

May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

OBSERVATIONS

- 1) The OPA Commercial Team prepared a government instructed counter proposal and delivered it to TCE on April 21, 2011. This proposal was authorized by the Board as our limit and any further changes in TCE's favour would start to completely erode rate payer value.
- 2) TCE submitted an original proposal on March 10, 2011, and submitted a subsequent letter on April 29 after receiving the government instructed counter proposal, where they have not backed down in any way from their original March 10th value proposition. Indeed, it could be said that they have asked for further premiums by asking to be absolved of all permitting matters and reducing their turbine output from previous correspondence. See **Comparison Matrix**.
- 3) 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.
- 4) 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.
- 5) The Commercial team does not recommend any further offers to meet TCE's demands. We would have to be directed to do so. 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 is pursued.
- 6) The OPA Legal team has developed some slides that discuss commencing arbitration discussions with TCE so as to determine what course the arbitration will take and where the KWCG plant and the OGS lost profits fit in.
- 7) 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. Proposal was sent on April 27, 2011.

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.

Aleksandar Kojic

From: Michael Killeavy
Sent: May 4, 2011 11:45 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - OPA Response to TCE Letter of 29 April 2011
Attachments: OPA Ltr to TCE 4 May 2011.docx

Colin has requested that a letter, substantially in the form of the attached letter, be sent by the OPA under his signature in response to TCE's letter of 29 April 2011. Can counsel please review and comment on the drafting of the attached letter? We would like to send the letter out tomorrow at the latest.

We want Osler to contact TCE counsel to initiate a discussion on the terms of reference for an arbitration of the dispute.

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)
416-967-1947 (FAX)

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 4, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011 ("letter"). All capitalized terms in this letter refer to terms defined in the Memorandum of Understanding between the OPA and TCE, dated 21 December 2010, unless defined otherwise.

We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Your letter seeks only to confirm and amplify your original settlement proposal. Indeed, your estimated capital expenditure ("CAPEX") for the Potential Project is in excess of \$600 million, including gas and electrical interconnect costs, which we cannot reconcile with our own estimates for such a plant.

We have some questions to seek clarifications on some of the matters you raised in your letter:

1. Can you please clarify the Annual Average Contract Capacity ("AACC") used in the TCE financial modeling for the Potential Project? We are in receipt of the revised Schedule B to the proposed implementation agreement, dated 24 February 2011, which indicates seasonal contract capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW. You indicate in your letter that an Annual Average Contract Capacity of 481 MW is not achievable and that it ought to be 450 MW.
2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in your 15 March 2011 financing model assumptions, which were shared with JoAnne Butler? These amounts total to \$42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?
3. Please clarify TCE cost of capital used in its financial model for the Potential Project, including how it is arrived at, i.e., proportion and cost of both debt and equity portions.
4. Please clarify the NRRIF used in your financial model for the Potential Project? In your letter you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler, you indicate 20%.

5. Can you please specify your concerns about testing ramp rates for the Potential Project?
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 letter where you state that it is "one-sided"?
7. In your letter 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?

While we attempt to understand better our differences in terms of financial parameters for any Potential Project I have requested that our commercial team move this file to our legal counsel, who will be contacting your legal counsel to commence discussions on terms of reference for the arbitration of our dispute.

Sincerely,

Colin Andersen

Aleksandar Kojic

From: Yvonne Cuellar
Sent: May 4, 2011 3:28 PM
To: Michael Killeavy
Subject: Visio diagram
Attachments: Decision-May4-2011.vsd

Here it is

Yvonne Cuellar

Administrative Assistant to

Michael Killeavy - Director, Contract Management and

Barbara Ellard - Director, Policy & Analysis

ER-OPA

120 Adelaide St. West | Suite 1600 | Toronto, ON M5H 1T1 | T: 416-969-6421 | 416-969-1947

yvonne.cuellar@powerauthority.on.ca



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Aleksandar Kojic

From: Deborah Langelaan
Sent: May 5, 2011 9:14 AM
To: Michael Killeavy
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011

Michael;

During yesterday's ETM Colin indicated he wanted us to specifically reference our CAPEX figure. Is this something that can be incorporated into this letter?

Deb

From: Michael Killeavy
Sent: May 4, 2011 11:45 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - OPA Response to TCE Letter of 29 April 2011

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Thank you,
Michael

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Aleksandar Kojic

From: Michael Killeavy
Sent: May 5, 2011 9:16 AM
To: Deborah Langelaan
Subject: Re: TCE Matter - OPA Response to TCE Letter of 29 April 2011

I thought I did?

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

From: Deborah Langelaan
Sent: Thursday, May 05, 2011 09:14 AM
To: Michael Killeavy
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011

Michael;

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Sent: May 4, 2011 11:45 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: May 5, 2011 9:51 AM
To: Michael Killeavy; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011
Attachments: OPA Ltr to TCE 4 May 2011 (Osler comments) 20556161_3.DOCX

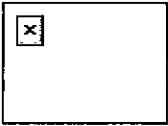
Michael,

Further to your request below, we have revised the proposed letter to TCE.

With respect to question 6 (the "one-sided" target costing methodology), we suspect that TCE's view of this is derived from the fact that although cost overruns and under-runs are split 50/50, there is an overall cap which is lower than TCE's estimated CAPEX which may be why they see the mechanism as being "one-sided". In light of this, you may want to consider whether you still want to ask them that question.

Please let us know if you have any questions or comments.

Elliot



Elliot Smith
Associate

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From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, May 04, 2011 11:45 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - OPA Response to TCE Letter of 29 April 2011

Colin has requested that a letter, substantially in the form of the attached letter, be sent by the OPA under his signature in response to TCE's letter of 29 April 2011. Can counsel please review and comment on the drafting of the attached letter? We would like to send the letter out tomorrow at the latest.

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Thank you,

Michael

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 4, 2011

Dear Alex:

We acknowledge receipt of your letter dated April 29, 2011 (the "April 29 Letter"). We have reviewed it in detail and we are very disappointed that it does not contain any materials revisions to your settlement proposal dated March 10, 2011 ("Original Settlement Proposal"), which we advised TCE was unacceptable to the OPA. The April 29 Letter serves only to confirm and amplify the Original Settlement Proposal. Indeed, your estimated capital expenditure ("CAPEX") for the "Potential Project" (as such term is defined in the Memorandum of Understanding dated December 21, 2010) is in excess of \$600 million, once gas and electrical interconnection costs are taken into account. We cannot reconcile this CAPEX with our own estimates for such a plant.

In an effort to better understand the April 29 Letter, we have the following questions which seek clarification on some of the matters raised in your letter:

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt of the revised Schedule B to the proposed implementation agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.
2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total \$42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?
3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).
4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011

Aleksandar Kojic

From: Michael Lyle
Sent: August 1, 2011 6:26 PM
To: JoAnne Butler; Michael Killeavy; Amir Shalaby
Subject: Draft Deck
Attachments: TCEBoard presentationAug211.ppt

See attached for purposes of discussion tomorrow morning.

Michael Lyle
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Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
 - » Scope of arbitration limited only to appropriate quantum of damages
 - » Crown and OPA both parties to the arbitration
 - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE
- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE would take ownership stake in Lennox
- Provision also made for subsequent negotiations on potential joint ventures between TCE and OPG on conversion of a coal unit to gas and development of new gas plant
- If commercial deal not finalized by end of August, then matters determined by way of binding arbitration in accordance with the arbitration agreement
- OPA is a party to proposed arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
- OPA and Crown waive defences with respect to:
 - » Exclusion of liability clauses in contract
 - » Any possibility that plant would have been unable to be built because it did not receive all necessary approvals
- TCE releases OPA and Crown from any further claims
- Process for arbitration award to be paid through transfer of an interest in an asset owned by the Crown or an agency of the Crown
- No reference to other OPA procurement processes

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?
- Who should pay arbitration award? – ratepayers or taxpayers?
- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
- Scope of arbitration process – limits on arbitration process raises concern about ability to obtain information from TCE
- No acknowledgement may be made of the fact that matter has gone to arbitration

Aleksandar Kojic

From: Michael Lyle
Sent: July 31, 2011 8:00 PM
To: 'jim_hinds@irish-line.com'; Colin Andersen; JoAnne Butler; Michael Killeavy
Cc: Susan Kennedy
Subject: TCE
Attachments: Draft Arbitration Agreement_FINAL9_IO(OPA comments).docx

See attached draft of arbitration agreement with OPA comments that has been provided to Infrastructure Ontario.

