Government is now integrally involved and being heavily lobbied by GR rep from TransCanada.
- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal.
- We believe that this proposal closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.
- TCE has sent letter from their litigation counsel on April 19 asking to sit down with our internal counsel to determine the appropriate dispute mechanism for resolving the matter. TCE remains willing to discuss alternatives, but not willing to suspend the formal process.

OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April 21, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Extension	25 Years	25 Years	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. - Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years - no returns	Amortize over 25 years - no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent - Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Quantum Comparison

	SUNK COSTS (\$M)	OGS LOST OPPORTUNITY (\$M)	CAPITAL EXPENDITURES (\$M)	GAP (\$M)
TCE Proposal	37	375	540	
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Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Next Steps

- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – legal teams will determine appropriate mechanism to resolve the matter. However, we have lost our leverage to try and get the dispute mechanisms on the table first.
- Reasonable probability that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 4:54 PM
To: Colin Andersen
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette; Michael Lyle
Subject: RE: Slide Deck for Tomorrow's Board Meeting
Attachments: OGS_BOD_CM_20110420 v1.pptx

John,

Here are the revised slides with typos fixed and have addressed all of Colin's comments except for the last point. We will look at that in the Exec Committee tomorrow. Thanks...

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: Colin Andersen
Sent: Martes, 19 de Abril de 2011 03:27 p.m.
To: JoAnne Butler
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette
Subject: RE: Slide Deck for Tomorrow's Board Meeting

2 typos p 3 – "Extention" row 3, col2, and "howp ever" row 7, col 5

Add the share over/under to the \$475m cap ex box

How are we addressing the Boards confusion from strategy day?

What about "Sean's way" – I'm guessing Jim will ask – variation on "walkaway" (sunk cost +turbines+lost profit = money for nothing) vs "all in for ratepayer" (same but adds in KW as still have to do a KW plant eventually) – noting that in both cases the turbine cost will be < 215 since they will be sold/repurposed for something on the dollar

Colin Andersen
Chief Executive Officer

Ontario Power Authority
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F: 416 969 6380

colin.andersen@powerauthority.on.ca

www.powerauthority.on.ca

Please consider your environmental responsibility before printing this email

From: JoAnne Butler
Sent: Tuesday, April 19, 2011 2:34 PM
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Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette
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Importance: High

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

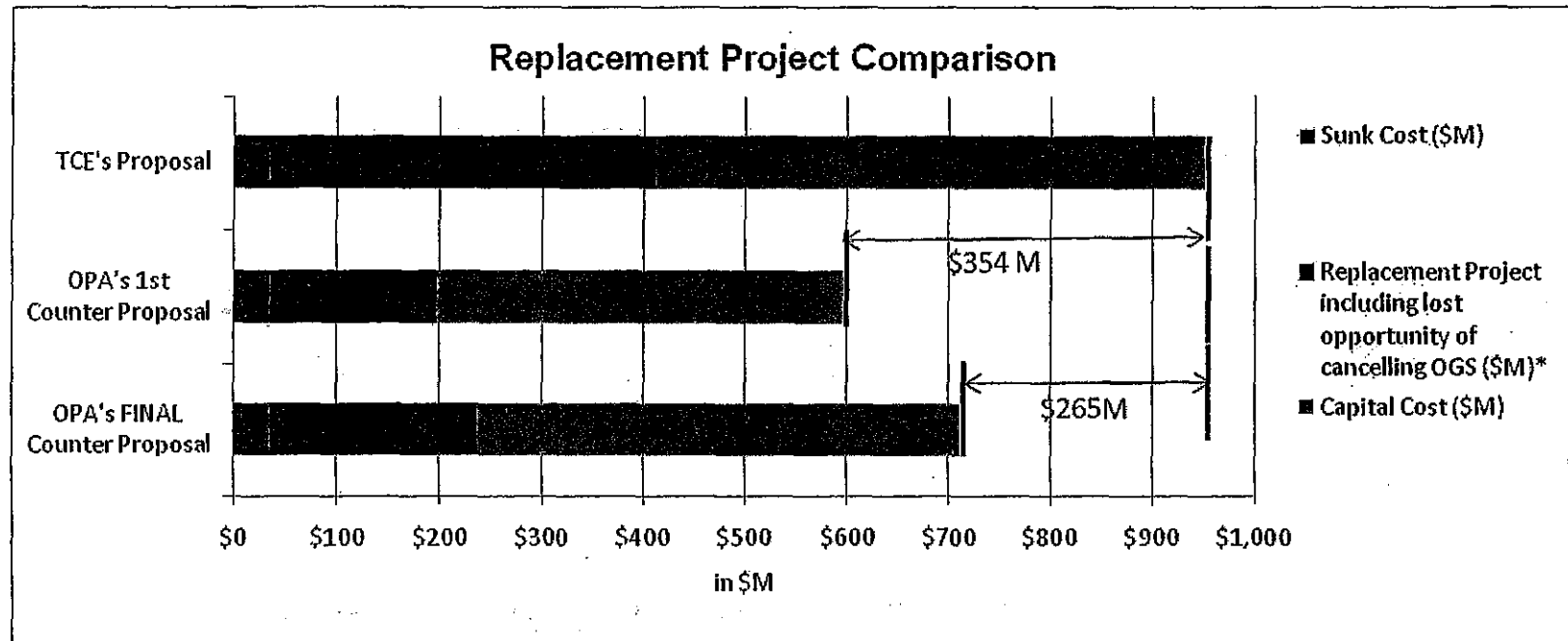
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Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Proposal covers OGS and KWCG profits, no double dipping

Next Steps

- Send out new counter proposal.
- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – legal teams will determine appropriate mechanism to resolve the matter. However, we have lost our leverage to try and get the dispute mechanisms on the table first.
- Reasonable probability that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.
- Send out strongly worded letter (prepared) to TCE indicating that they have breached their terms of the confidentiality agreement with us and are not negotiating in good faith.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 8:19 PM
To: Susan Kennedy; pivanoff@osler.com; Sebastiano, Rocco; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes
Attachments: SWGTA Contract Potential Outcomes 19 Apr 2011.ppt; SWGTA Scenarios 19 Apr 2011.xlsx

Importance: High

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

There has been a lot of discussion about the possible outcomes of the settlement discussions with TCE by certain persons not directly involved in these settlement discussions. Sadly, most of this discussion has been uninformed. I have prepared the attached slide that sets out a few different scenarios along with their approximate cost to the ratepayer. This graphical depiction is only intended to show the relative magnitude of the impact for each outcome to the ratepayer. Furthermore, it is not an exhaustive listing of the potential outcomes.

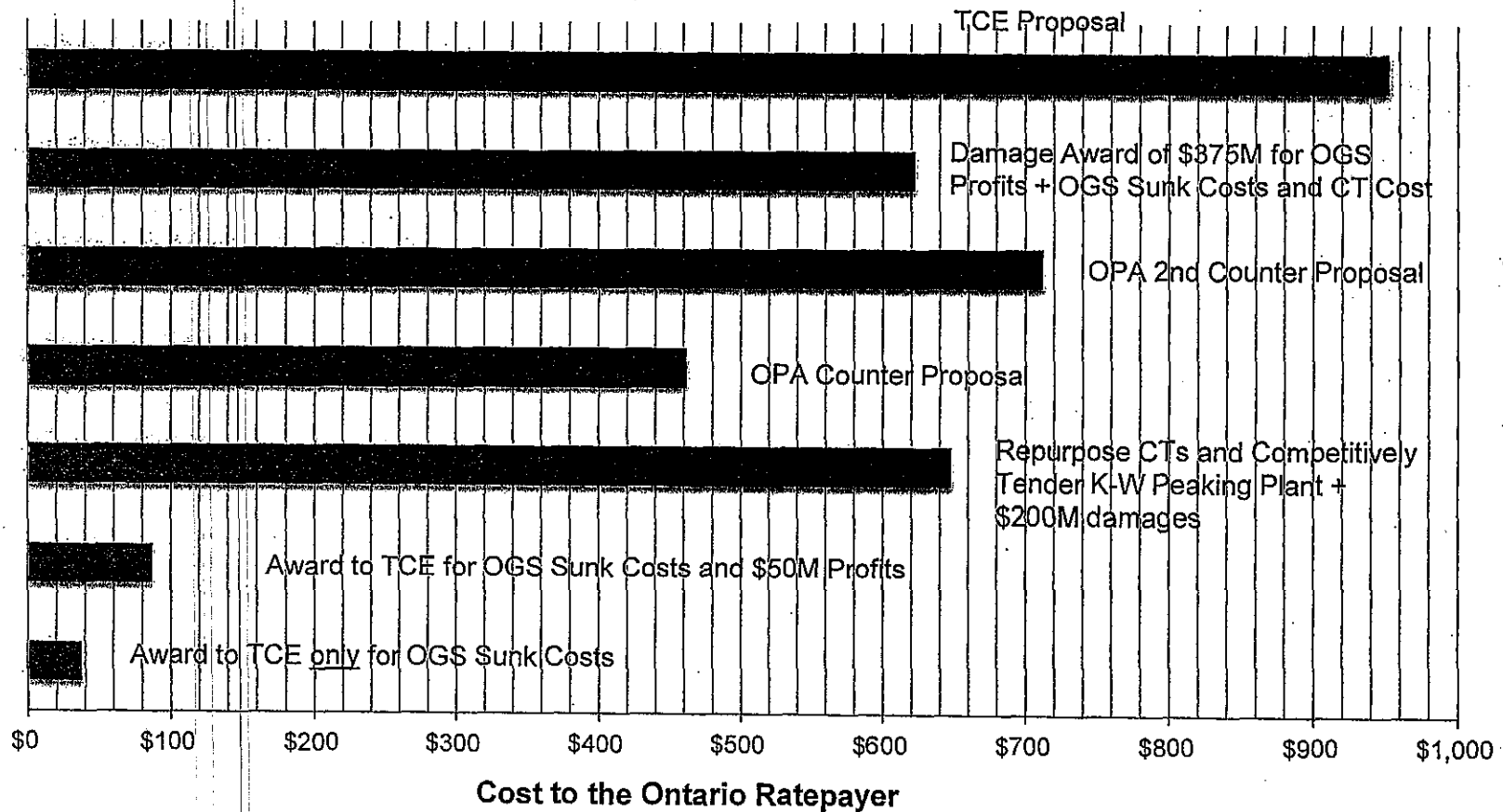
What might not be obvious to those not involved directly in the discussions is that acceptance of TCE's original proposal to settle is the worst possible outcome for the ratepayer. It appears that our second counter-proposal is the next worst outcome for the ratepayer. This slide might help the Board and other decision-makers in their deliberations with regard to their decision on sending TCE the second counter-proposal.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Potential Outcomes

SWGTA Outcome Scenarios



■ OGS Sunk

■ CT Cost

■ CAPEX

■ OGS Financial Value

Privileged and Confidential – Prepared in Contemplation of Litigation



Aleksandar Kojic

From: John Zych
Sent: April 19, 2011 8:22 PM
To: Colin Andersen; ceb1618@aol.com; jim.hinds@irish-line.com; jmichaelcostello@hotmail.com; rfitzgerald7@sympatico.ca; rfitzgerald7@sympatico.ca; ferrari@execulink.com; blourie@ivey.org; pjmon@yorku.ca; lynandneil@sympatico.ca
Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Irene Mauricette; Nimi Visram
Subject: BOARD TELECONFERENCE MEETING - WEDNESDAY, APRIL 20, 2010 AT 5:30 P.M., TORONTO TIME
Attachments: OGS_BOD_CM_20110420 v1.pptx

I wish to confirm that we will hold a Board teleconference meeting on Wednesday, April 20, 2010 at 5:30 p.m., Toronto time, on the subject of the Oakville generating station matter. It is expected to last about 45 minutes:

A slide deck is attached.

All Board members other than Lyn McLeod are expected to participate. (Lyn is away until April 26th and does not have access to e-mail, so I do not expect her to participate.)

This is an information matter, so there is no resolution. (If an OPA counter-offer to TransCanada Energy is agreed to by the Board and accepted by TransCanada Energy, an implementation agreement will be drafted by the parties, which our Board will be asked to approve before signing.)

The call-in number particulars are as follows:

Toll Free: 1-877-320-7617

OPA Board Members' Access Code: 6802847

If any of our Board members are in downtown Toronto at the time of the meeting, they should feel free to attend in person in the 16th Floor Boardroom, if they wish to do so.