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO
POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "OPA") and the Claimant TransCanada Energy Ltd. ("TCE" or the "Claimant") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "CES Contract") for the construction with respect to the development and operation of a 900 megawatt gas fired generating station in Oakville Ontario (the "OGS");

Comment [A1]: Better reflects what the contract is about

AND WHEREAS by letter dated October 7, 2010 (the "October 7 letter") the OPA ~~terminated the CES Contract~~ stated that it would like to begin negotiations with TCE to reach mutual agreement to terminate the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondent OPA have mutually agreed to terminate the CES Contract and the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "Province of Ontario"), under

section 7 of the *Proceedings Against the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

Comment [A2]: Is it the intention to override 14.1 in its entirety including to allow for punitive damages?

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "Act");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of the mutual agreement to terminate the CES Contract, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 **Act**

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 **Consideration**

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

- (a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and
- (b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "Arbitrator").

ARTICLE 4

JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 **The Disputes**

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3

Waiver of Defences

(a) The Respondents agree that in light of the October 7 letter they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract which is understood to include the following components:

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the Respondents is/are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the expiration of the

Comment [A3]: Same comment as earlier re override of 14.1 in its entirety

twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

- (a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;
- (b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the Act, and make such orders or directions as may be required in respect of such issues;
- (c) determine any question of law arising in the Arbitration;
- (d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;
- (e) make one or more interlocutory or interim orders;
- (f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and
- (g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "Expenses"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

ARTICLE 6 CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the Rules. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

Comment [A4]: We are unclear why there is a desire to limit the scope of discovery. A full understanding of TCE's position on damages requires broad disclosure. As TCE is the party with the most information on damages, this is clearly a provision that favours them.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their **witnesses**.

Comment [A5]: Unclear why affidavits necessary. Not usual procedure.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per **witness**, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Comment [A6]: Significant case with large quantum of damages and I CE with the most informative calculations of damages. This limitation is not appropriate.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

- (a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.
- (b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.
- (c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "Final Award"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an after tax value to TCE, after due consideration for the tax implications of the transaction, equal to or greater than the Final Award [or interim final award] (the "Equivalent Value").

- (a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "Assets of Interest") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amongst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.
- (b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:
 - (i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

- (ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;
 - (iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and
 - (iv) TCE does not become liable for any pre-closing liabilities relating to the asset.
- (e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.
- (h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Comment [A7]: Unless show the works, which Respondent? What award is only ordered against one respondent?

Comment [A8]: Too short a time period for what could be a very large sum.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8 CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 Counsel

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

**Counsel for the Claimant,
TransCanada Energy Ltd.**

Thornton Grout Finnigan LLP
3200 - 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

**Counsel for the Respondent,
The Ontario Power Authority**

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

**Counsel for the Respondent,
Her Majesty The Queen in Right of
Ontario**

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry - Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
Tel: (416) 601-7887
Email: john.kelly@ontario.ca

Eunice Machado
Tel: (416) 601-7562
Fax: (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

TRANSCANADA ENERGY LTD.

By: _____

Title

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

By: Signatory to be determined in
consultation with MAG

Title

ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

**AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY**

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

**WHEREAS, in connection with this Arbitration between
TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the
Southwest GTA Clean Energy Supply Contract between the Ontario Power**

Authority and TCE dated October 9, 2009 (the "CES Contract"), TCE and the Respondents have entered into an Arbitration agreement dated July 31st, 2011 (the "Arbitration Agreement");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "• Information");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the " Respondents Information");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "Confidential Information");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.
2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "Representatives"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.
4. The undersigned hereby covenant and agree that:
 - (a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;
 - (b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;
 - (c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and
 - (d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.
5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.
7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.
8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.
9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.
10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

Comment [A9]: Why are legal advisors included?

In witness whereof, the undersigned have executed this Agreement at
, this day of , 2011.

**HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO**

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 ~~by~~ in which the Ontario Power Authority (the "OPA") stated that it would like to begin negotiations to ~~terminated~~ the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the mutual agreement of TCE and OPA to terminate the CES Contract, the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration') and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of \$5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Arbitration. Notwithstanding the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration or in any legal proceeding by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of ~~and~~ or arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

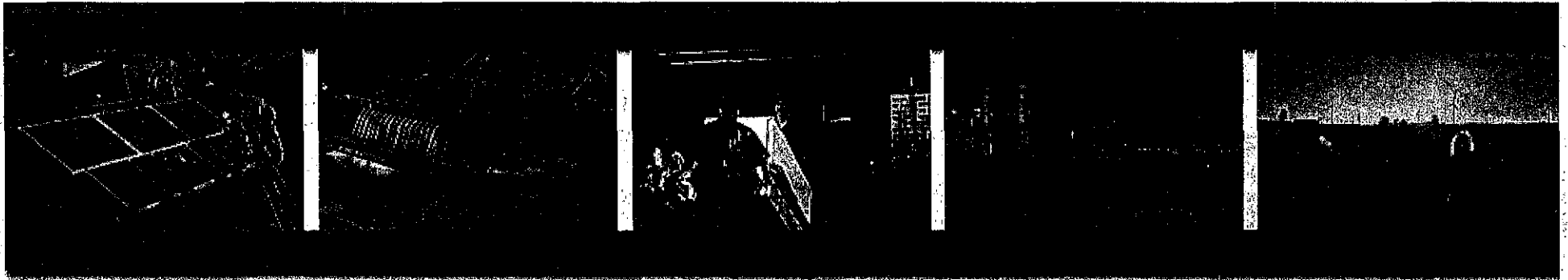
Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 11:38 AM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: BOD 2 Aug 2011 Presentation - REVISED
Attachments: TCE Board Presentation 2 Aug 2011 v2.pptx

Importance: High

Attached please find the revised BOD presentation. I can insert Kevin's and Amir's slides into the appendix when they are ready.

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)



Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
 - » Scope of arbitration limited only to appropriate quantum of damages
 - » Crown and OPA both parties to the arbitration
 - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE
- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE would take ownership stake in Lennox
- Provision also made for subsequent negotiations on potential joint ventures between TCE and OPG on conversion of a coal unit to gas and development of new gas plant
- If commercial deal not finalized by end of August, then matters determined by way of binding arbitration in accordance with the arbitration agreement
- OPA is a party to proposed arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
- OPA and Crown waive defences with respect to:
 - » Exclusion of liability clauses in contract
 - » Any possibility that plant would have been unable to be built because it did not receive all necessary approvals
- TCE releases OPA and Crown from any further claims
- Process for arbitration award to be paid through transfer of an interest in an asset owned by the Crown or an agency of the Crown
- No reference to other OPA procurement processes

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?
- Who should pay arbitration award? – ratepayers or taxpayers?
- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
- Scope of arbitration process – limits on arbitration process raises concern about ability to obtain information from TCE
- No acknowledgement may be made of the fact that matter has gone to arbitration

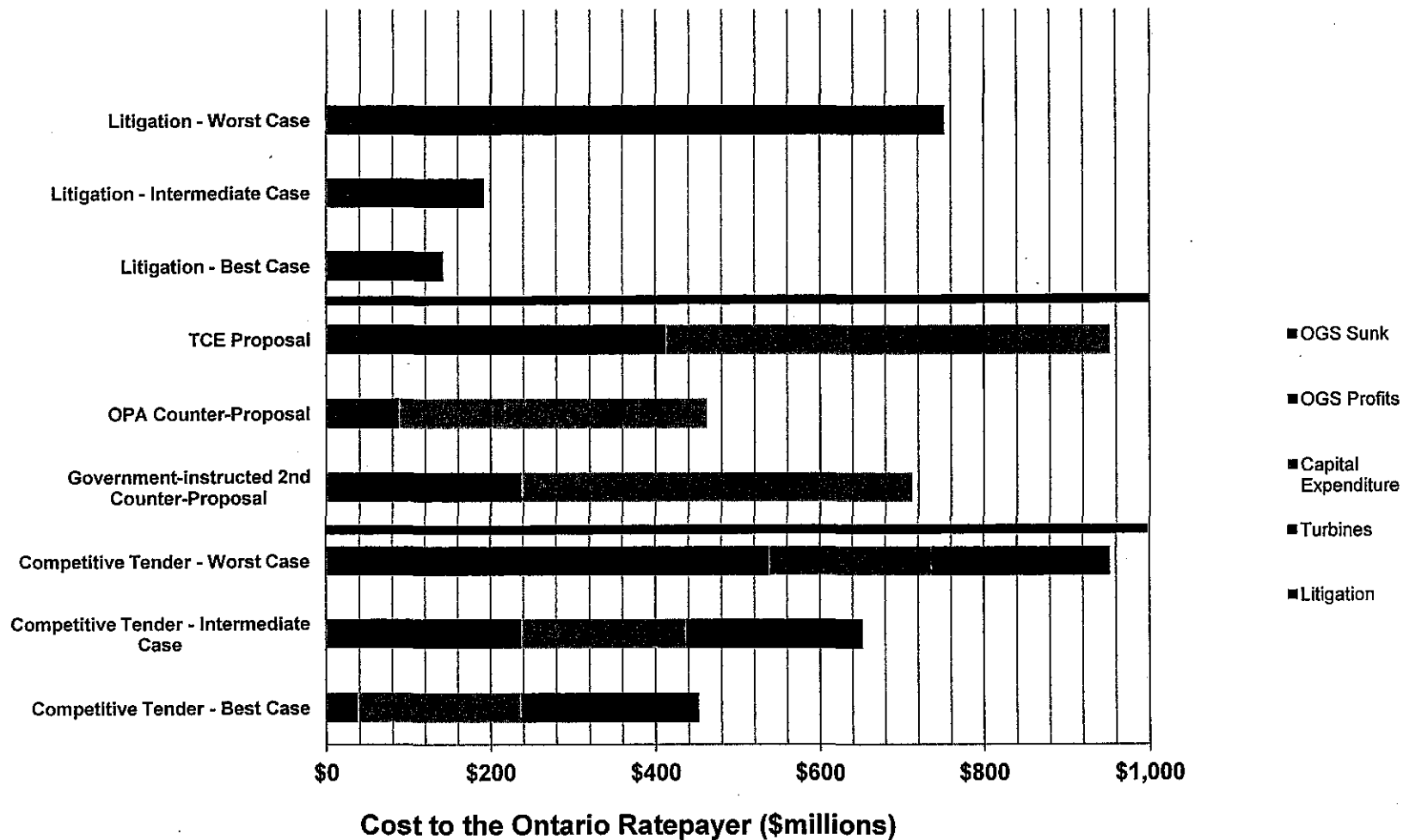
Comparison of Settlement Proposals

	NRR Proposal (March 20, 2004)	SEI/Whitby Proposal (March 20, 2004)	Original Portlands Energy Centre Proposal (March 20, 2004)	Portlands Energy Centre Counter-Proposal (April 29, 2004)	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.
Options 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 Costs (Estimated)	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
Operating Costs (Incremental)	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 Costs (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.
Operating Expenses (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.
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Appendix

Planning Aspects

Planning Aspects

Lennox GS – Current Status

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- Need for generation identified in OPA's proposed Integrated Power System Plan (IPSP) submitted to OEB in August 2007
- GTA has experienced robust growth and generation in the area continues to be significantly less than the GTA load
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- TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
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- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

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- OPA has worked closely with Ministry of Energy on the drafting of a Directive to authorize negotiations with TCE for the replacement project
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- Ministry wants the Directive to be silent on including the financial value of the OGS Contract into the revenue requirement for the replacement project
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Aleksandar Kojic

From: Michael Lyle
Sent: August 2, 2011 11:53 AM
To: Michael Killeavy; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED
Attachments: TCE Board Presentation 2 Aug 2011 v3.pptx

Some changes in light of more info on the Lennox side of the deal.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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From: Michael Killeavy
Sent: August 2, 2011 11:38 AM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: BOD 2 Aug 2011 Presentation - REVISED
Importance: High

Attached please find the revised BOD presentation. I can insert Kevin's and Amir's slides into the appendix when they are ready.

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Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
 - » Scope of arbitration limited only to appropriate quantum of damages
 - » Crown and OPA both parties to the arbitration
 - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE
- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE leases Lennox facility and constructs new combined cycle gas plant on Lennox site under PPA with OEFC (the issues related to a gas plant at Lennox are discussed in the Appendix)
- Provision also made for subsequent negotiations on potential joint venture between TCE and OPG on conversion of Nanticoke to gas
- If commercial deal not finalized by September 1, then matters determined by way of binding arbitration in accordance with the arbitration agreement
- OPA is a party to proposed arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
- OPA and Crown waive defences with respect to:
 - » Exclusion of liability clauses in contract
 - » Any possibility that plant would have been unable to be built because it did not receive all necessary approvals
- TCE releases OPA and Crown from any further claims
- Process for arbitration award to be paid through transfer of an interest in an asset owned by the Crown or an agency of the Crown
- No reference to other OPA procurement processes

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?
- Who should pay arbitration award? – ratepayers or taxpayers?
- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
- Scope of arbitration process – limits on arbitration process raises concern about ability to obtain information from TCE
- No acknowledgement may be made of the fact that matter has gone to arbitration

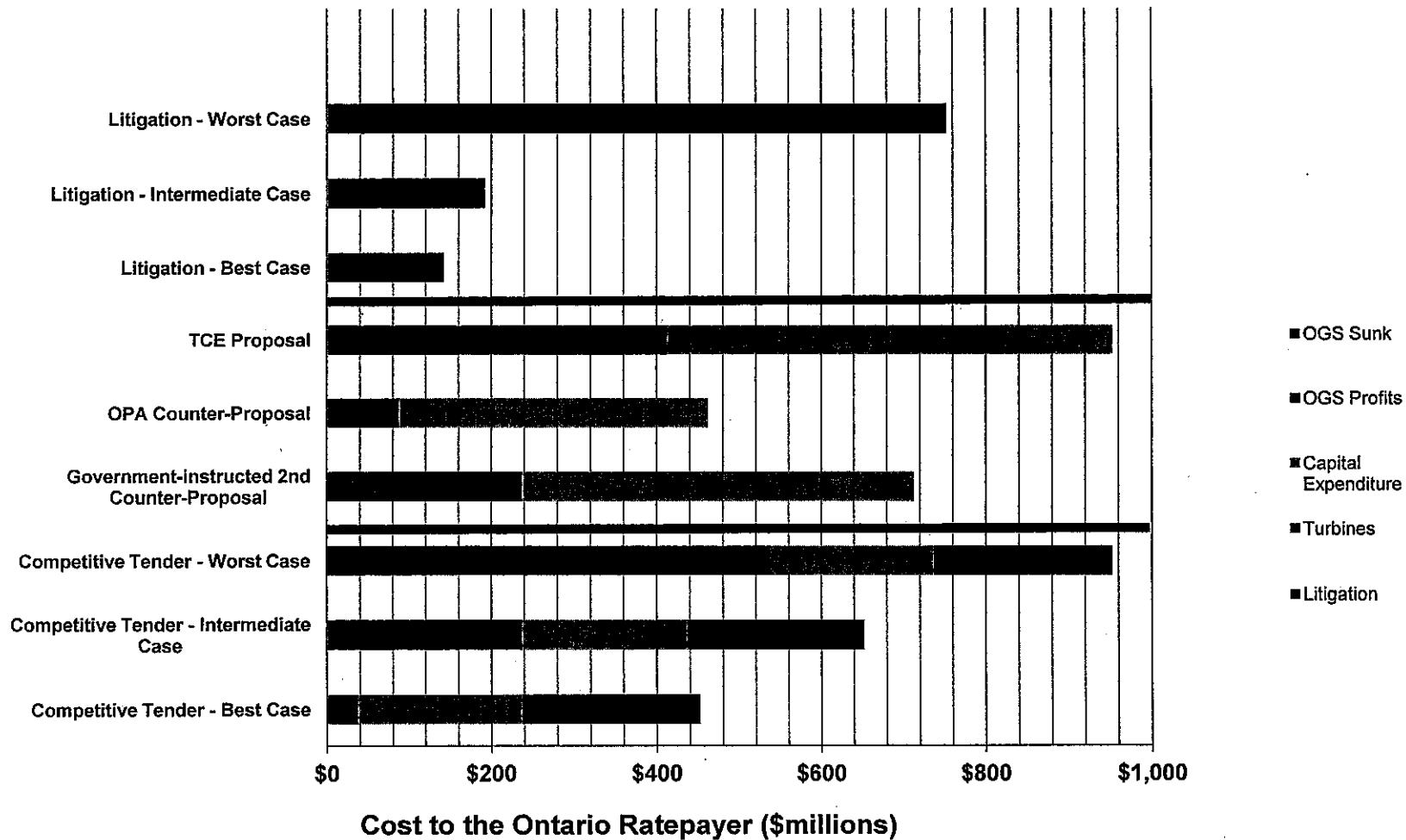
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Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 12:03 PM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED
Attachments: TCE Board Presentation 2 Aug 2011 v4.pptx