John Zych
Corporate Secretary
Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto, ON M5H 1T1
416-969-6055
416-967-7474 Main telephone
416-967-1947 OPA Fax
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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

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Status

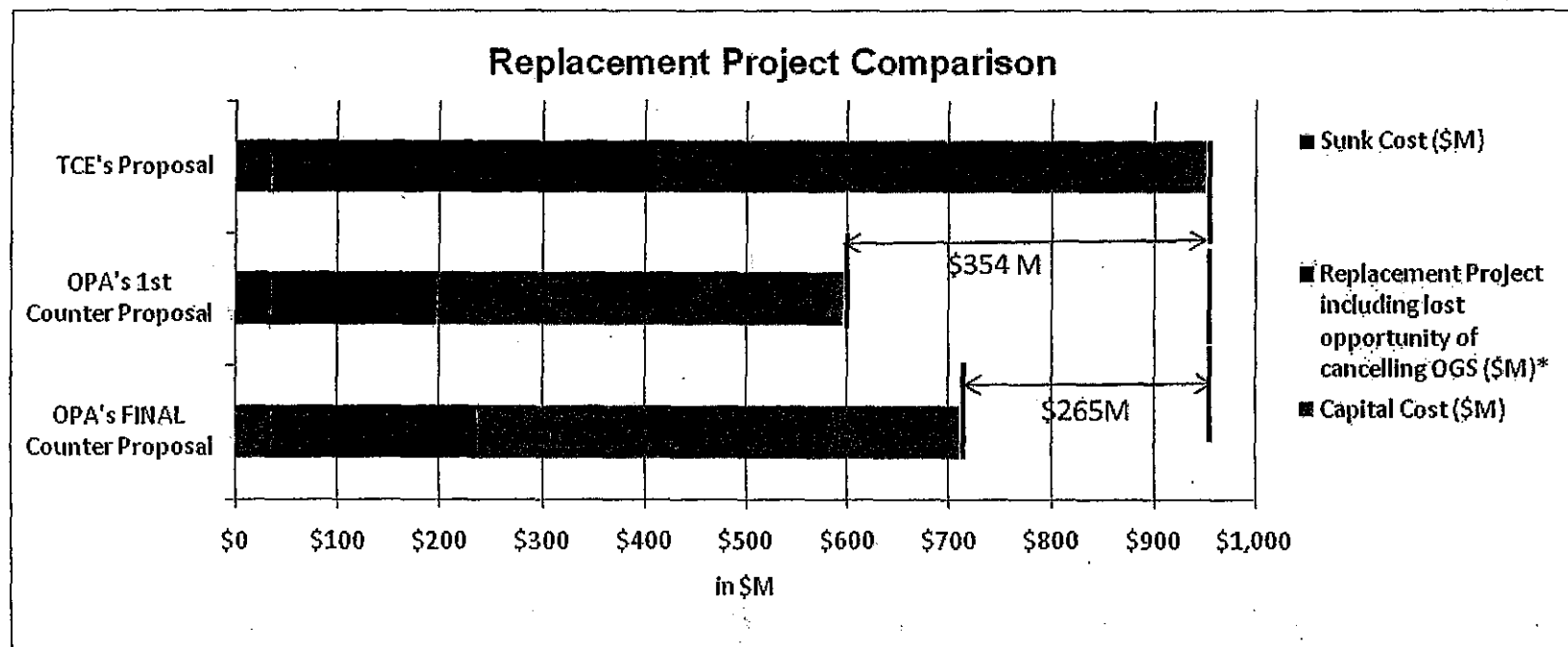
- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
- TCE's approach of "divide and conquer" has worked as Government is now integrally involved and being lobbied by Government Relations rep from TransCanada.
- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal.
- We believe that this proposal closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.
- TCE has sent letter from their litigation counsel on April 19 asking to sit down with our internal counsel to determine the appropriate dispute mechanism for resolving the matter. TCE remains willing to discuss alternatives, but not willing to suspend the formal process.

OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April 21, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Exemption	25 Years	25 Years	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. - Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years - no returns	Amortize over 25 years - no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent - Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$100mm; however, cannot really substantiate why. We are still proposing a target cost on CAPEX where there is a \$25 upper/lower band and then increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE, however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Quantum Comparison

	SUNK COSTS (\$M)	OGS LOST OPPORTUNITY (\$M)	CAPITAL EXPENDITURES (\$M)	GAP (\$M)
TCE Proposal	37	375	540	
OPA's First Proposal	37	160	400	354
OPA's Final Proposal	37	200	475	265



Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Proposal covers OGS and KWCG profits, no double dipping

Next Steps

- Send out new counter proposal.
- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – legal teams will determine appropriate mechanism to resolve the matter. However, we have lost our leverage to try and get the dispute mechanisms on the table first.
- Reasonable probability that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.
- Send out strongly worded letter (prepared) to TCE indicating that they have breached their terms of the confidentiality agreement with us and are not negotiating in good faith.

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: April 19, 2011 8:40 PM
To: Michael Killeavy
Subject: RE: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes

Elliot and I just called you to make a couple of observations on the slides. Can you please call me at my office at 416-862-5859. Thanks, Rocco

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, April 19, 2011 8:19 PM
To: Susan Kennedy; Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes
Importance: High

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

There has been a lot of discussion about the possible outcomes of the settlement discussions with TCE by certain persons not directly involved in these settlement discussions. Sadly, most of this discussion has been uninformed. I have prepared the attached slide that sets out a few different scenarios along with their approximate cost to the ratepayer. This graphical depiction is only intended to show the relative magnitude of the impact for each outcome to the ratepayer. Furthermore, it is not an exhaustive listing of the potential outcomes.

What might not be obvious to those not involved directly in the discussions is that acceptance of TCE's original proposal to settle is the worst possible outcome for the ratepayer. It appears that our second counter-proposal is the next worst outcome for the ratepayer. This slide might help the Board and other decision-makers in their deliberations with regard to their decision on sending TCE the second counter-proposal.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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Michael.killeavy@powerauthority.on.ca

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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: April 19, 2011 9:15 PM
To: Susan Kennedy; Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED
Attachments: SWGTA Contract Potential Outcomes 19 Apr 2011.ppt; SWGTA Scenarios 19 Apr 2011.xlsx

Importance: High

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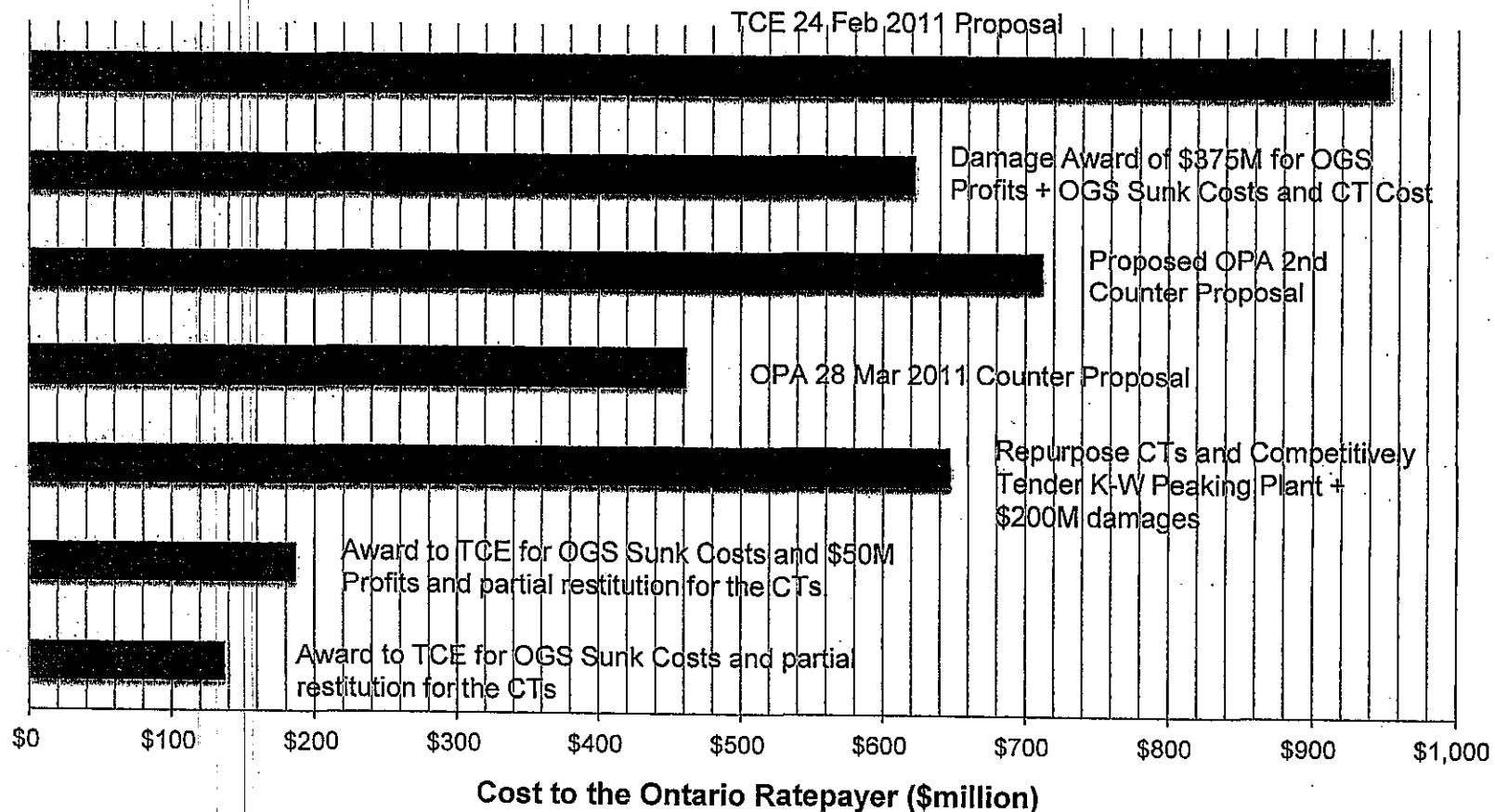
I had a brief teleconference with Rocco and Elliot this evening and they made a few suggestions, which I have incorporated into the attached slide and spreadsheet. Their suggestions do not affect the conclusions that I set out in my previous email this evening.

I can make any other desired changes tomorrow.

Michael Killeavy, LL.B., MBA, P.Eng.
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Michael.killeavy@powerauthority.on.ca

Potential Outcomes

SWGTA Outcome Scenarios



■ OGS Sunk ■ CT Cost ■ CAPEX ■ OGS Financial Value

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 9:18 PM
To: Michael Killeavy
Subject: Re: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED

Just looking at it right now...looks good...we can discuss tomorrow...

JCB

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

From: Michael Killeavy
Sent: Tuesday, April 19, 2011 09:15 PM
To: Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com
<pivanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED

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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 9:19 PM
To: JoAnne Butler
Subject: Re: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED

It looks career ending for us

Michael Killeavy, LL.B., MBA, P.Eng.
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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: JoAnne Butler
Sent: Tuesday, April 19, 2011 09:17 PM
To: Michael Killeavy
Subject: Re: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED
.....

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JCB

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

From: Michael Killeavy
Sent: Tuesday, April 19, 2011 09:15 PM
To: Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com
<pivanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - REVISED

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 7:25 AM
To: Susan Kennedy; Sebastiano, Rocco; Smith, Elliot; pivanoff@osler.com
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - SECOND REVISION
Attachments: SWGTA Contract Potential Outcomes 20 Apr 2011.ppt; SWGTA Contract Potential Outcomes 19 Apr 2011.ppt
Importance: High

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

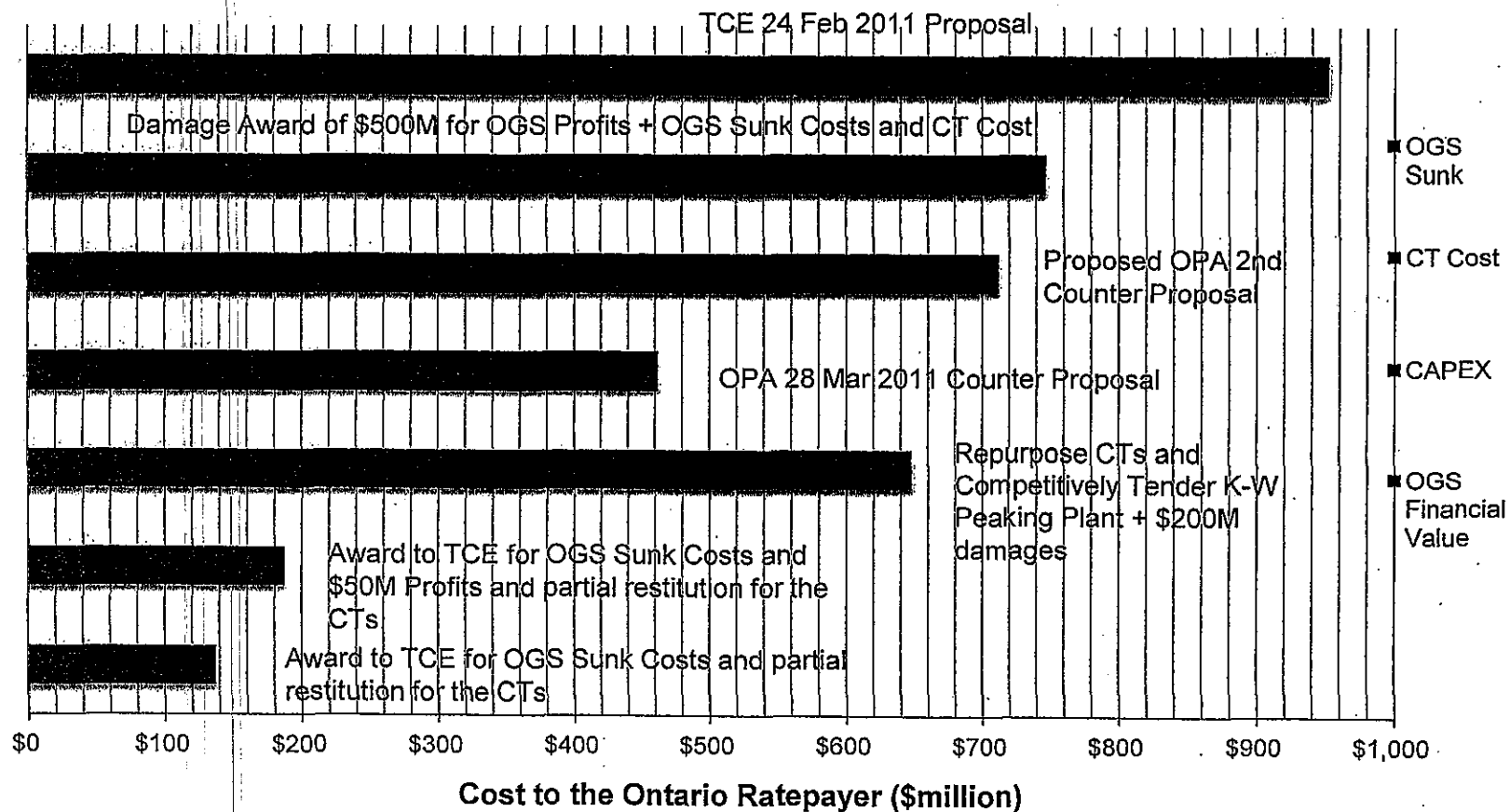
I reviewed what I did last night and I made a revision to the second scenario from the top - TCE is successful at litigation or arbitration and receives a damage award for the OGS sunk costs, including the CTs, and financial value of the OGS contract ("worse case damage award"). I had estimated the financial value of the OGS contract at the proposed \$375M settlement from TCE. This likely isn't the worse case, so I re-did the graphic with the alleged financial value of the OGS contract (so far anyway) at \$500M. This means that the proposed second OPA counter-proposal is actually slightly better for the ratepayer than a worse case damage award if TCE were to agree with our proposed settlement.

Michael

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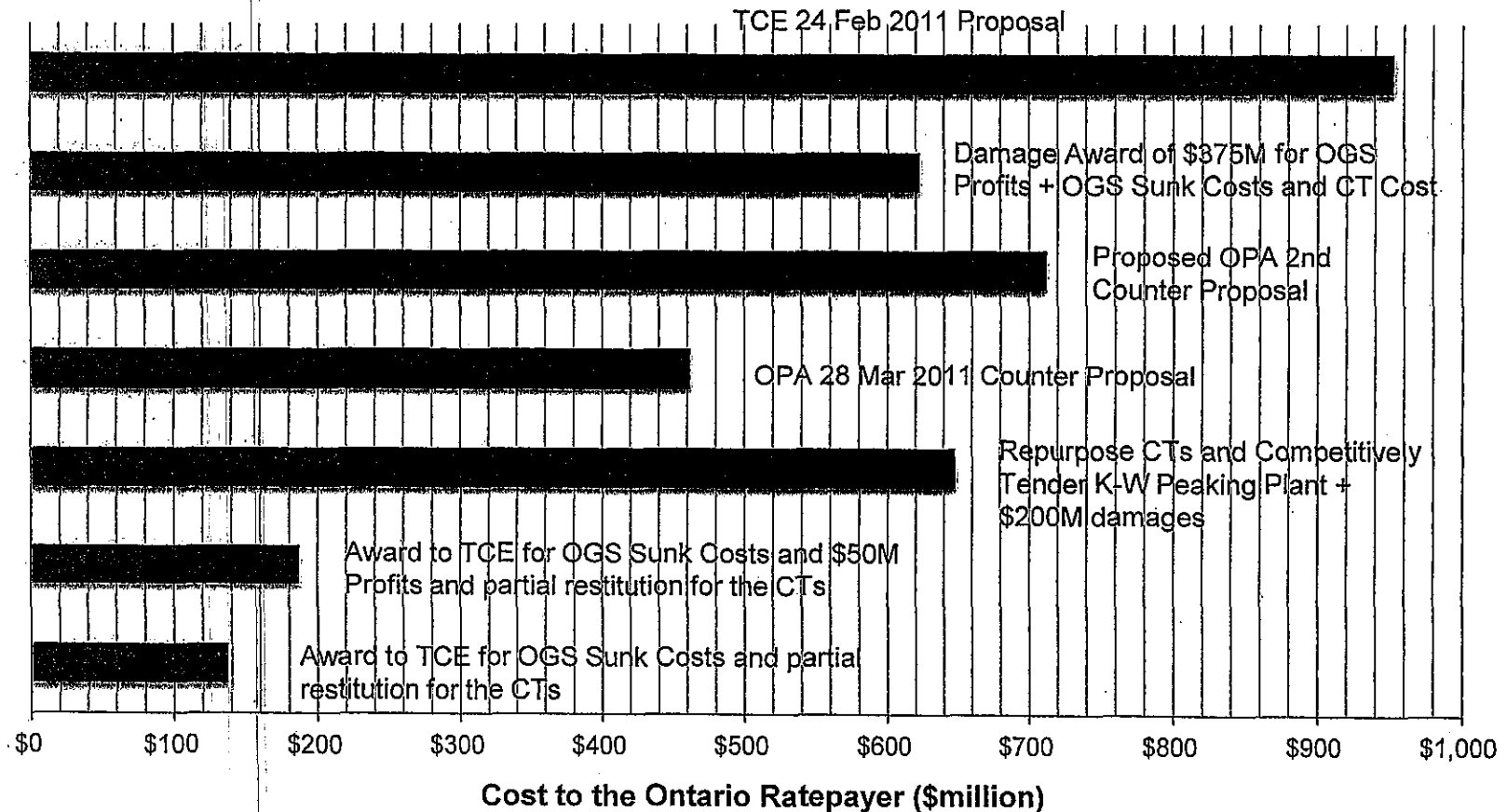
Potential Outcomes

SWGTA Outcome Scenarios



Potential Outcomes

SWGTA Outcome Scenarios



■ OGS Sunk ■ CT Cost ■ CAPEX ■ OGS Financial Value

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Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 20, 2011 3:23 PM
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul



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



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[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Alex Pourbaix
President, Energy and Oil Pipelines
TransCanada Energy Limited
450 – 1 Street, SW
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA") dated October 9, 2009

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement") and a letter agreement dated December 21, 2010 (the "MOU"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario's electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU states that "[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the "Definitive Agreement") in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE." The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE's acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 3:30 PM
To: 'PIvanoff@osler.com'
Subject: Re: OPA - TCE [Privileged and Confidential]

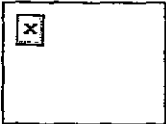
Good letter.

Michael Killeavy, LL.B., MBA, P.Eng.,
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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: Wednesday, April 20, 2011 03:23 PM
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul



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Partner

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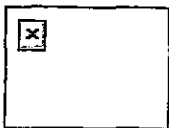
Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 20, 2011 4:16 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco; Ivanoff, Paul; Deborah Langelaan; JoAnne Butler; Susan Kennedy
Subject: Revised Second Proposal to TCE
Attachments: #20465379v2_LEGAL_1_ - Draft Second Project Proposal to TCE.DOC; WSComparison_#20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE-#20465379v2_LEGAL_1_ - Draft Second Project Proposal to TCE.pdf; Blackline to first counterproposal.pdf

All,

Please find attached a revised draft of the second counter-proposal to TCE, along with two blacklines – one to the first counter-proposal and one to the preceding draft we circulated (i.e. before Safouh's comments and the revised NRR-Capex factor were incorporated).

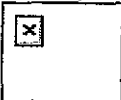
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
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Toronto, Ontario, Canada M5X 1B8



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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**
- (b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u>	[●] MW	[●] MW	[●] MW	[●] MW
Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW				
<u>10%ORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any

residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by ~~{0.000 012 681015 213 3}~~ multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production

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intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

~~[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?]~~

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of ~~[250 MW]~~ at 35-30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
- (b) be able to provide a minimum of ~~[500 MW]~~ at 35-30°C under N-2 System Conditions; [NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

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If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

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- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
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- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such

application that such limits be imposed as conditions of such Certificate of Approval.

- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

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SCHEDULE "B" – FINANCIAL PARAMETERS

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Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
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Start-Up Maintenance Cost	\$30,000/start-up
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	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
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SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

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OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

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- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by ~~{0.000 012 681 3}~~ 0.15 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
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Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the

Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

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The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

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The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, ~~or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.~~

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount ~~equal to a payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with~~ (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000 ~~plus \$37,000,000~~, (ii) ~~fifty percent of the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with~~ prudently incurred in the development of the Replacement Project. ~~TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR, and (iii) the anticipated financial value of the Contract.~~

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by ~~0.000 012 681015 213 3~~ multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
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6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a

Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of 250[● MW] at 35-30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; INTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.
- (b) be able to provide a minimum of 500[● MW] at 35-30°C under N-2 System Conditions; INTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is

not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 12,500 <u>14,922</u> / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	<u>500</u> 481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity	[●] MW	[●] MW	[●] MW	[●] MW
Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW				
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of ~~\$375,000,000~~ \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + \$25,000,000) × 0.50

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 ~~012-681015~~ 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the

Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 4:17 PM
To: 'ESmith@osler.com'
Cc: 'RSebastiano@osler.com'; 'PIvanoff@osler.com'; Deborah Langelaan; JoAnne Butler; Susan Kennedy
Subject: Re: Revised Second Proposal to TCE

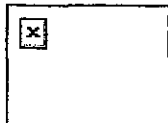
Thank you Elliot.

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: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Wednesday, April 20, 2011 04:15 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>; Deborah Langelaan; JoAnne Butler; Susan Kennedy
Subject: Revised Second Proposal to TCE

All,
Please find attached a revised draft of the second counter-proposal to TCE, along with two blacklines – one to the first counter-proposal and one to the preceding draft we circulated (i.e. before Safouh's comments and the revised NRR-Capex factor were incorporated).

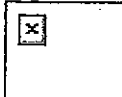
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



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Aleksandar Kojic

From: JoAnne Butler
Sent: April 20, 2011 7:34 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

I think that we got from the Board meeting to fold in elements of this letter, into a letter from counsel to counsel...can you please talk to Paul about this?

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

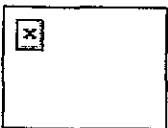
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul



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



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[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Alex Pourbaix
President, Energy and Oil Pipelines
TransCanada Energy Limited
450 – 1 Street, SW
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the “Contract”) between TransCanada Energy Ltd. (“TCE”) and Ontario Power Authority (the “OPA”) dated October 9, 2009

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the “Confidentiality Agreement”) and a letter agreement dated December 21, 2010 (the “MOU”). We are writing to you at this time to advise you of our concerns regarding TCE’s failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled “SW-GTA Update”. Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario’s electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU states that “[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the “Definitive Agreement”) in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE.” The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE’s acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Aleksandar Kojic

From: JoAnne Butler
Sent: April 20, 2011 7:35 PM
To: Colin Andersen
Cc: Michael Killeavy; Deborah Langelaan
Subject: FW: Revised Second Proposal to TCE
Attachments: #20465379v2_LEGAL_1_ - Draft Second Project Proposal to TCE.DOC; WSComparison_#20465379v1_LEGAL_1_ - Draft Second Project Proposal to TCE-#20465379v2_LEGAL_1_ - Draft Second Project Proposal to TCE.pdf; Blackline to first counterproposal.pdf

Here are the soft copies, but as discussed, there will be some minor changes...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

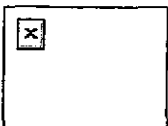
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Miércoles, 20 de Abril de 2011 04:16 p.m.
To: Michael Killeavy
Cc: Sebastiano, Rocco; Ivanoff, Paul; Deborah Langelaan; JoAnne Butler; Susan Kennedy
Subject: Revised Second Proposal to TCE

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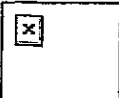
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
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Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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de le divulguer sans autorisation.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

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associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
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If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

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JoAnne Butler

- c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

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The Replacement Project shall:

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The Replacement Project will be a single generating facility and will:

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 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

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OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCB to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + \$25,000,000) × 0.50

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any

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residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by ~~{0.000 012 684015 213 3}~~ multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production

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intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

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Michael Killeavy, *Ontario Power Authority*
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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

~~[NTD: In light of the change to the AACC to 481 MW, should the capacity figures in (a), (b) and (c) below also be revised to reflect TCE's comments about the capabilities of the CTG's?]~~

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of ~~[250 MW]~~ at 35-30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
- (b) be able to provide a minimum of ~~[500 MW]~~ at 35-30°C under N-2 System Conditions; [NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such

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application that such limits be imposed as conditions of such Certificate of Approval.

- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
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	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
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SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

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OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

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- (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by ~~{0.000 012 681 3}~~ 0.015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

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3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
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Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

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Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination ~~amount equal to~~payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000 ~~plus \$37,000,000~~, (ii) ~~fifty percent of the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with~~prudently incurred in the development of the Replacement Project. ~~TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR, and~~ (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by ~~0.000 012 681 015 213 3~~ multiplied by the amount by which such costs are less than \$37,000,000.
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Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of 250[● MW] at 35-30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
- (b) be able to provide a minimum of 500[● MW] at 35-30°C under N-2 System Conditions; [NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be~~
 - ~~(i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is

not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 12,500<u>14,922</u> / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500<u>481</u> MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of ~~\$375,000,000~~ \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by ~~0.000 012 681 015 213~~ 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]
4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the

Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 7:42 PM
To: Michael Lyle
Subject: Fw: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

Was this your understanding?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
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416-969-6288 (office)
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Michael.killeavy@powerauthority.on.ca

From: JoAnne Butler
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To: Michael Killeavy
Cc: Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]

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JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

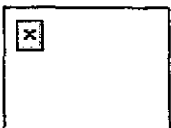
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From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
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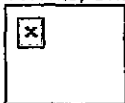
Regards,
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Paul Ivanoff
Partner

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[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Alex Pourbaix
President, Energy and Oil Pipelines
TransCanada Energy Limited
450 – 1 Street, SW
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the “Contract”) between TransCanada Energy Ltd. (“TCE”) and Ontario Power Authority (the “OPA”) dated October 9, 2009

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the “Confidentiality Agreement”) and a letter agreement dated December 21, 2010 (the “MOU”). We are writing to you at this time to advise you of our concerns regarding TCE’s failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled “SW-GTA Update”. Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario’s electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU states that “[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the “Definitive Agreement”) in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE.” The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE’s acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Draft & Privileged

Aleksandar Kojic

From: Michael Lyle
Sent: April 20, 2011 7:45 PM
To: Michael Killeavy
Subject: Re: OPA - TCE [Privileged and Confidential]

No but I think we got that from the call with Craig. We are still going to have to loop back with Colin.

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 07:42 PM
To: Michael Lyle
Subject: Fw: OPA - TCE [Privileged and Confidential]

Was this your understanding?

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To: JoAnne Butler; Michael Killeavy

Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

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Regards,
Paul



Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 7:46 PM
To: JoAnne Butler
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Could we discuss this with Colin tomorrow?

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Sent: April 20, 2011 7:48 PM
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Cc: Deborah Langelaan; Michael Lyle
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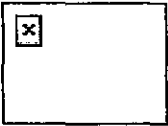
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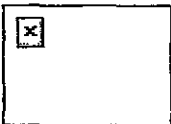
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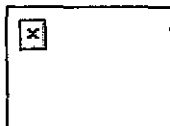
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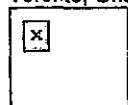
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Aleksandar Kojic

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To: Michael Killeavy
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Sure...

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 07:46 PM
To: JoAnne Butler
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Could we discuss this with Colin tomorrow?

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: JoAnne Butler
Sent: Wednesday, April 20, 2011 07:34 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]

I think that we got from the Board meeting to fold in elements of this letter, into a letter from counsel to counsel...can you please talk to Paul about this?

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

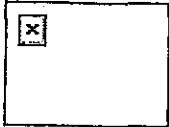
416-969-6005 Tel.
416-969-6071 Fax
joanne.butler@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy

Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul



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



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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: April 21, 2011 9:55 AM
To: JoAnne Butler; Colin Andersen; Brett Baker; Michael Lyle
Cc: Deborah Langelaan
Subject: TCE Matter - Government-Instructed Counter-Proposal to TCE
Attachments: #20465379v3_LEGAL_1_ - Draft Second Project Proposal to TCE.doc

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

Attached is an updated version of the counter-proposal with the revisions discussed last evening incorporated into the draft. Please note that this updated document has not yet been reviewed by our litigation counsel.