Here is a further updated presentation – I removed “government-instructed” from references to the second counter proposal. I also added the “Privileged and Confidential – Prepared in Contemplation of Litigation” footer to all the slides.

Michael Killeavy, LL.B., MBA, P.Eng.
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Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Sent: August 2, 2011 11:38 AM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: BOD 2 Aug 2011 Presentation - REVISED
Importance: High

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Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

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- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

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 - » Any possibility that plant would have been unable to be built because it did not receive all necessary approvals
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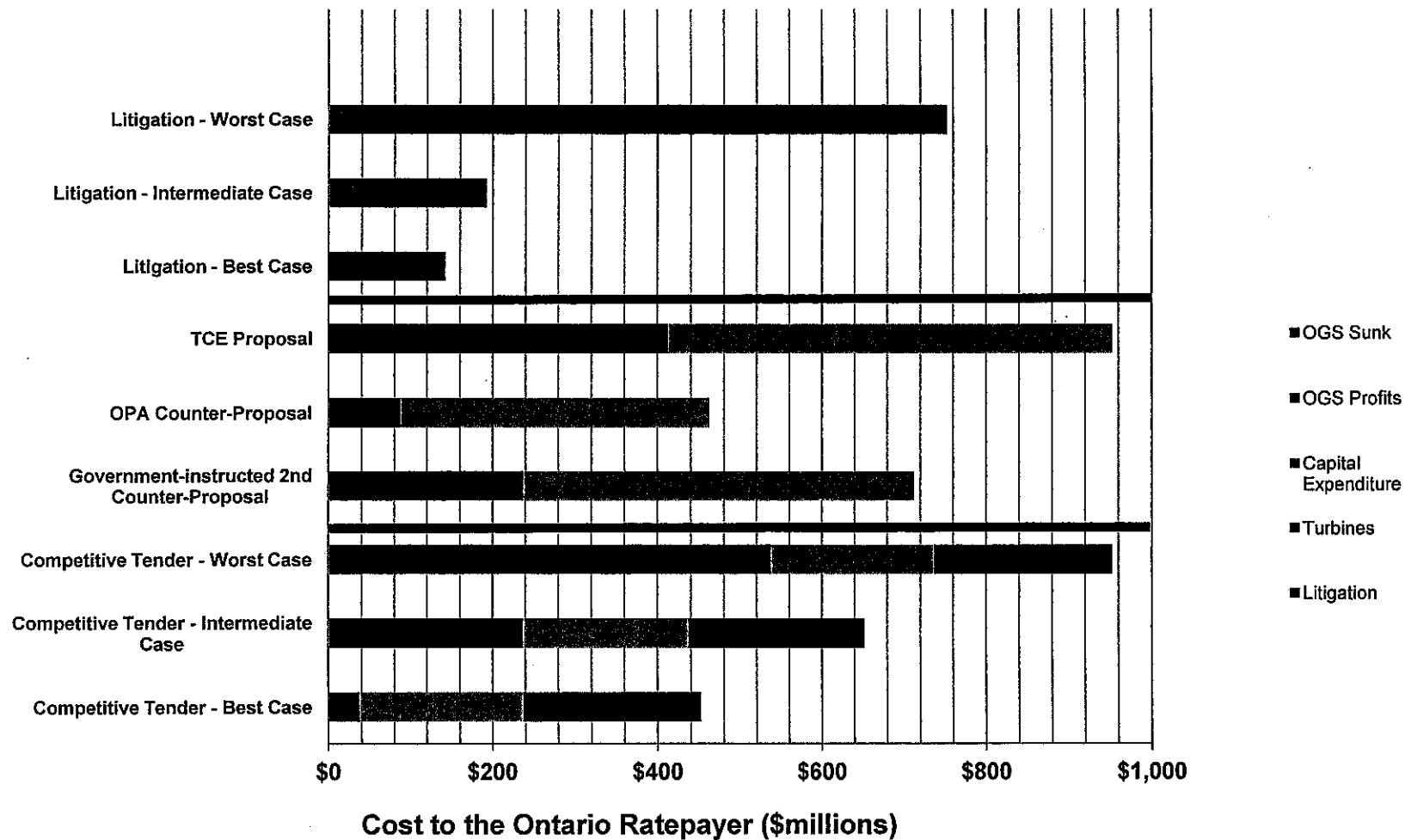
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	First Settlement Proposal (May 13, 2014)	Second Settlement Proposal (June 23, 2014)	Third Settlement Proposal (September 2, 2014)	Fourth Settlement Proposal (November 19, 2014)	Comments
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Structure 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.
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Appendix

Planning Aspects

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Lennox GS – Current Status

Southwest Greater Toronto Area (SW GTA) Supply

- Need for generation identified in OPA's proposed Integrated Power System Plan (IPSP) submitted to OEB in August 2007
- GTA has experienced robust growth and generation in the area continues to be significantly less than the GTA load
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- New electricity generation will:
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 - Competitively procure
 - Combined-cycle, natural gas-fired electricity generation facility
 - Rated capacity up to ~850 MW
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- C4CA (Citizens For Clean Air) is a non-profit Oakville organization opposed to locating power plants close to homes and schools. Frank Clegg is the Chairman and Director and former President of Microsoft Canada

Government Cancellation

- October 7, 2010 Energy Minister Brad Duguid, along with Oakville Liberal MPP Kevin Flynn, announced the Oakville power plant was not moving forward
- OPA provided TCE with letter, dated 7 October 2010, that stated *"The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract."*
- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

Termination Negotiations

- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.
- These discussions began in October 2011 and continued until April 2011.
- All these discussions were on a confidential and without prejudice basis.

TCE Initial Concerns

- TCE identified 3 immediate concerns:
 1. Canadian Securities Administrators (CSA) disclosure requires TCE to report a write down on the project if out-of-pocket costs not resolved by year-end (~\$37 MM)
 2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order (\$210 MM)
 3. Financial value of OGS
- TCE met with Premier's Office and advised that Ontario has other generation needs; TCE is a good counterparty; and asked TCE to be patient and not sue immediately

Confidentiality Agreement

- All OPA and TCE discussions related to the termination of the contract have occurred on a “without prejudice” basis.
- Oct. 8th OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.
- This agreement has a term of five years.

MOU

- TCE's Treasury Department needed documentation from the OPA stating there was a replacement project to which the OGS's out-of-pocket costs could be applied to avoid having to write them off at year-end
- MOU executed December 21, 2010:
 - Potential Project site identified for Cambridge
 - Potential Project will utilize the gas turbines sourced for OGS
 - OPA & TCE agree to work together in good faith to negotiate a Definitive Agreement for the Potential Project
 - Potential Project to be gas-fired peaking generation plant
 - Expired June 30, 2011

Replacement Project

- It was determined that the replacement project would be a gas-fired peaking generation (i.e. simple cycle) plant with a contract capacity of 400 - 450 MW
- TCE owns a site in Cambridge (Eagle St.) but close to schools and residential areas
- TCE identified the Boxwood Industrial Park in Cambridge as its preferred site
- TCE has had preliminary discussions with the City of Cambridge and they seem to be a willing host
- C4CA has commenced a letter writing campaign against the replacement project
- The 2 Mitsubishi M501GAC gas turbines purchased for OGS will be repurposed for the replacement project

Replacement Project Negotiations

- Negotiations focused on the following issues:
 - Capital costs of Replacement Project
 - Financial value of OGS
 - Disposition of Mitsubishi gas turbines
 - Proper allocation of project risk, i.e., who bears the approvals and permitting risk for the Replacement Project.
- The negotiations were premised on the financial value of OGS being “built” into the return that TCE would get from the Replacement Project.

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.
- Third party technical and financial consultants were hired to support this effort.
- The OPA believes that TCE's projected capital expenditure for the Replacement Project is far too high.
- TCE estimated that the CAPEX was on the order of \$540 million. Our estimate is \$375 million.

Fundamental Disagreement – Value of OGS

- TCE has claimed that the financial value of the OGS contract is \$500 million.
- TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

Residual Value of the OGS

- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

TCE Current Position on OGS Financial Value

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$385 million and not the earlier claimed \$503 million.
- Our independent expert believed that the NPV of OGS could be on the order of \$100 million. Given the problems in developing OGS the value is likely much lower.

Ministry of Energy Directive

- OPA has worked closely with Ministry of Energy on the drafting of a Directive to authorize negotiations with TCE for the replacement project
- OPA requires a Directive to enter into the Definitive Agreement
- Ministry wants the Directive to be silent on including the financial value of the OGS Contract into the revenue requirement for the replacement project
- Directive remains outstanding

Settlement Proposals

- March 10th OPA received TCE's Potential Project Pricing and Terms Proposal
 - Commercial parameters for the proposed peaking plant along with proposed revisions to the peaking contract
- TCE proposing to pass through majority of risk to Ontario ratepayer
- OPA retained Financial Consultant to assist with due diligence of TCE's Proposal
- March 28th OPA made a counter-proposal to TCE
- April 6th TCE rejected OPA's counter-proposal

Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 1:27 PM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED
Attachments: TCE Board Presentation 2 Aug 2011 v5.pptx

Attached is the presentation for today's review meeting at 1:30pm.

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Sent: August 2, 2011 11:53 AM
To: Michael Killeavy; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
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Some changes in light of more info on the Lennox side of the deal.

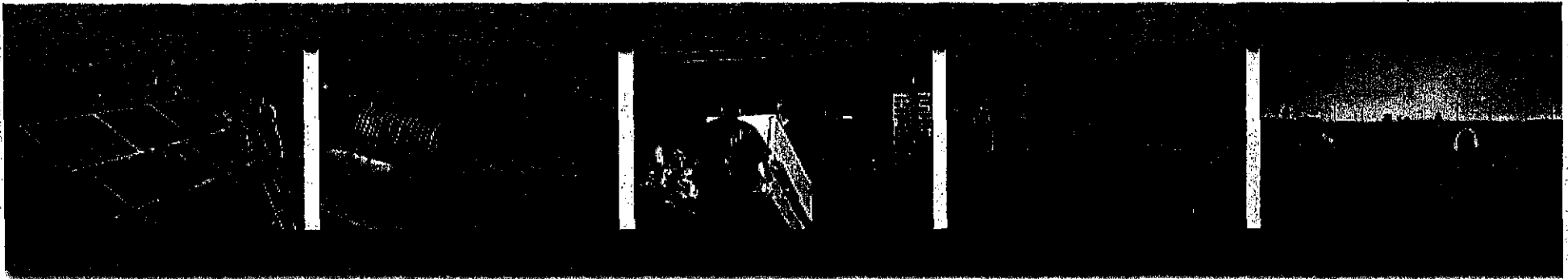
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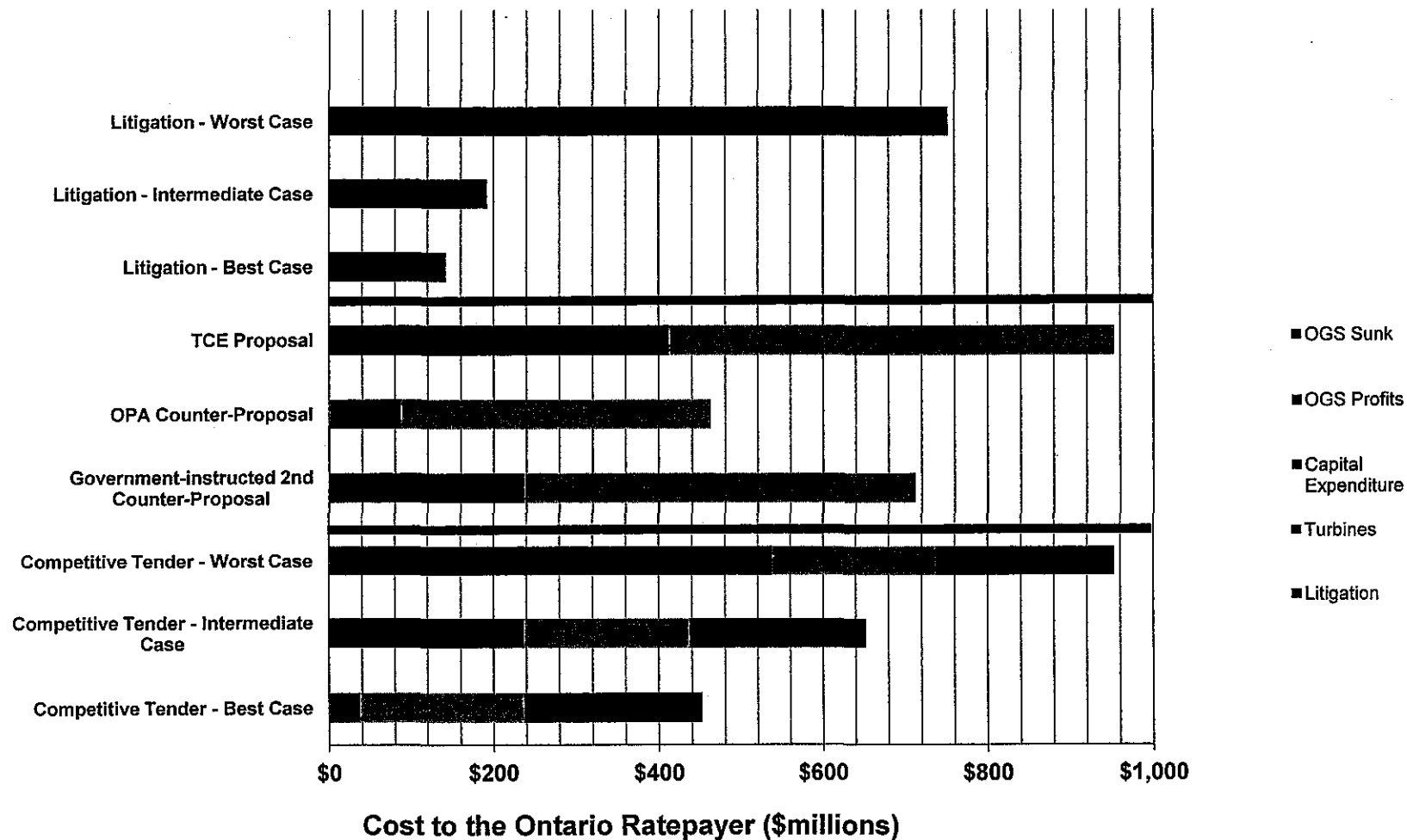
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System Planning Considerations

- Continued operation of the current Lennox station at current contracted terms is valuable to the system and as such is part of the LTEP and IPSP.
- The Transmission system can accommodate adding capacity on the Lennox site . Fuller assessment to be developed once details are better known.
- The System will need capacity that has operating flexibility: Low minimum loading, high ramp rates, and frequent cycling capability. Any new addition should be specified accordingly.