Michael

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416-520-9788 (CELL)
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in Colin's my October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages

associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
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5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

~~JoAnne Butler~~ Colin Andersen

- c. ~~Colin Andersen~~ JoAnne Butler, Ontario Power Authority
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
- (b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; [NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NO_x and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50, \text{ provided that the OPA Share shall not exceed } \$25,000,000$$
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 10:09 AM
To: Susan Kennedy
Subject: Fw: TCE Matter - Government-Instructed Counter-Proposal to TCE
Attachments: #20465379v3_LEGAL_1_ - Draft Second Project Proposal to TCE.doc

FYI ..

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

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- (a) be a dispatchable facility designed for maximum operational flexibility;
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 - (i) Nitrogen Oxides (NO_x) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NO_x and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NO_x and CO.
- (c) The Replacement Contract will require that the emission limits for NO_x and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NO_x and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

Draft & Privileged

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u>	[●] MW	[●] MW	[●] MW	[●] MW
Note: Subject to Schedule "A" TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW				
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Draft & Privileged

Aleksandar Kojic

From: Deborah Langelaan
Sent: April 21, 2011 10:17 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Cc: 'Elliot Smith (esmith@osler.com)'; Michael Killeavy
Subject: Government-Instructed Counter-Proposal to TCE
Attachments: OPA_Ltr_TCE_Govt_Proposal_20110421.doc

Importance: High

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

Rocco and Paul;

Attached is an updated version of the counter-proposal document with a couple of minor revisions that were discussed last evening (i.e. letter signed by Colin rather than JoAnne). Would you please review and provide your comments?

Thanks,

Deb



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Toronto, Ontario M5H 1T1
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F 416-967-1947
www.powerauthority.on.ca

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in my October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate ~~TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the~~ "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties

Ontario Power Authority

in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all ~~out-of-pocket~~ reasonable costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

Colin Andersen

cc: JoAnne Butler, Andersen, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: April 21, 2011 10:57 AM
To: Deborah Langelaan; Michael Killeavy
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy
Subject: RE: Government-Instructed Counter-Proposal to TCE

Deb and Michael, was there a specific reason for changing the words "out-of-pocket" have been replaced with "reasonable" in reference to the reimbursement of costs incurred by TCE for the gas and electrical interconnection? For purposes of the proposal, this change is not a problem or material in the context of the entire proposal (albeit, this would let TCE charge its internal costs and possibly, a mark-up for overhead), but was wondering if there was a reason for the change.

Have there been any changes to the Schedules? There were a couple of notes to draft which were still in the proposal document that we sent over yesterday afternoon.

Lastly, the in first cc, delete "Anderson" as it reads "JoAnne Butler, Andersen,".

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Sent: Thursday, April 21, 2011 10:17 AM
To: Sebastiano, Rocco; Ivanoff, Paul
Cc: Smith, Elliot; Michael Killeavy
Subject: Government-Instructed Counter-Proposal to TCE
Importance: High

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 11:02 AM
To: 'Sebastiano, Rocco'
Subject: RE: Government-Instructed Counter-Proposal to TCE

Colin suggested it.

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)
416-967-1947 (FAX)

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Aleksandar Kojic

From: Deborah Langelaan
Sent: April 21, 2011 11:07 AM
To: 'Sebastiano, Rocco'; Michael Killeavy
Cc: 'Smith, Elliot'; 'Ivanoff, Paul'; Susan Kennedy
Subject: RE: Government-Instructed Counter-Proposal to TCE
Attachments: OPA_Ltr_TCE_Govt_Proposal_20110421 (w schedules).doc

This time with Schedules attached - no changes were made to the Schedules.

Deb

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Sent: April 21, 2011 10:57 AM
To: Deborah Langelaan; Michael Killeavy
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy
Subject: RE: Government-Instructed Counter-Proposal to TCE

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

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Ontario Power Authority

in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

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Yours very truly,

Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**
- (b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**
- (c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NO_x) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NO_x and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NO_x and CO.
- (c) The Replacement Contract will require that the emission limits for NO_x and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NO_x and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]
4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.
5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 11:35 AM
To: 'RSebastiano@osler.com'; Deborah Langelaan
Cc: 'ESmith@osler.com'; 'PIvanoff@osler.com'; Susan Kennedy
Subject: Re: Government-Instructed Counter-Proposal to TCE

We'll change it to "... reasonable out-of-pocket"

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: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Thursday, April 21, 2011 10:57 AM
To: Deborah Langelaan; Michael Killeavy
Cc: Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>; Susan Kennedy
Subject: RE: Government-Instructed Counter-Proposal to TCE

Deb and Michael, was there a specific reason for changing the words "out-of-pocket" have been replaced with "reasonable" in reference to the reimbursement of costs incurred by TCE for the gas and electrical interconnection? For purposes of the proposal, this change is not a problem or material in the context of the entire proposal (albeit, this would let TCE charge its internal costs and possibly, a mark-up for overhead), but was wondering if there was a reason for the change.

Have there been any changes to the Schedules? There were a couple of notes to draft which were still in the proposal document that we sent over yesterday afternoon.

Lastly, the in first cc, delete "Anderson" as it reads "JoAnne Butler, Andersen,".

Also, I gather that the other letter is not going to be sent out.

Thanks, Rocco

From: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Thursday, April 21, 2011 10:17 AM
To: Sebastiano, Rocco; Ivanoff, Paul
Cc: Smith, Elliot; Michael Killeavy
Subject: Government-Instructed Counter-Proposal to TCE
Importance: High

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

Rocco and Paul;

Attached is an updated version of the counter-proposal document with a couple of minor revisions that were discussed last evening (i.e. letter signed by Colin rather than JoAnne). Would you please review and provide your comments?

Thanks,

Deb

This e-mail message is privileged, confidential and subject to
copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et
soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

Aleksandar Kojic

From: Deborah Langelaan
Sent: April 21, 2011 12:08 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Cc: 'Smith, Elliot'; Michael Killeavy; JoAnne Butler; Cathy Schell
Subject: Final - Gov't Instructed Counter-Proposal to TCE
Attachments: OPA_Ltr_TCE_Govt_Proposal_20110421 (w schedules).doc

Importance: High

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

Rocco and Paul;

Attached is the final version of the counter proposal that will be sent to Alex today.

Deb



120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in my October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties

Ontario Power Authority

in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all reasonable, out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**
- (b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
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Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule A2 TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW	[●] MW	[●] MW	[●] MW	[●] MW
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50, \text{ provided that the OPA Share shall not exceed } \$25,000,000$$
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]
4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.
5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 12:12 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
....
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments of concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

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
416-520-9788 (CELL)
416-967-1947 (FAX)

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Alex Pourbaix
President, Energy and Oil Pipelines
TransCanada Energy Limited
450 – 1 Street, SW
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the “Contract”) between TransCanada Energy Ltd. (“TCE”) and Ontario Power Authority (the “OPA”) dated October 9, 2009

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the “Confidentiality Agreement”) and a letter agreement dated December 21, 2010 (the “MOU”). We are writing to you at this time to advise you of our concerns regarding TCE’s failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled “SW-GTA Update”. Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario’s electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. ~~In that regard, the MOU states that “[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the “Definitive Agreement”) in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE.”~~ The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE’s acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Draft & Privileged

Aleksandar Kojic

From: Deborah Langelaan
Sent: April 21, 2011 12:19 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Cc: 'Smith, Elliot'; Michael Killeavy; JoAnne Butler; Cathy Schell; Michael Lyle
Subject: Revised Final - Gov't Instructed Counter Proposal to TCE
Attachments: OPA_Ltr_TCE_Govt_Proposal_20110421 (w schedules).doc

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

Rocco and Paul;

The wrong contract capacity was used in the 2nd table on Schedule B. It has been corrected and the revised letter is attached.

Deb



120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in my October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate ~~TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project")~~. We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties

Ontario Power Authority

in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

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7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
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If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

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The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

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The Replacement Project will be a single generating facility and will:

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- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
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The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

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The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

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 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
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- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A" TCF to determine Seasonal Contract Capacities so long as the AACC is 481 MW	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule “B” is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the “Target Capex”). So long as the actual cost to design and build the Replacement Project (the “Actual Capex”) is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B” other than the NRR shall be subject to adjustment pursuant to this Schedule “C”.

- (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA’s share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex – \$25,000,000) × 0.50, provided that the OPA Share shall not exceed \$25,000,000

- (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA’s share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + \$25,000,000) × 0.50

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule “B”, plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule “B”.

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, “Interconnection Costs”, as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with “Good Engineering and Operating Practices” (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]

4. The determination of the Actual Capex shall be done through an “open book” process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.
5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 12:55 PM
To: 'Sebastiano, Rocco'; 'Smith, Elliot'; 'Ivanoff, Paul'
Cc: Deborah Langelaan
Subject: FW: TCE Contract
Attachments: TCE Contract (April 21, 2011).pdf

Please see below. The attached document was sent 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
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Irene Mauricette **On Behalf Of** Colin Andersen
Sent: April 21, 2011 12:51 PM
To: Alex Pourbaix (alex.pourbaix@transcanada.com)
Cc: Colin Andersen; Irene Mauricette; JoAnne Butler; Michael Killeavy
Subject: TCE Contract

Please see attached.

Colin Andersen
Chief Executive Officer

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

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

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Ontario Power Authority

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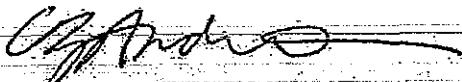
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Ontario Power Authority

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<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 481 MW.	[●] MW	[●] MW	[●] MW	[●] MW
<u>10mORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
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$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
provided that the OPA Share shall not exceed \$25,000,000
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 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
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<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
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4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.
5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 21, 2011 12:58 PM
To: Michael Killeavy
Subject: Fw: TCE Contract
Attachments: TCE Contract (April 21, 2011).pdf

Please resend on to the rest of the team as you deem appropriate.

JCB

From: Colin Andersen
Sent: Thursday, April 21, 2011 12:50 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com) <alex_pourbaix@transcanada.com>
Cc: Colin Andersen; Irene Mauricette; JoAnne Butler; Michael Killeavy
Subject: TCE Contract

Please see attached.

Colin Andersen
Chief Executive Officer

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

Direct: 416 969 6010
FAX: 416 969 6380
Web: www.powerauthority.on.ca



PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix: 

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

As stated in my October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). ~~We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.~~

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties

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in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR).

In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

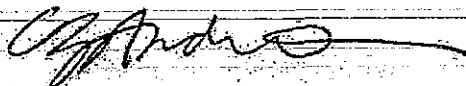
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5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.
8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.
9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,



Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

- (a) be a dispatchable facility designed for maximum operational flexibility;
- (b) be a simple cycle configuration generating facility;
- (c) utilize natural gas supplied by pipeline as the fuel; and
- (d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
- (b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; [NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]
- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. [Note: This assumes the Replacement Project is located at the Boxwood site.]

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) ~~The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.~~
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" - FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 481 MW.	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
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$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 2:06 PM
To: Ronak Mozayyan
Subject: FW: TCE Contract
Attachments: TCE Contract (April 21, 2011).pdf

FYI ...

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)
416-967-1947 (FAX)

From: Irene Mauricette **On Behalf Of** Colin Andersen
Sent: April 21, 2011 12:51 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com)
Cc: Colin Andersen; Irene Mauricette; JoAnne Butler; Michael Killeavy
Subject: TCE Contract

Please see attached.

Colin Andersen
Chief Executive Officer

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

Direct: 416 969 6010
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Web: www.powerauthority.on.ca



PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

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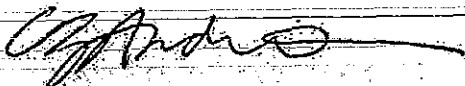
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Ontario Power Authority

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

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If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

- (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
- (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
- (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
- (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 14,922 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	481 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine	[●] MW	[●] MW	[●] MW	[●] MW
Seasonal Contract Capacities so long as the AACC is 481 MW.				
<u>10mORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of \$475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within \$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".
 - (a) If the Actual Capex is more than \$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} - \$25,000,000) \times 0.50$$
, provided that the OPA Share shall not exceed \$25,000,000
 - (b) If the Actual Capex is less than \$25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

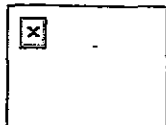
$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	USD\$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD\$[36,295,000]
Costs of Hedging USD to CAD	CAD\$[13,500,000]
4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.
5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: April 21, 2011 5:17 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (Osler letterhead) April 21 2011 20472672_5.doc

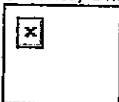
Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.



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: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
Importance: High

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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
416-520-9788 (CELL)
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de le divulguer sans autorisation.

Toronto

Montréal

Ottawa

Calgary

New York

April 21, 2011

Paul A. Ivanoff
Direct Dial: 416.862.4223
pivanoff@osler.com
Our Matter Number: 1126205

SENT BY FACSIMILE

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

Dear Mr. Barrack:

**Southwest GTA Clean Energy Supply Contract (the "Contract") between
TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA")
dated October 9, 2009**

We are in receipt of your letter dated April 19, 2011, which the OPA forwarded to us.

The OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under the Confidentiality Agreement. We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, you sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and refrain from any further discussions with the Government of Ontario or others on matters that are the subject of the Confidentiality Agreement. We are hereby putting TCE on notice that the OPA reserves all of its rights and remedies against TCE respecting the actions referred to above.

Draft & Privileged

Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

Aleksandar Kojic

From: Michael Lyle
Sent: April 21, 2011 5:23 PM
To: Michael Killeavy; 'PIvanoff@osler.com'; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Ok with content. Want before it goes out to loop back with Colin on Monday morning re his discussion with Minister's Office on their role going forward.

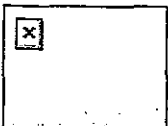
From: Michael Killeavy
Sent: Thursday, April 21, 2011 05:21 PM
To: 'PIvanoff@osler.com' <PIvanoff@osler.com>; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com' <RSebastiano@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>
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I am fine with this. Susan and Mike are alright with it?

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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To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
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Partner

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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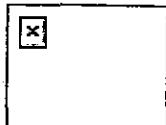
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Sent: April 21, 2011 5:31 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Okay, thanks Mike. We'll wait to hear from you.

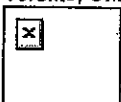
Regards,



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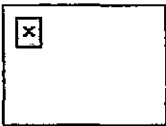
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From: Michael Lyle
Sent: April 25, 2011 8:48 AM
To: Michael Killeavy
Subject: FW: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (Osler letterhead) April.21 2011 20472672_5.doc

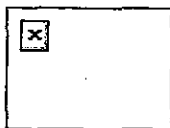
Can you meet with Colin and I re this letter in my office at 11 this morning?

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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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

April 21, 2011.

Montréal

Paul A. Ivanoff
Direct Dial: 416.862.4223
pivanoff@osler.com
Our Matter Number: 1126205

Ottawa

SENT BY FACSIMILE

Calgary

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

New York

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

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Draft & Privileged

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Paul A. Ivanoff
Ples

c: Colin Andersen, *OPA*
JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Draft & Privileged

Aleksandar Kojic

From: Michael Lyle
Sent: April 25, 2011 10:40 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

He is actually early. Can you phone in now?

From: Michael Killeavy
Sent: Monday, April 25, 2011 08:51 AM
To: Michael Lyle
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Understood.

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: Michael Lyle
Sent: Monday, April 25, 2011 08:50 AM
To: Michael Killeavy
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

969-6035. I cannot guarantee that Colin will be precisely on time.

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

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From: Michael Killeavy

Sent: April 25, 2011 8:50 AM

To: Michael Lyle

Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

I'm off today. I can dial in, though. I don't have my telephone directory handy - what's your office telephone number please?

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: Michael Lyle

Sent: Monday, April 25, 2011 08:48 AM

To: Michael Killeavy

Subject: FW: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Can you meet with Colin and I re this letter in my office at 11 this morning?

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

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From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]

Sent: April 21, 2011 5:17 PM

To: Michael Killeavy; Susan Kennedy; Michael Lyle

Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot

Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.



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: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments of concerns with these changes.

~~We plan to send the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.~~

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
416-520-9788 (CELL)
416-967-1947 (FAX)

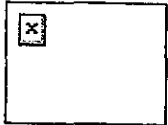
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de le divulguer sans autorisation.

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 25, 2011 2:09 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]
Attachments: Letter to Michael Barrack April 25, 2011 20041578_1.pdf

Attached is a copy of the letter sent this afternoon to counsel for TCE.



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 Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]
Sent: Thursday, April 21, 2011 5:23 PM
To: Michael Killeavy; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Ok with content. Want before it goes out to loop back with Colin on Monday morning re his discussion with Minister's Office on their role going forward.

From: Michael Killeavy
Sent: Thursday, April 21, 2011 05:21 PM
To: 'PIvanoff@osler.com' <PIvanoff@osler.com>; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com' <RSebastiano@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

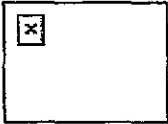
I am fine with this. Susan and Mike are alright with it?

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

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Thursday, April 21, 2011 05:16 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

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Paul Ivanoff
Partner

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To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
Importance: High

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

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1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments or concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

Thanks,
Michael

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416-520-9788 (CELL)
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416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

April 25, 2011

Montréal

Paul A. Ivanoff
Direct Dial: 416.862.4223
pivanoff@osler.com
Our Matter Number: 1126205

Ottawa

SENT BY FACSIMILE

Calgary

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

New York

Mr. Michael E. Barrack
Thornton Groat Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

Dear Mr. Barrack:

**Southwest GTA Clean Energy Supply Contract (the "Contract") between
TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA")
dated October 9, 2009**

We are in receipt of your letter dated April 19, 2011, which the OPA forwarded to us.

The OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under the Confidentiality Agreement. We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, you sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and refrain from any further discussions with the Government of Ontario or others on matters that are the subject of the Confidentiality Agreement. We are hereby putting TCE on notice that the OPA reserves all of its rights and remedies against TCE respecting the actions referred to above.

OSLER

Page 2

Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

ORIGINAL SIGNED BY
PAULA A. IVANOFF

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
✓ JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Aleksandar Kojic

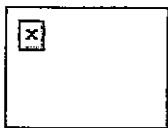
From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: April 26, 2011 7:44 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot
Subject: FW: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

In our discussions with TCE's counsel, as requested, we raised the good faith negotiations issue in connection with the terms of the MOU. Michael Barrick restated the assertion in his letter that his client embarked on these discussions with the Province at the urging of "senior representatives of the OPA". He suggested that TCE does not view their discussions with the Province as an attempt to circumvent the terms of the MOU.

It also appears from the letter that TCE wants to try to stop Osler from representing the OPA in any potential litigation or arbitration. They have alleged (without providing any specifics) that Osler has a conflict of interest that TCE is not willing to waive as it relates to litigation or arbitration. When we spoke to TCE's counsel, we asked him what he is referring to when he claims Osler has a "conflict of interest" in representing the OPA. He said he didn't have any specifics regarding this and would ask his client. For your information, TCE is not a client of the firm, and therefore Osler does not have a conflict in representing the OPA in this dispute, irrespective of whether it ends up in litigation or arbitration. It is our view that this is a baseless assertion on TCE's part and an attempt to frustrate the OPA.

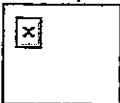
Regards,



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: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul

Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

Re: Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA") dated October 9, 2009.

We are in receipt of your letter of April 25, 2011.

The Confidentiality Agreement dated October 8, 2010 does not prevent TCE from communicating with the Government of Ontario. A review of the Confidentiality Agreement, the relevant legislation, and the actions of the parties all support an intention that the Government of Ontario would have full access to all relevant information. The definition of "Confidential Information" included in that Agreement means "all information that has been identified as confidential and which is disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives..." As you are aware, the Government of Ontario is a Representative of the OPA. This provision is consistent with subsection 25.26 of the *Electricity Act, 1998* which provides, "The OPA shall submit to the Minister such reports and information as the Minister may require from time to time."

You are also aware that the genesis of this entire matter is the announcement by the Minister of Energy that the Province would not be proceeding with the construction of the Oakville Generating Station. As Mr. Andersen, Chief Executive Officer of OPA, wrote to TCE in his letter of October 7, 2010, "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 the southwest GTA. The OPA will not proceed with the Contract..."

In subsequent discussions between senior representatives of the OPA and TCE, the senior officials of OPA have directly and forcefully urged representatives of TCE to deal directly with the Government of Ontario in order to resolve the issue of the entitlement of TCE to "reasonable

damages from the OPA, including the anticipated value of the Contract.” In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA “upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario).”

While there exists no legal impediment to TCE sharing information with the Government of Ontario, no “Confidential Information” as defined in the Confidentiality Agreement is identified in your letter.

Perhaps most fundamentally, the position taken in your letter does not promote the efforts of the relevant parties to engage in a meaningful, constructive dialogue aimed at determining whether there is a mutually beneficial solution to the entire matter or significant steps which can be taken to mitigate the damage suffered by TCE. There is absolutely no harm suffered by OPA by sharing information which the Government of Ontario has a right to obtain.

With respect to the matter of representation, we have been informed by TCE that Osler is subject to a conflict of interest with respect to its representation of the OPA in any litigation or dispute resolution process which may ensue. TCE is not willing to waive that conflict.

We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP



Michael E. Barrack
MEB/slg

Aleksandar Kojic

From: Michael Killeavy
Sent: April 26, 2011 7:47 PM
To: 'PIvanoff@osler.com'; Michael Lyle; JoAnne Butler
Cc: 'RSebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: TransCanada and Ontario Power Authority

Thank you.

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

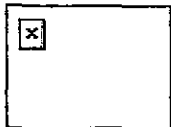
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

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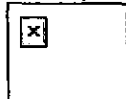
Regards,



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: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
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Aleksandar Kojic

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Sent: April 26, 2011 7:49 PM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Fw: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

I suggest that we bring this to ETM tomorrow.

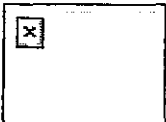
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Regards,



Paul Ivanoff
Partner

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Toronto, Ontario, Canada M5X 1B8



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Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Thornton Grout Finnigan LLP
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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

Re: Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA") dated October 9, 2009.

We are in receipt of your letter of April 25, 2011.

The Confidentiality Agreement dated October 8, 2010 does not prevent TCE from communicating with the Government of Ontario. A review of the Confidentiality Agreement, the relevant legislation, and the actions of the parties all support an intention that the Government of Ontario would have full access to all relevant information. The definition of "Confidential Information" included in that Agreement means "all information that has been identified as confidential and which is disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives..." As you are aware, the Government of Ontario is a Representative of the OPA. This provision is consistent with subsection 25.26 of the *Electricity Act, 1998* which provides, "The OPA shall submit to the Minister such reports and information as the Minister may require from time to time."

You are also aware that the genesis of this entire matter is the announcement by the Minister of Energy that the Province would not be proceeding with the construction of the Oakville Generating Station. ~~As Mr. Andersen, Chief Executive Officer of OPA, wrote to TCE in his letter of October 7, 2010, "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 the southwest GTA. The OPA will not proceed with the Contract..."~~

In subsequent discussions between senior representatives of the OPA and TCE, the senior officials of OPA have directly and forcefully urged representatives of TCE to deal directly with the Government of Ontario in order to resolve the issue of the entitlement of TCE to "reasonable

tgf.ca

damages from the OPA, including the anticipated value of the Contract.” In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA “upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario).”

While there exists no legal impediment to TCE sharing information with the Government of Ontario, no “Confidential Information” as defined in the Confidentiality Agreement is identified in your letter.

Perhaps most fundamentally, the position taken in your letter does not promote the efforts of the relevant parties to engage in a meaningful, constructive dialogue aimed at determining whether there is a mutually beneficial solution to the entire matter or significant steps which can be taken to mitigate the damage suffered by TCE. There is absolutely no harm suffered by OPA by sharing information which the Government of Ontario has a right to obtain.

With respect to the matter of representation, we have been informed by TCE that Osler is subject to a conflict of interest with respect to its representation of the OPA in any litigation or dispute resolution process which may ensue. TCE is not willing to waive that conflict.

We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP



Michael E. Barrack
MEB/slg

Aleksandar Kojic

From: JoAnne Butler
Sent: April 26, 2011 8:25 PM
To: Michael Lyle
Cc: Michael Killeavy
Subject: Re: TransCanada and Ontario Power Authority

Sure...

JCB

From: Michael Lyle
Sent: Tuesday, April 26, 2011 07:48 PM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Fw: TransCanada and Ontario Power Authority

I suggest that we bring this to ETM tomorrow.

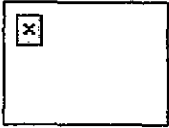
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

In our discussions with TCE's counsel, as requested, we raised the good faith negotiations issue in connection with the terms of the MOU. Michael Barrick restated the assertion in his letter that his client embarked on these discussions with the Province at the urging of "senior representatives of the OPA". He suggested that TCE does not view their discussions with the Province as an attempt to circumvent the terms of the MOU.

It also appears from the letter that TCE wants to try to stop Osler from representing the OPA in any potential litigation or arbitration. They have alleged (without providing any specifics) that Osler has a conflict of interest that TCE is not willing to waive as it relates to litigation or arbitration. When we spoke to TCE's counsel, we asked him what he is referring to when he claims Osler has a "conflict of interest" in representing the OPA. He said he didn't have any specifics regarding this and would ask his client. For your information, TCE is not a client of the firm, and therefore Osler does not have a conflict in representing the OPA in this dispute, irrespective of whether it ends up in litigation or arbitration. It is our view that this is a baseless assertion on TCE's part and an attempt to frustrate the OPA.

Regards,



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: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 26, 2011 8:49 PM
To: Deborah Langelan
Subject: Fw: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

We can discuss this tomorrow. I spoke with Paul and Rocco this evening and can fill you in tomorrow.

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

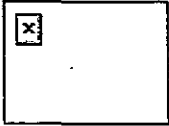
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

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Regards,



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: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
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Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

Re: Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and Ontario Power Authority (the "OPA") dated October 9, 2009.

We are in receipt of your letter of April 25, 2011.

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damages from the OPA, including the anticipated value of the Contract.” In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA “upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario).”

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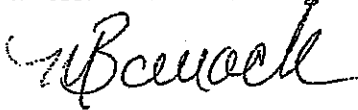
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We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP



Michael E. Barrack
MEB/slg

Aleksandar Kojic

From: Michael Killeavy
Sent: April 27, 2011 6:59 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot
Subject: FW: TCE

Importance: High

Please see Mike's email message below.

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 Lyle
Sent: Wed 27-Apr-11 6:04 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Brett Baker
Cc: Susan Kennedy
Subject: TCE

CONFIDENTIAL: SOLICITOR/CLIENT PRIVILEGE

PREPARED IN CONTEMPLATION OF LITIGATION

I just received word from Ministry Legal that they are expecting to receive the notice of proceedings against the Crown very shortly. This is consistent with the parallel streams that their counsel has suggested. As we have speculated before, the three tracks may be:

-
1. Get the 60 day clock re ability to commence litigation against the Crown running
 2. Enter into discussions with OPA about the terms of reference of an arbitration
 3. Seek to continue settlement negotiations with OPA - OPA latest counter offer to serve as basis for settlement negotiations.

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 <<mailto:michael.lyle@powerauthority.on.ca>>

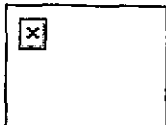
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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 28, 2011 1:40 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Subject: RE: TCE Matter - Next Steps

Michael, I've prepared a draft of this memo which we're reviewing internally. We'll get it out to you as soon as possible, hopefully by tomorrow.

Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, April 27, 2011 7:02 PM
To: Smith, Elliot
Cc: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Subject: TCE Matter - Next Steps
Importance: High

Elliot,

Have you been able to work much on the memo about the assignment of the MPS agreements? We may need to start thinking about options as events unfold.

Thanks,
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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Aleksandar Kojic

From: Michael Killeavy
Sent: April 28, 2011 5:00 PM
To: Susan Kennedy
Cc: Michael Lyle; Kristin Jenkins
Subject: RE: TransCanada Energy Limited v. Her Majesty in right of Ontario

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

Correct. Our response back went from our counsel to their counsel and address the Confidentiality Agreement issues we identified.