System Planning considerations-continued

- It is too early to commit to adding large capacity at this time. LTEP/IPSP recommended waiting to at least 2012 to reassess needs. Weak demand could make additions surplus for some time
- It is higher value to the system to add capacity in Cambridge. The alternative is 20 Km of 230 KV transmission from either Guelph or Kitchener
- Adding new capacity will delay and reduce the need for conversion of Nanticoke/ Lambton to natural gas.
- On Conversion of coal to gas : the only firm requirement at this time is for Thunder bay to be converted.

Current Status of Lennox Contract and Negotiations

- Directive for OPA to enter into negotiations with OPG was issued on January 6, 2010
- Current Contract
 - OPA essentially converted IESO RMR contract to OPA Contract for Lennox
 - Lennox provides a cost to Ontario electricity customers with a reasonable balancing of risk and reward including incentives for optimizing the facility operation
 - Contract was effective on the expiry of the most recent IESO RMR contract (October 1, 2009) and expired on December 31, 2010
 - OPA renewed the contract with minor modifications in January 2011 (effective until December 31, 2011)
- OPG would like a longer term contract (3 to 10 years) with OPA that provides for capital projects including a CHP facility
- Based on the relatively low cost of extremely flexible capacity associated with Lennox, the OPA has been working with OPG to re-negotiate a new longer term agreement for Lennox and would be willing to provide compensation for capital projects but is doubtful about the CHP facility
- The re-negotiated contract is envisaged to be complete by November of 2011

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- OPA provided TCE with letter, dated 7 October 2010, that stated *"The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract."*
- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

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- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.
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- All these discussions were on a confidential and without prejudice basis.

TCE Initial Concerns

- TCE identified 3 immediate concerns:
 1. Canadian Securities Administrators (CSA) disclosure requires TCE to report a write down on the project if out-of-pocket costs not resolved by year-end (~\$37 MM)
 2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order (\$210 MM)
 3. Financial value of OGS
- TCE met with Premier's Office and advised that Ontario has other generation needs; TCE is a good counterparty; and asked TCE to be patient and not sue immediately

Confidentiality Agreement

- All OPA and TCE discussions related to the termination of the contract have occurred on a “without prejudice” basis.
- Oct. 8th OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.
- This agreement has a term of five years.

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 - Potential Project site identified for Cambridge
 - Potential Project will utilize the gas turbines sourced for OGS
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 - Capital costs of Replacement Project
 - Financial value of OGS
 - Disposition of Mitsubishi gas turbines
 - Proper allocation of project risk, i.e., who bears the approvals and permitting risk for the Replacement Project.
- The negotiations were premised on the financial value of OGS being “built” into the return that TCE would get from the Replacement Project.

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- OPA undertook a detailed analysis of the Replacement Project.
- Third party technical and financial consultants were hired to support this effort.
- The OPA believes that TCE's projected capital expenditure for the Replacement Project is far too high.
- TCE estimated that the CAPEX was on the order of \$540 million. Our estimate is \$375 million.

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- TCE has claimed that the financial value of the OGS contract is \$500 million.
- TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

Residual Value of the OGS

- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

TCE Current Position on OGS Financial Value

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$385 million and not the earlier claimed \$503 million.
- Our independent expert believed that the NPV of OGS could be on the order of \$100 million. Given the problems in developing OGS the value is likely much lower.

Ministry of Energy Directive

- OPA has worked closely with Ministry of Energy on the drafting of a Directive to authorize negotiations with TCE for the replacement project
- OPA requires a Directive to enter into the Definitive Agreement
- Ministry wants the Directive to be silent on including the financial value of the OGS Contract into the revenue requirement for the replacement project
- Directive remains outstanding

Settlement Proposals

- March 10th OPA received TCE's Potential Project Pricing and Terms Proposal
 - Commercial parameters for the proposed peaking plant along with proposed revisions to the peaking contract
- TCE proposing to pass through majority of risk to Ontario ratepayer
- OPA retained Financial Consultant to assist with due diligence of TCE's Proposal
- March 28th OPA made a counter-proposal to TCE
- April 6th TCE rejected OPA's counter-proposal

Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 1:49 PM
To: Brett Baker
Subject: Fw: TCE

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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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Michael Lyle
Sent: Monday, August 01, 2011 06:22 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Michael Killeavy
Cc: Brett Baker
Subject: TCE

Further to our conversation from earlier with respect to what can be disclosed about the fact that the matter has gone to arbitration, there are two key provisions. There is the recital to the arbitration agreement which JoAnne mentioned which states that:

The Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record

There is also a provision in the accompanying release which provides that the facts and terms of the release and the settlement underlying it (i.e. that the matter will be determined by arbitration) will be held in confidence and will receive no publication unless necessary for financial statements, income tax purposes, disclosure under securities law or other legal reasons.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
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Email: michael.lyle@powerauthority.on.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 3:29 PM
To: Michael Lyle; JoAnne Butler; Amir Shalaby; Brett Baker
Cc: John Zych
Subject: TCE Matter - BOD Presentation 2 Aug 2011
Attachments: TCE Board Presentation 2 Aug 2011 v6.pptx

Importance: High

Attached is the updated presentation, which reflects today's meeting comments.

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



Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
 - » Scope of arbitration limited only to appropriate quantum of damages
 - » Crown and OPA both parties to the arbitration
 - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE
- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE leases Lennox facility and constructs new combined cycle gas plant on Lennox site under PPA with OEFC (the issues related to a gas plant at Lennox are discussed in the Appendix)
- Provision also made for subsequent negotiations on potential joint venture between TCE and OPG on conversion of Nanticoke to gas
- If commercial deal not finalized by September 1, then matters determined by way of binding arbitration in accordance with the arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
- OPA and Crown waive defences with respect to:
 - » Exclusion of liability clauses in contract
 - » Any possibility that plant would have been unable to be built because it did not receive all necessary approvals
- TCE releases OPA and Crown from any further claims
- Process for arbitration award to be paid through transfer of an interest in an asset owned by the Crown or an agency of the Crown
- No reference to other OPA procurement processes

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?
- Who should pay arbitration award? – ratepayers or taxpayers?
- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
- Scope of arbitration process – limits on arbitration process raises concern about ability to obtain information from TCE
- No acknowledgement may be made of the fact that matter has gone to arbitration.
- The discovery process is limited.