There was a telephone call from our counsel to their counsel where our counsel raised the issue of the TCE not negotiating in good faith.

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)
416-967-1947 (FAX)

From: Susan Kennedy
Sent: April 28, 2011 4:46 PM
To: Michael Killeavy
Cc: Michael Lyle; Kristin Jenkins
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

Privileged and Confidential (In Contemplation of Litigation)

MK,

Please see below.

I believe the answer to KJ's question is "no" but wanted to confirm.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Kristin Jenkins
Sent: April 28, 2011 4:43 PM
To: Susan Kennedy
Subject: RE: TransCanada Energy Limited v. Her Majesty in right of Ontario

Did we respond to the April 19, beyond the letter about violating the confidentiality agreement.

From: Susan Kennedy

Sent: April 28, 2011 4:36 PM

To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker

Cc: Michael Lyle; Michael Killeavy

Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

They've been served, so to speak.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Aleksandar Kojic

From: Ronak Mozayyan
Sent: April 29, 2011 12:43 PM
To: Deborah Langelaan; Michael Killeavy
Subject: Worst-Case Scenario

I tried to include all scenarios using the Baseline NRR tab as I wasn't sure of the other parameters to be included. Also, I may be wrong, but when I ran through the counter- counter offer numbers and got an NRR of \$14,919/MW Month versus the \$14,922/MW Month.

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
CAPEX Spend:	\$475,000,000	\$475,000,000	\$475,000,000	\$475,000,000
Plant Capacity (MW)	500	481	500	481
Fixed O&M	\$5,500,000	\$5,500,000	\$29,000,000	\$29,000,000
GD&M	\$10,000,000	\$10,000,000	\$0	\$0
TCE Cost of Capital	5.25%	5.25%	5.25%	5.25%
NRR	\$14,744	\$15,326	\$18,082	\$18,797
OGS Sunk Cost Adder	\$406	\$422	\$406	\$422
Total NRR (with OGS Sunk Cost)	\$15,149	\$15,748	\$18,488	\$19,218
Target OGS NPV	\$240,000,000	\$240,000,000	\$240,000,000	\$240,000,000
XNPV for K-W Peaking Plant	\$240,000,000	\$240,000,000	\$240,000,000	\$240,000,000
Target IRR	9%	9%	9%	9%
XIRR	9.77%	9.77%	9.89%	9.89%

Ronak Mozayyan
Business Analyst Contract Management, Electricity Resources
Ontario Power Authority
120 Adelaide St. W. Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6057
F: 416.967.1947

Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 12:45 PM
To: Ronak Mozayyan; Deborah Langelaan
Subject: Re: Worst-Case Scenario

Ok. We need to run the model with the OPEX and other financial parameters the same as our counter-counter proposal. That's why there is an anomaly. We can discuss this when I return from lunch. Sorry for the confusion.

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: Ronak Mozayyan
Sent: Friday, April 29, 2011 12:42 PM
To: Deborah Langelaan; Michael Killeavy
Subject: Worst-Case Scenario

I tried to include all scenarios using the Baseline NRR tab as I wasn't sure of the other parameters to be included. Also, I may be wrong, but when I ran through the counter-counter offer numbers and got an NRR of \$14,919/MW Month versus the \$14,922/MW Month.

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XNPV for K-W Peaking Plant	\$240,000,000	\$240,000,000	\$240,000,000	\$240,000,000
Target IRR	9%	9%	9%	9%
XIRR	9.77%	9.77%	9.89%	9.89%

Ronak Mozayyan

Business Analyst Contract Management, Electricity Resources

Ontario Power Authority

120 Adelaide St. W. Suite 1600

Toronto, ON M5H 1T1

T: 416.969.6057

F: 416.967.1947

Aleksandar Kojic

From: Ronak Mozayyan
Sent: April 29, 2011 1:27 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Worst-Case Scenario

As requested:

	Government-Instructed 2nd Counter Proposal	Litigation - Worst Case
CAPEX Spend:	\$475,000,000	\$475,000,000
Plant Capacity (MW)	481	481
Fixed O&M	\$5,500,000	\$5,500,000
GD&M	\$10,000,000	\$10,000,000
TCE Cost of Capital	5.25%	5.25%
NRR	\$14,500	\$15,326
OGS Sunk Cost Adder	\$422	\$422
Total NRR (with OGS Sunk Cost)	\$14,922	\$15,748
Target OGS NPV	\$200,130,253	\$240,000,000
XNPV for K-W Peaking Plant	\$200,130,253	\$240,000,000
Target IRR	9%	9%
XIRR	9.10%	9.77%

From: Michael Killeavy
Sent: Friday, April 29, 2011 12:45 PM
To: Ronak Mozayyan; Deborah Langelaan
Subject: Re: Worst-Case Scenario

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Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority

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~~Toronto, Ontario, M5H 1T1~~

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~~Michael.killeavy@powerauthority.on.ca~~

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Sent: Friday, April 29, 2011 12:42 PM
To: Deborah Langelaan; Michael Killeavy

Subject: Worst-Case Scenario

I tried to include all scenarios using the Baseline NRR tab as I wasn't sure of the other parameters to be included. Also, I may be wrong, but when I ran through the counter- counter offer numbers and got an NRR of \$14,919/MW Month versus the \$14,922/MW Month.

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Ronak Mozayyan
Business Analyst Contract Management, Electricity Resources
Ontario Power Authority
120 Adelaide St. W. Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6057
F: 416.967.1947

Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 1:38 PM
To: Ronak Mozayyan; Deborah Langelaan
Subject: RE: Worst-Case Scenario

This is good. Thanks.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-967-1947 (FAX)

From: Ronak Mozayyan
Sent: April 29, 2011 1:27 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Worst-Case Scenario

As requested:

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From: Michael Killeavy
Sent: Friday, April 29, 2011 12:45 PM
To: Ronak Mozayyan; Deborah Langelaan
Subject: Re: Worst-Case Scenario

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Michael.killeavy@powerauthority.on.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 1:40 PM
To: JoAnne Butler
Subject: FW: Worst-Case Scenario

Ronak did a model run for the absolute worst case – if we had to increase the settlement proposal to the exact same value as the worst case in litigation – the NRR is increased by about \$800/MW-month.

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 1:42 PM
To: Michael Killeavy
Subject: RE: Worst-Case Scenario

Ok...good to know...

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: Viernes, 29 de Abril de 2011 01:40 p.m.
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

Let's meet internally first...I am ready whenever everyone else is...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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

416-969-8005 Tel.
416-969-8071 Fax.
joanne.butler@powerauthority.on.ca

From: Brett Baker
Sent: Viernes, 29 de Abril de 2011 02:03 p.m.
To: Colin Andersen
Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: TCE

Hi Colin,

The rejection has come ... Michael L is suggesting a short meeting later this afternoon to discuss ... might you be available to participate? Also, you will note, I have copied folks here, but wonder about broader distribution to the DMO, MO, other? Your thoughts?

B.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 2:12 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'
Cc: Deborah Langelaan
Subject: FW: TCE
Attachments: 20110429125827.pdf

FYI ...

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
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From: Brett Baker
Sent: April 29, 2011 2:03 PM
To: Colin Andersen
Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: TCE

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B.



TransCanada

In business to deliver

April 29, 2011

TransCanada Corporation
450 – 1 Street, SW
Calgary, AB T2P 5H1

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Colin Andersen
Chief Executive Officer
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1

tel 403.920.2122
fax 403.920.2410
email alex_pourbaix@transcanada.com
web www.transcanada.com

Alex Pourbaix,
President, Energy & Oil Pipelines

Dear Colin,

Thank you for your revised proposal of April 21, 2011 (the "Offer"). Although I appreciate the modest improvements from your original proposal of March 28th, this second proposal still falls significantly short of providing value to TransCanada for the cancellation of the SW-GTA CES contract (the "Oakville Contract"). In fact, our analysis indicates that the economic return of the Offer is approximately 5.3% (unlevered after-tax). In order for the Cambridge contract to be acceptable to TransCanada as a standalone project, without recovery of any damages as a result of the cancellation of the Oakville Contract, it must provide a minimum after-tax unlevered economic return of 9% (equivalent to the Oakville Contract).

As we have both acknowledged, time is quickly running out on trying to find an acceptable commercial solution to this issue that would avoid an expensive litigation for Ontario ratepayers. It would be unfortunate if the ratepayers are exposed to significantly higher damages in relation to the Mitsubishi turbines ordered for the Oakville project in the event we are unable to agree on reasonable commercial terms for the construction of the Cambridge facility. I am providing this feedback for your use should you decide to respond with an offer that would allow this project to proceed.

In order to assist you in understanding our concerns, we have taken the liberty of identifying for the OPA a number of issues that arise from our review of the Offer. These issues can be grouped into two broad categories: Terms and Conditions Issue; and, Value Issues.

Terms and Conditions Issues

Permits and Approvals – The Offer provides cost recovery only in the event there is an issue under the Planning Act and further provides that the OPA could not terminate due to force majeure associated with a Planning Act issue unless they pay TransCanada a termination payment including Oakville project sunk costs, replacement project sunk costs and the anticipated value of the Oakville Contract (note this is an OPA option). Given the fundamental increase in permitting risk introduced by the cancellation of the Oakville project, we require the following amendments:

- The protection must apply to any and all permits;
- This must be a TransCanada option, not an OPA option;

- It must be clear that sunk costs include the gas turbines; and
- It must repay TransCanada for its actual project sunk costs for both the Oakville project (not subject to a cap) and the replacement project and gives TransCanada a legal right to the termination payment rather than an undertaking to negotiate the payment in good faith.

There are a number of terms and conditions in the Offer that are not aligned with the Mitsubishi gas turbines to be used in the Cambridge project. The appropriate parameters were included in TransCanada's proposal and must be adopted in any agreement between us. These include:

1. **Schedule A – Section II (c) – The maximum Season 3 Contract Capacity** of 480 MW as outlined in the Offer is higher than can be achieved with these gas turbines which is 427MW.
2. **Schedule B – Annual Average Contract Capacity** of 481 MW is higher than can be achieved with these gas turbines which is 450MW.
3. **Schedule B – Operating Parameters – Start-Up Gas, Start-Up Maintenance Costs, and O&M Costs** in Schedule B of the Offer have been set at figures that are inconsistent with the Mitsubishi turbines which were ordered for the Oakville project.

Capital Cost Adjustment Methodology – The mechanism outlined in the Offer requires a true-up of costs based on actual costs to construct the facility and provides the OPA significant latitude in approving or disapproving costs post expenditure. A more reasonable and equitable mechanism is contained in the TransCanada proposal which had the OPA and TransCanada agreeing to reasonable capital expenditures prior to executing the CES contract for the Cambridge project.

Capacity Check Test - The Offer requires that Ramp Rates be subject to verification as part of the Capacity Check Test. Introducing new requirements, never seen before in a CES contract is counterproductive to the goal of reaching a mutually acceptable agreement.

Value Issues

Sunk Costs – TransCanada's audited and reasonable sunk costs associated with the development of the Oakville project must be explicitly recognized in the repayment mechanism of the contract at an appropriate amortization rate or paid to TransCanada as an upfront payment. Our sunk costs include the carrying cost associated with the gas turbines which increase every month and therefore the amount cannot be capped as proposed by the OPA.

Capital Cost Adjustment Mechanism – The Target Capital Cost identified in the Offer is significantly below (~\$ 65 million) TransCanada's best estimate for construction of this plant and the "sharing" mechanism proposed in that offer is one-sided. TransCanada's original proposal contained our reasonable capital estimate, and offered an equitable sharing mechanism with the OPA as the beneficiary of any capital reduction while incenting TransCanada to deliver a project at a reduced cost.

TransCanada also tabled several value propositions in its proposal that we feel were beneficial to both sides. These included an extension of the contract to 30 years, increasing the Indexing Factor to 50%, and modifying the Capacity Check Test. I would encourage the OPA to adopt some or all of these as tools for reaching a mutually agreeable deal. These tools offer a reduction in the NRR payment while at the same time allowing TransCanada an acceptable value for the Oakville contract.

TransCanada has consistently defined our expectations of the financial value we are seeking in this replacement project settlement. This has been shared with you and your team since late last year when we

Ontario Power Authority
Attn: Colin Anderson
April 29, 2011
Page 3

sent our cash flow model of the Oakville plant to you. I would therefore urge you to table the value that you are prepared to incorporate into the Cambridge contract. TransCanada needs to understand the OPA's view on the value contained in the Offer to develop the Cambridge facility. This can be easily and quickly accomplished by the OPA advising TransCanada of the OPA's view of the NPV (at a 5.25% discount rate) and the projected after-tax unlevered IRR of the cash flows associated with the current OPA offer. Alternatively, the OPA could send TransCanada its economic model for review. If our respective value expectations can be aligned, or at least understood, I believe we could more quickly understand whether an agreement can be reached.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Pourbaix', with a stylized, flowing script.

Alex Pourbaix
President, Energy & Oil Pipelines

Irene Mauricette

From: Linda Lee [linda_lee@transcanada.com]
Sent: April 29, 2011 12:28 PM
To: Colin Andersen
Cc: Irene Mauricette
Subject: Response to OPA Letter of April 21, 2011
Attachments: Let.OPA.Colin Anderson_Apr 29.pdf

Mr. Anderson,

Attached is a letter from Alex Pourbaix. Please note that the original is being sent by regular post.

Thank you.

Sincerely,

Linda Lee

Linda Lee
Executive Assistant
TransCanada
450 - 1 Street, SW
Calgary, AB T2P 5H1
Ph: (403) 920-2106
Fx: (403) 920-2410

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29/04/2011

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: April 29, 2011 4:19 PM
To: Michael Killeavy
Cc: Ivanoff, Paul
Subject: Re: TCE Matter

Nothing suspicious about it. They are sticking with their offer and have not made any material concessions. Why should they? Their tactic is working and we're negotiating with ourselves without them having to make any concessions.

Regards, Rocco

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Friday, April 29, 2011 03:29 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; Ronak Mozayyan <Ronak.Mozayyan@powerauthority.on.ca>; Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>
Subject: TCE Matter

We've decided not to meet today. Could everyone please read the letter I forwarded and be prepared to discuss it Monday afternoon. We likely will need to ask some clarifying questions - this looks suspiciously like TCE's original proposal to settle.

Thanks,
Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 4:23 PM
To: 'Sebastiano, Rocco'
Cc: 'Ivanoff, Paul'
Subject: RE: TCE Matter

OK, but what do you really think? :-)

This is so messed up.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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Sent: Friday, April 29, 2011 03:29 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Deborah Langelaan
<Deborah.Langelaan@powerauthority.on.ca>; Ronak Mozayyan
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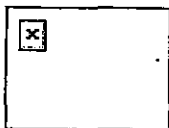
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Aleksandar Kojic

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Cc: Sebastiano, Rocco; Smith, Elliot
Subject: OPA - TCE

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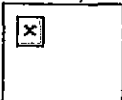
Regards,
Paul



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



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Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 4:57 PM
To: 'Pivanoff@osler.com'
Subject: Re: OPA - TCE

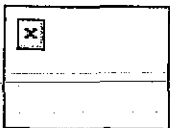
Thanks Paul.

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: Friday, April 29, 2011 04:53 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: OPA - TCE

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de le divulguer sans autorisation.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 5:10 PM
To: 'PIvanoff@osler.com'; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: OPA - TCE

Very interesting...I continue to believe that arbitration is in the best interests of all of us, now and in the future. We already have many long terms relationships with TCE and jamming us will not make us very happy.

JCB

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Friday, April 29, 2011 04:53 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: OPA - TCE

I received a call this afternoon from TCE's counsel, Michael Barrack. He wanted us to know that he has served a notice on the Crown; that he would like to get together with counsel for the Crown and the OPA at some point to discuss a dispute resolution mechanism; and, that he is thinking about a private arbitration process that would involve the OPA, TCE and the Crown. The reference to a private arbitration process is an interesting development from the TCE side. He said that he is considering this as he knows that a private process may be preferable to the Crown. He also said that the Osler "conflict" issue will no longer be pursued by TCE, and that TCE wants to keep the arbitration/litigation process moving forward in parallel with the OPA/TCE negotiations.

Regards,
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Aleksandar Kojic

From: Michael Killeavy
Sent: May 1, 2011 4:52 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Documented NRR Analysis Model
Attachments: OPA-TCE Settlement Negotiations - NRR Analysis Model 1 May 2011.xls

Importance: High

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

I have embedded comments in cells throughout the NRR model to make it a bit easier to use. I also removed a lot of stuff that isn't being used at all now (it had been previously). I have colour-coded the inputs - all yellow highlighted cells in the various worksheets in the attached workbook are inputs into the model. Derived and calculated values are highlighted in green.

I tried protecting the worksheets cells, but since the macro changes the cells when it runs, I really can't lock the cells - if I can figure a way around this problem I will update the workbook and resend later. I can hide the calculation cells to protect them and get the macros to run, but you don't get to see the effect of the changes except for the changed NRR value. I'm not sure there's a lot of value in doing this, but I'm open to comments from the user group. So for now, just only make changes to the input (yellow) cells.


Thanks,

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

CAPX Spend	\$775,000,000 / Yearly % Spend
2009	\$18 5%
2010	\$26 5%
2011	\$90 17%
2012	\$109 20%
2013	\$225 43%
2014	\$72 13%
	\$59 million

Note: All fiscal figures are in yellow cells.

Capital Cost Allowance:	
Exp'd to Class 1	CCA Rate
Exp'd to Class 17	4%
Exp'd to Class 43	8%
Exp'd to Class 48	15%
Inflation Factor NOR Index Factor Stationary Tax Rate Plant Capacity	 (IRF) (NRRIF) (ACCR) (MM)

Fixed O&M	\$5,500,000 (2009 \$)
GDA&M	\$10,000,000 (2011 \$)

Calculation of TCE Cost of Capital *** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

TCE Cost of Equity	7.50%	Proportion of Equity in the Capital Structure	31%	Note: All model inputs are in yellow cells.
TCE Cost of Debt	5.68%	Proportion of Debt in the Capital Structure	69%	Note: All derived values are in green cells.
TCE Weighted Average Cost of Capital	5.25%			

OGS Sunk Cost Analysis *** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

OGS Sunk Costs	\$37,000,000	
TCE Borrowing Cost	5.68%	Based on Average YTM of LT Debt
After-tax Cost of Borrowing	4.26%	
Contract Term	25	years
Amortization of OGS Sunk Costs	\$2,433,974	/year
NRR Sunk Cost Adder	\$422	allocation per MW-month

Note: All model inputs are in yellow cells.

Note: All derived values are in green cells.

Most all model points are in yellow cells.

[illegible]

530-160 570-7443 518-4316 518-4324 634-0202


[illegible]

Target Costing Allocation of Actual CAPEX *** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

Target CAPEX = \$475,000,000 Note: All model inputs are in yellow cells.

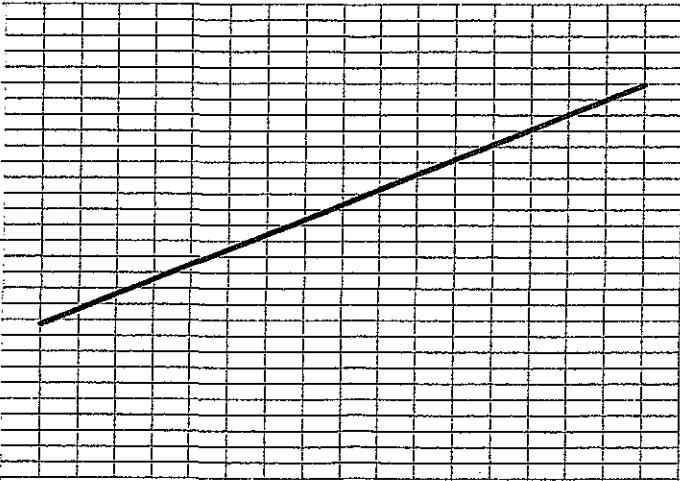
CAPEX Sharing: Note: All derived values are in green cells.

	Overrun	Underrun
OPA	50%	50%
TCE	50%	50%

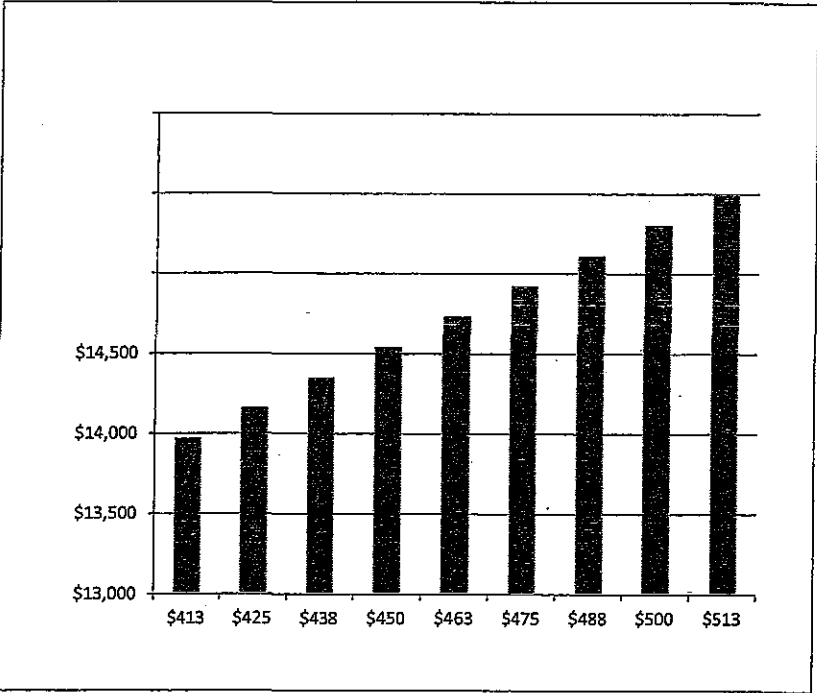
FINAL CAPEX = \$550,000,000
Overrun (Underrun) = \$75,000,000
OPA Share \$27,500,000
TCE Share \$47,500,000
Adjusted CAPEX = \$512,500,000 Target CAPEX + OPA Share

Initial NRR \$14,500
Final NRR \$15,492

		m = 1.52133E-05	
		b = 7885.343433	
ADJUSTED CAPEX		FINAL NRR	FITTED LINE
\$412,500,000	\$413	\$13,971	\$13,971
\$425,000,000	\$425	\$14,161	\$14,161
\$437,500,000	\$438	\$14,351	\$14,351
\$450,000,000	\$450	\$14,541	\$14,541
\$462,500,000	\$463	\$14,732	\$14,732
\$475,000,000	\$475	\$14,922	\$14,922
\$487,500,000	\$488	\$15,112	\$15,112
\$500,000,000	\$500	\$15,302	\$15,302
\$512,500,000	\$513	\$15,492	\$15,492



0.0000152133



Aleksandar Kojic

From: Michael Killeavy
Sent: May 1, 2011 6:19 PM
To: Amir Shalaby; JoAnne Butler
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Thank you.

I am not suggesting sharing modelling - just the NPV and our rationale for discounting - this does disclose a defence, though. I think we accept counsel's advice.

I'm sure our model is close to their model absent the input assumptions - CAPEX, OPEX, etc. Our model is based on everything they've disclosed to us that we agree with and their unique firm-specific data, which has been disclosed, such as tax rate, composition of CAPEX for calculating CCA, CAPEX spend profile over time, etc.

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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

From: Amir Shalaby
Sent: Sunday, May 01, 2011 06:07 PM
To: JoAnne Butler; Michael Killeavy
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Thanks. I am glad you are on our side.

Excellent review.

You suggest sharing our NPV modeling . Is this consistent with the legal/litigation approach ?

See you all tomorrow

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

From: JoAnne Butler
Sent: Sunday, May 01, 2011 05:18 PM
To: Michael Killeavy; 'rsebastiano@osler.com' <rsebastiano@osler.com>; 'pivanoff@osler.com' <pivanoff@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>; Susan Kennedy
Cc: Deborah Langelaan; Ronak Mozayyan; Brett Baker; Michael Lyle; Amir Shalaby
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Michael,

Thanks for spending your Sunday afternoon on this. Great observations and suggestions. I look forward to a good strategy session tomorrow at our three o'clock.

JCB

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

From: Michael Killeavy

Sent: Sunday, May 01, 2011 04:08 PM

To: Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com <pivanoff@osler.com>;

Smith, Elliot <ESmith@osler.com>; Susan Kennedy

Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan

Subject: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

....

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

I have reviewed the 29 April 2011 letter from TCE ("TCE letter"), which responds to our letter of 21 April 2011 ("OPA letter"). Here are some observations and suggestions:

1. The TCE letter and it doesn't, in my opinion, propose any alternative or revised settlement terms. It merely reiterates that which we've all heard for the past several months.
2. TCE has incorrectly characterized our letter of 21 April 2011 to have been a settlement "offer."
3. TCE wants the permitting and approval protection set out in the OPA letter be expanded for all permits and approvals. We had indicated that it would apply only to Planning Act approvals, i.e., municipal approvals. Furthermore, we had indicated that we'd reserve the right to terminate the Replacement Contract if a permitting force majeure were to arise. TCE wants this right be mutual. Not surprisingly, TCE wants to fix the quantum of any such contract termination payment in the event of a force majeure, as opposed to a commitment to good faith negotiation of the quantum. It further clarifies that the termination payments for the MPS contracts need to be included in the OGS sunk costs. This will depend on the disposition of these contracts and to what extent TCE has mitigated its potential damages, so we need to be careful in considering inclusion of the MPS gas turbines in sunk costs.
4. TCE claims that the contract capacities in the OPA letter are inconsistent with the MPS gas turbines. I suggest that we ought to have SMS Energy conduct yet another review of the MPS information in light of TCE's latest comments. We revised our AACC based on information TCE shared with the government. We have stated to TCE in the past that we are not particularly wedded to any technical specifications in Schedule A, and that we are willing to discuss these.
- ~~5. TCE characterizes the Capital Cost Adjustment Methodology as providing the OPA with "significant latitude in approving or disproving (sic) costs..." I'm not sure that this is correct. We set out in s. 3 of Schedule C in the OPA letter what is to be included in the Actual CAPEX. TCE claims that it is a "one-sided" mechanism, which it certainly is not, since TCE and the OPA share deviations from the target on a 50/50 basis. TCE's comments are not, however, an outright rejection of the target costing methodology.~~
6. TCE has an issue with testing ramp rates and sees it as being counterproductive, but doesn't explain it's issue beyond that fact that it is a "new" requirement. TCE draws an analogy to the CES contract, which the Replacement Contract will not be based upon. Being able to ramp consistently is important for a peaking plant.

7. TCE indicates that the target CAPEX in the OPA letter is ~\$65M less than its "best estimate" for the Replacement Plant. TCE has never clarified what the \$42 M in CAPEX spend in 2009 and 2010 are for in its model. I had raised the issue at our last meeting with TCE and the question was never answered. The 2009/2010 CAPEX spend amounts from TCE are very close to the estimated OGS sunk costs of \$37 M. If there is double counting in the TCE model for OGS sunk costs, the difference if CAPEX is only about ~ \$28M now.
8. With regard to the claimed sub-standard returns, using the parameters in the OPA letter the IRR for the Replacement Project is 9.1%, and not 5.3%. Deb, Ronak and I will get together Monday morning and see if we can figure out what TCE is getting at here.
9. TCE re-proposes a 30-year contract term and NRRIF (% of the NRR to index) of 50%. We had rejected both of these purported value propositions earlier.
10. TCE claims to have provided a "cash flow model" to the OPA. It provided a project pro forma income statement for OGS in December 2010. There was no "model" in the sense that the inputs to the model and calculation of the derived values was not disclosed to the OPA.
11. TCE wants either the NPV we used in our analysis or for us to disclose our model to them. It might be time to tell them what NPV we used and why we used what we used.
12. TCE continually seems to conflate the notion of OGS contract and OGS project in terms of its expectations for the financial value of the OGS contract. I think that we need to be careful that we separate the two. Our offering of foregone OGS profits is very near the full value of the profits under the OGS contract, i.e., excluding OGS residual value.