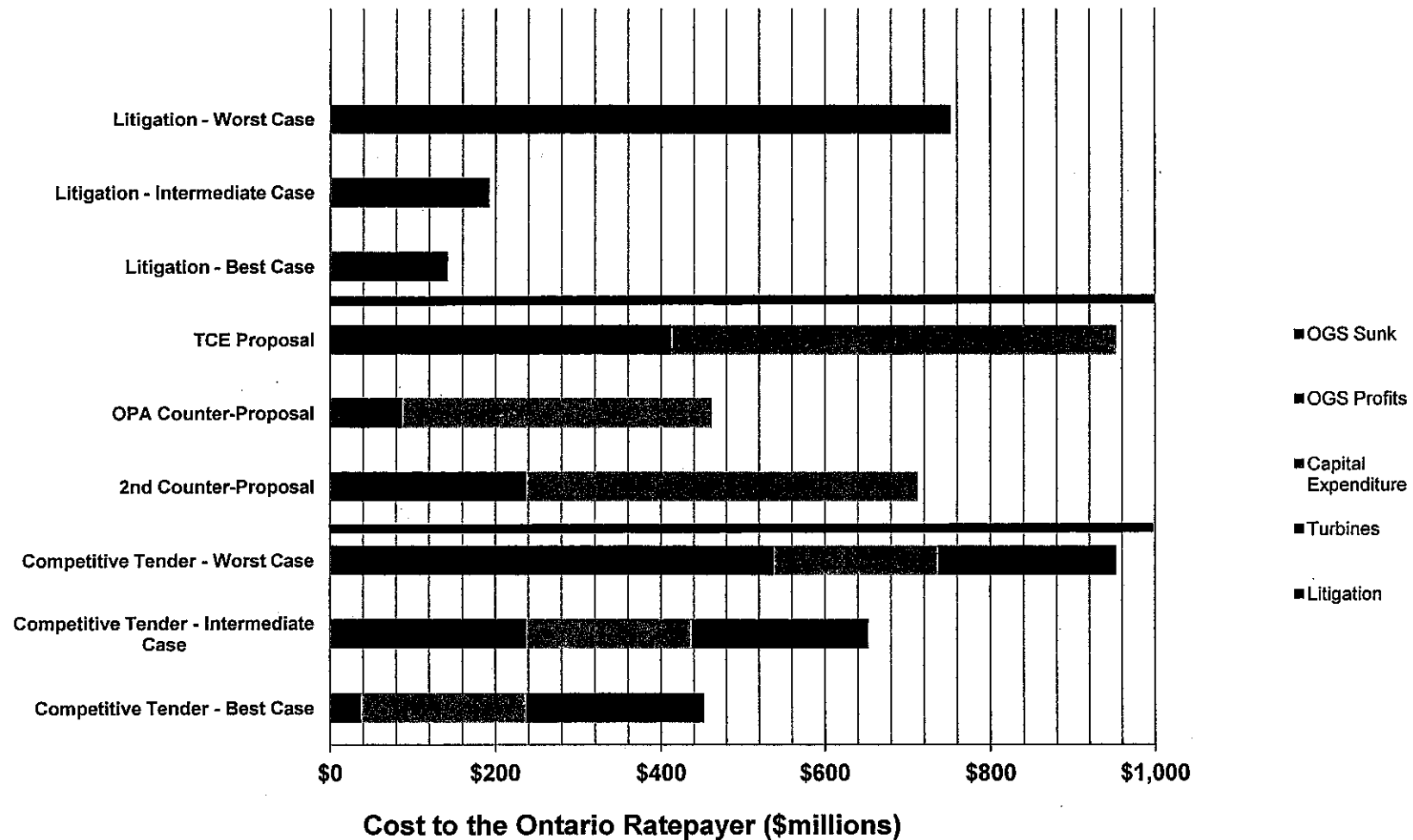
Comparison of Settlement Proposals

	Portlands Energy Centre (March 20, 2004)	Portlands Energy Centre (March 25, 2004)	Portlands Energy Centre (April 10, 2004)	Portlands Energy Centre (April 15, 2004)	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.
Installed 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 to be audited by Ministry of Finance for substantiation and reasonableness
Costs/Charges After Settlement	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 Expenditure (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.
Operational Expenditure (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 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.

Potential Outcomes

- The following graphic sets out several cases for litigation/arbitration and settlement
- TCE's proposal to build the Replacement Project costs the ratepayer more than our potentially worst case scenario if the case were to go to litigation
- The cost of the OPA's Second Counter-Proposal is close to the worst case if the case were to go to litigation

Financial Value of Potential Outcomes



Appendix – System Planning and Status of Lennox GS

OPG/TCE Potential Deal - System Planning Considerations

- Continued operation of the current Lennox station at current contracted terms is valuable to the system and as such is part of the LTEP and IPSP.
- The Transmission system can accommodate adding capacity on the Lennox site . Fuller assessment to be developed once details are better known.
- The System will need capacity that has operating flexibility: Low minimum loading, high ramp rates, and frequent cycling capability. Any new addition should be specified accordingly.

OPG/TCE Potential Deal - System Planning considerations (continued)

- It is too early to commit to adding large capacity at this time. LTEP/IPSP recommended waiting to at least 2012 to reassess needs. Weak demand could make additions surplus for some time
- It is higher value to the system to add capacity in Cambridge. The alternative is 20 Km of 230 KV transmission from either Guelph or Kitchener
- Adding new capacity will delay and reduce the need for conversion of Nanticoke/ Lambton to natural gas.
- On Conversion of coal to gas : the only firm requirement at this time is for Thunder bay to be converted.

Current Status of Lennox Contract and Negotiations

- Directive for OPA to enter into negotiations with OPG was issued on January 6, 2010
- Current Contract
 - OPA essentially converted IESO RMR contract to OPA Contract for Lennox
 - Lennox provides a cost to Ontario electricity customers with a reasonable balancing of risk and reward including incentives for optimizing the facility operation
 - Contract was effective on the expiry of the most recent IESO RMR contract (October 1, 2009) and expired on December 31, 2010
 - OPA renewed the contract with minor modifications in January 2011 (effective until December 31, 2011)
- OPG would like a longer term contract (3 to 10 years) with OPA that provides for capital projects including a CHP facility
- Based on the relatively low cost of extremely flexible capacity associated with Lennox, the OPA has been working with OPG to re-negotiate a new longer term agreement for Lennox and would be willing to provide compensation for capital projects but is doubtful about the CHP facility
- The re-negotiated contract is envisaged to be complete by November of 2011

Appendix – SWGTA Procurement and Contract (Summer 2008 to Spring 2011)

Southwest Greater Toronto Area (SW GTA) Supply

- Need for generation identified in OPA's proposed Integrated Power System Plan (IPSP) submitted to OEB in August 2007
- GTA has experienced robust growth and generation in the area continues to be significantly less than the GTA load
- Has resulted in heavy reliance on the Transmission System and the ability of existing infrastructure to service this area
- Expected to fall short by 2015 or sooner

Southwest Greater Toronto Area (SW GTA) Supply

- In addition to aggressive conservation efforts the OPA has identified the need for new electricity generation in this area
- New electricity generation will:
 - Support coal-fired generation replacement by 2014
 - Provide system supply adequacy
 - Address reliability issues such as local supply and voltage support
 - Defer Transmission needs in the Western GTA

OPA Procurement Process – Ministry Directive

- Ministry of Energy issued Directive to OPA in August 2008 to:
 - Competitively procure
 - Combined-cycle, natural gas-fired electricity generation facility
 - Rated capacity up to ~850 MW
 - In-service date not later than December 31, 2013
 - Connected to the 230 kV Transmission System corridor between the Oakville Transformer Station in Oakville to the Manby Transformer Station in Etobicoke
 - Not to be located at the former Lakeview Generating Station site in Mississauga

OPA Procurement Process – RFQ & RFP

1. Request for Qualifications

- Released October 2008
- 9 Qualification Submissions were received
- Short-list of 4 Qualified Applicants representing 7 proposed projects resulted

2. Request for Proposals

- Released February 2009
- 4 Proposals from 4 Proponents were received
- Proposals evaluated on Completeness; Mandatory Requirements; Rated Criteria and Economic Bid
- Project with lowest Adjusted Evaluated Cost selected

Procurement Process - Contract

- SW GTA Contract based on Clean Energy Supply (CES) Contract
 - 20 year term
 - Contract-for-Differences based on Deemed Dispatch logic:
 - Generator guaranteed Net Revenue Requirement (NRR)
 - Market Revenues < NRR = Payment from OPA
 - Market Revenues > NRR = Payment from Generator
- TransCanada Energy Ltd. (“TCE”) was the successful proponent in the RFP and was awarded SW GTA CES Contract on October 2009

Opposition to Gas-Fired Generation

- Procurement process fraught with local opposition
- Town of Oakville passed several by-laws:
 - Interim control of power generation facilities on certain lands in the Town of Oakville (2009-065)
 - Town of Oakville Official Plan Livable Oakville (2009-112)
 - Health Protection and Air Quality By-law (2010-035)
 - Amendment to the Official Plan of the Oakville Planning Area (Power Generation Facilities) (2010-151)
 - Amend the Comprehensive Zoning By-law 1984-63 to make modifications for power generation facilities (2010-152)
 - Amend the North Oakville Zoning By-law 2009-189 to make modifications for power generation facilities (2010-153)