Michael

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: May 2, 2011 8:09 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments: TCE Matter - Comparison Matrix 2 May 2011.docx

Importance: High

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

Attached is a preliminary draft of a matrix comparing the various settlement proposals made by the parties. You can see that the 29 April 2011 TCE response to the 21 April 2011 OPA letter, which outlines the government-instructed second counter-proposal, really does not constitute a separate, identifiable settlement proposal.

Michael

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SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter- Proposal March 28, 2011	Government- instructed Second Counter Proposal April 21, 2011	TCE Response to Government- instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-Instructed Second Counter Proposal April 21, 2011	TCE Response to Government-Instructed Second Counter-Proposal 29 April 2011	Comments
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we suspect it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Aleksandar Kojic

From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.DOC;
WSCcomparison_#20420450v3_LEGAL_1_ - v3 Common Interest Privilege Agreement,
OPA-#20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.pdf

Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

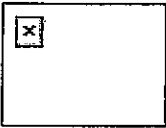
- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."

- the definition of "Third Party" has been simplified.

- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

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**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the “**Effective Date**”).

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ENERGY
("ONTARIO")**

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- ~~D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.~~
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

In consideration of the promises and the mutual covenants and agreements herein, the Parties agree as follows:

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. ~~Disclosure of Privileged Information by the Receiving Party to Third Parties without the~~ prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

10. The Parties shall cooperate in respect of the defence of the Claims, including providing access to information, materials and employees as may be reasonably necessary from time to time, as the case may be, provided that each of the Parties reserves the right to determine what information will be shared and under what circumstances, and no obligation or duty to share any such information is created by this Agreement.

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

17. The Receiving Party acknowledges that disclosure of any Privileged Information to Third Parties in breach of this Agreement will cause the Disclosing Party to suffer irreparable harm for which there is no adequate legal remedy. The Parties therefore agree that immediate injunctive relief is an appropriate and necessary remedy for a breach or threatened or anticipated breach of this Agreement.

NOTICE

18. All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel

120 Adelaide Street West, Suite 1600

Toronto, Ontario

M5H 1T1

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

To: Her Majesty the Queen in Right of Ontario as Represented by the Minister
of Energy

Attention: ●

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Draft & Privileged

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the _____^{1st} day of April, 2011 (the "Effective Date").
~~[NTD: Consider whether this Agreement should be backdated.]~~

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ENERGY
("ONTARIO")**

RECITALS:

- A.** The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B.** The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C.** The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- ~~**D.** Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.~~
- E.** In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

In consideration of the promises and the mutual covenants and agreements herein, the Parties agree as follows:

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, and experts ~~and affiliates~~.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;

Draft & Privileged

- (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and
- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not, with respect to either Party, any corporation, partnership, joint venture or other legal entity that is a direct or indirect parent or subsidiary of such Party or that directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise, and, without limitation, a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

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6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.
7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

10. The Parties shall cooperate in respect of the defence of the Claims, including providing access to information, materials and employees as may be reasonably necessary from time to time, as the case may be, provided that each of the Parties reserves the right to determine what information will be shared and under what circumstances, and no obligation or duty to share any such information is created by this Agreement.

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party

prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

17. The Receiving Party acknowledges that disclosure of any Privileged Information to Third Parties in breach of this Agreement will cause the Disclosing Party to suffer irreparable harm for which there is no adequate legal remedy. The Parties therefore agree that immediate injunctive relief is an appropriate and necessary remedy for a breach or threatened or anticipated breach of this Agreement.

NOTICE

18. ~~All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:~~

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1

Tel. No.: (416) 969-6035
Fax No.: (416) 967-1947
E-Mail: michael.lyle@powerauthority.on.ca

To: Her Majesty the Queen in Right of Ontario as Represented by the Minister
of Energy
Attention: ●

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 8:35 AM
To: Deborah Langelaan; Ronak Mozayyan
Subject: FW: TCE Arbitration
Attachments: TCEarbitration.ppt

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)
416-967-1947 (FAX)

From: Robert Godhue **On Behalf Of** Michael Lyle
Sent: May 3, 2011 8:34 AM
To: Michael Killeavy
Cc: Susan Kennedy; Michael Lyle
Subject: TCE Arbitration

Good Morning All,
Mike Lyle will be in meetings all day *but* can be pulled out if necessary.
-Robert

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058
Robert.Godhue@powerauthority.on.ca

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

Aleksandar Kojic

From: Robert Godhue on behalf of Michael Lyle
Sent: May 3, 2011 8:34 AM
To: Michael Killeavy
Cc: Susan Kennedy; Michael Lyle
Subject: TCE Arbitration
Attachments: TCEarbitration.ppt

Good Morning All,
Mike Lyle will be in meetings all day *but* can be pulled out if necessary.
-Robert

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058

Robert.Godhue@powerauthority.on.ca

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 8:49 AM
To: JoAnne Butler
Subject: FW: TCE Arbitration
Attachments: TCEarbitration.ppt

FYI

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)
416-967-1947 (FAX)

From: Robert Godhue **On Behalf Of** Michael Lyle
Sent: May 3, 2011 8:34 AM
To: Michael Killeavy
Cc: Susan Kennedy; Michael Lyle
Subject: TCE Arbitration

Good Morning All,
Mike Lyle will be in meetings all day *but* can be pulled out if necessary.
-Robert

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058

Robert.Godhue@powerauthority.on.ca

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

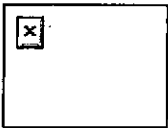
Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: May 3, 2011 11:10 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Susan Kennedy; Smith, Elliot
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

This e-mail message is privileged, confidential and subject to
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de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 11:47 AM
To: 'PIvanoff@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com'; Susan Kennedy; 'ESmith@osler.com'
Subject: Re: TCE Matter - IPSP Q&A Document

Thx.

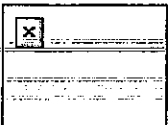
Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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>
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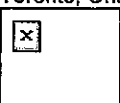
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Partner

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416.862.6666 FACSIMILE
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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 ***

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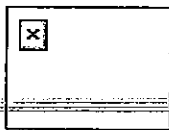
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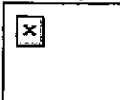
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Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 11:59 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments: TCE Matter - Comparison Matrix 2 May 2011.docx

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

Attached is a revised draft of a matrix comparing the various settlement proposals made by the parties. It also has a number of potential questions to ask about the 29 April 2011 letter from TCE.

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May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

OBSERVATIONS

- 1) This matter is clearly not a commercial discussion anymore. The conversation is around strategies and tactics to see “who blinks first”, ie. Government for fear of litigation and thereby, instructing the OPA to accede to TCE’s demands through a further proposal or TCE for fear of litigation and mindful of the long term relationships and numerous contracts that they currently have through the OPA. The clock has effectively started ticking through TCE’s notice to Government to commence litigation within 60 days. Offer was sent on April 27, 2011.
 - 2) The OPA Commercial Team has prepared a government instructed counter offer which has been authorized by the Board as our limit as to when we start to completely erode rate payer value. We cannot and will not move further to meet TCE’s demands unless we are directed to do so.
 - 3) TCE submitted a proposal on March 10, 2011, and submitted a subsequent letter on April 30 where they have not backed down in any way from their original value proposition, indeed, it could be said that they have asked for further premiums be asking to be absolved of all permitting matters and reducing their turbine output from previous correspondence. See **Comparison Matrix**.
 - 4) It is time to commence arbitration discussions with TCE so as to determine to what course the arbitration will take and is it with or without the KWCG plant and just exclusive to the OGS lost profits.
 - 5) The question remains do we continue to pretend to work towards a commercial settlement by asking for clarifying questions or do we simply stop commercial matters and move it directly to the Legal Department. Two draft letters are attached depending on which strategy pursued.
-

RECOMMENDATIONS

- 1) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 2) Ask one round of clarifying questions from TCE; however, this will not impact or drive us towards sending another counter proposal. **Draft Letter 1A**.

OR

- 3) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 4) Send a clear message that since they are unwilling to move on their proposal that all commercial discussions will end and only the legal dispute mechanisms of arbitration or litigation will be pursued. **Draft Letter 1.**

Items in Bold are send as Attachments to this Memo.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
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Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Questions

1. Please clarify the Annual Average Contract Capacity ("AACC") used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
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- 8.

DRAFT

Aleksandar Kojic

From: Chuck Farmer
Sent: May 3, 2011 1:19 PM
To: Barbara Ellard
Cc: Michael Killeavy
Subject: RE: TCE Matter - IPSP Q&A Document

Thanks,

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.

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: JoAnne Butler
Sent: May 3, 2011 2:32 PM
To: Deborah Langelaan; Michael Killeavy
Subject: TCE Information for Tomorrow's Meeting
Attachments: TCEarbitration.ppt; TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

Deb, MK – would welcome changes/comments before I send off to Colin and rest of team later....please start with the TCE Observations Recommendations note....I can meet after 3:30 PM if you want....

JCB

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

I have compiled in this email all that material that we have available for tomorrow's Exec meeting.

They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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joanne.butler@powerauthority.on.ca

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

DRAFT 1
PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF
LITIGATION

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We are very disappointed that your letter does not really constitute a separate, identifiable settlement proposal. Indeed, it seeks only to confirm and amplify your asks in your proposal of March 10, 2011

In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to pursue arbitration of this issue. It is apparent that a two pronged approach will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A

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May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We are very disappointed that your letter does not really constitute a separate, identifiable settlement proposal. Indeed, it seeks only to confirm and amplify your asks in your proposal of March 10, 2011.

However, we have some questions to seek clarifications on your proposition as follows:

1. Please clarify the Annual Average Contract Capacity (“AACC”) used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
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project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?

While we can continue to try and resolve the commercial terms, we will be contacting your legal counsel to pursue potential legal resolution of this issue.

Sincerely,

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Aleksandar Kojic

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Sent: May 3, 2011 3:11 PM
To: JoAnne Butler; Deborah Langelaan
Subject: RE: TCE Information for Tomorrow's Meeting
Attachments: MK_EDITS-TCEObservationsRecommendationsMay 3.doc; MK_EDITS-TCEMay3DRAFT 1.doc; MK_EDITS-TCEMay3DRAFT 1A.doc

JoAnne,

I have made a few suggestions on the drafting, but not the substance. As we discussed there are two options: proceed to discuss arbitration with parallel track settlement discussions continuing; and proceed to discuss arbitration without continuing settlement discussions.

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Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning-Act-approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Questions

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6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your 29 April 2011 letter where you state that it is "one-sided"?
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- 8.

DRAFT

May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

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RECOMMENDATIONS

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- 4) Send a clear message that since they are unwilling to move on their proposal that all commercial discussions will end and only the legal dispute mechanisms of arbitration or litigation will be pursued. **Draft Letter 1.**

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DRAFT 1

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In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to commence discussions on pursue arbitration of this issue our dispute. It is apparent that a two-pronged approach continued settlement discussions will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A

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PREPARED IN CONTEMPLATION OF LITIGATION**

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Colin Andersen

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 3:24 PM
To: JoAnne Butler; Deborah Langelaan
Subject: RE: TCE Information for Tomorrow's Meeting
Attachments: MK_EDITs-TCEObservationsRecommendationsMay 3.doc

Here are some additional observations.

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)
416-967-1947 (FAX)

From: JoAnne Butler
Sent: May 3, 2011 2:32 PM
To: Deborah Langelaan; Michael Killeavy
Subject: TCE Information for Tomorrow's Meeting

Deb, MK – would welcome changes/comments before I send off to Colin and rest of team later....please start with the TCE Observations Recommendations note....I can meet after 3:30 PM if you want....

JCB

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I have compiled in this email all that material that we have available for tomorrow's Exec meeting.

They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

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- 5) The question remains do we continue to pretend to work towards a commercial settlement by asking for clarifying questions or do we simply stop commercial matters and move it directly to the Legal Department. Two draft letters are attached depending on which strategy pursued.
- 6) We have used the disclosed TCE financial parameters, including CAPEX of \$540 million, and financial value of the OGS contract of \$375 million, and we can get a project return (IRR) of 5.1%, whereas TCE states it gets a 5.3% project return. Consequently, the two models seem to be calibrated correctly.
- 5)7) The two main issues we need to resolve with TCE are (i) the financial value of the OGS contract and (ii) CAPEX for the Replacement Plant. Only the financial value of the OGS contract is something that arbitration can resolve. If we still cannot come to either a resolution on CAPEX or a resolution on how to

handle differences in CAPEX, we will not be able to conclude our settlement discussions and have a Replacement Contract.

RECOMMENDATIONS

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From: Deborah Langelaan
Sent: May 3, 2011 3:53 PM
To: JoAnne Butler
Cc: Michael Killeavy; Ronak Mozayyan
Subject: FW: TCE Information for Tomorrow's Meeting
Attachments: MK_EDITS-TCEObservationsRecommendationsMay 3.doc; MK_EDITS-TCEMay3DRAFT 1.doc; MK_EDITS-TCEMay3DRAFT 1A.doc

JoAnne;

I made a few additional edits to Michael's but nothing substantive.

Deb

From: Michael Killeavy
Sent: May 3, 2011 3:11 PM
To: JoAnne Butler; Deborah Langelaan
Subject: RE: TCE Information for Tomorrow's Meeting

JoAnne,

I have made a few suggestions on the drafting, but not the substance. As we discussed there are two options: proceed to discuss arbitration with parallel track settlement discussions continuing; and proceed to discuss arbitration without continuing settlement discussions.

Michael Killeavy, LL.B., MBA, P.Eng.
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May 3, 2011

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Aleksandar Kojic

From: JoAnne Butler
Sent: May 3, 2011 4:23 PM
To: OPA Executive; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Susan Kennedy
Subject: TCE Material PRIVILEGED AND CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION
Attachments: TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCEarbitration.ppt; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

We have worked up this material to facilitate our discussion tomorrow at ETM. They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day "clock" to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL -- PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10- Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
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4. Please clarify the NRRIF used in your financial model? In your 29 April 2011 letter to Colin Andersen, you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA, you indicate 20%.
5. Can you please specify your concerns about testing ramp rates for the Replacement Plant?
6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e. 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your 29 April 2011 letter where you state that it is "one-sided"?
7. In your letter of 29 April 2011 you mention that TCE has shared its cash flow model with the OPA. Actually, you shared a pro-forma income statement for the project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?
- 8.

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