Opposition to Gas-Fired Generation

- Town of Oakville rejected TCE's:
 - Site plan application
 - Application for minor variances
- Mississauga Mayor Hazel McCallion publically opposed project
- Liberal MPP Kevin Flynn publically opposed project
- C4CA (Citizens For Clean Air) is a non-profit Oakville organization opposed to locating power plants close to homes and schools. Frank Clegg is the Chairman and Director and former President of Microsoft Canada

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Aleksandar Kojic

From: Michael Killeavy
Sent: August 2, 2011 7:44 PM
To: John Zych
Subject: RE: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: TCE Board Presentation 2 Aug 2011 v6.pdf
Importance: High

John,

Slide #10 isn't blank. That page is a graph showing the relative cost of the various options. It's an embedded MS-EXCEL graph in the MS-POWERPOINT file. If Michael is using a iPad I think that the software he's using to view the presentation may not be displaying the embedded graph. Attached is a .pdf file. This should fix the problem. Let me know if this works or not.

Michael

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

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

From: John Zych
Sent: Tue 02-Aug-11 7:36 PM
To: Michael Killeavy
Subject: FW: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

See Michael Costello's comment about a missing page 10.

From: jmichaelcostello@gmail.com [<mailto:jmichaelcostello@gmail.com>]
Sent: Tue 8/2/2011 6:00 PM
To: John Zych
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

My page 10 is blank on slide deck...
MC

Sent from my iPad

On 2011-08-02, at 12:52 PM, "John Zych" <John.Zych@powerauthority.on.ca> wrote:

As agreed to at Monday's Board meeting, the Board will meet again by telephone tomorrow at 4:30 p.m., Toronto time, with one agenda item, to further discuss a proposal to submit to arbitration the dispute with TransCanada Energy Inc. arising out of the cancellation of the Oakville Generating Station.

Mr. David Livingston, President & Chief Executive Officer of Infrastructure Ontario, will be in attendance.

We attach the following materials:

- a slide deck;
- a term sheet (named "Original") for a commercial deal whereby TCE would acquire an interest in one of OPG's coal plants and convert it to burn natural gas;
- a term sheet (named "Preferred") for a commercial deal whereby TCE would acquire an interest in OPG's Lennox plant and to expand it and in it provision is also made for subsequent negotiations on a potential joint venture between TCE and OPG on the conversion of Nanticoke to gas (the "Original" term sheet is being provided for context but it has been superseded by the "Preferred" term sheet); and,
- a draft of an agreement whereby the parties would submit the dispute to arbitration.

The slide deck contains several pages that do not present new material - pages 16 to 35 are meant to jog your memory if needed as to the history of this matter.

It is hard to estimate the time required for this meeting but we estimate that 90 minutes will be needed.

The call-in details are as follows:

Toll Free: 1-877-320-7617

Board Members', Executive Team Access Code: 6802847#

John Zych

Corporate Secretary

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120 Adelaide Street West

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416-416-324-5488 Personal Fax

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- <1 - TCE Board Presentation 2 Aug 2011 v6.pptx>
- <2 - Original TS.pdf>
- <3 - Preferred TS.pdf>
- <4 - Draft Arbitration Agreement_FINAL12_IO.docx>



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Presentation to Board of Directors
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Litigation: Solicitor/Client Privilege

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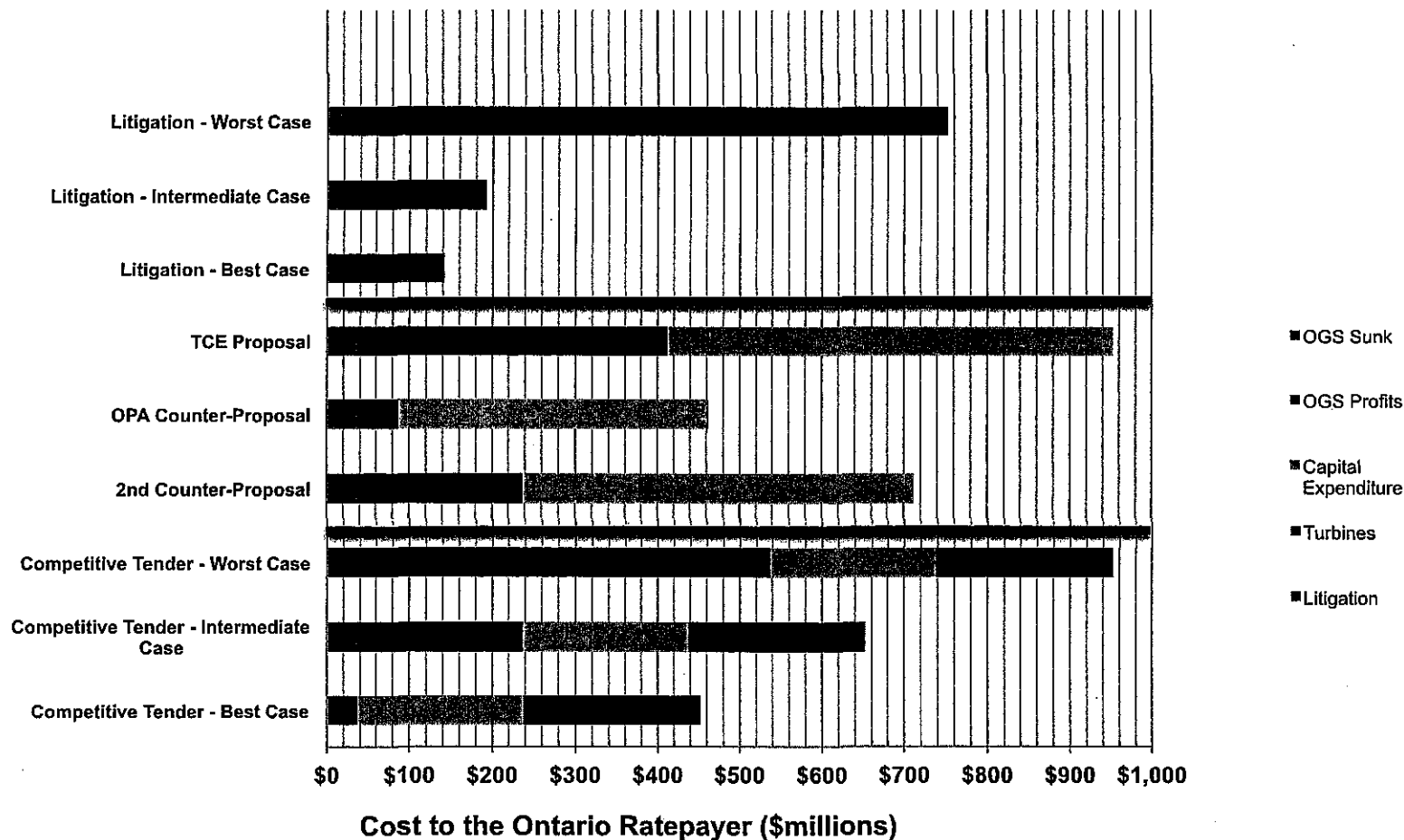
Comparison of Settlement Proposals

	First Proposal (March 30, 2006)	Counter Proposal (March 28, 2006)	Second Counter Proposal (April 21, 2006)	Third Counter Proposal (April 24, 2006)	Comments
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Financial Value of Potential Outcomes



Appendix – System Planning and Status of Lennox GS

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Appendix – SWGTA Procurement and Contract (Summer 2008 to Spring 2011)

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- New electricity generation will:
 - Support coal-fired generation replacement by 2014
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- Town of Oakville rejected TCE's:
 - Site plan application
 - Application for minor variances
- Mississauga Mayor Hazel McCallion publically opposed project
- Liberal MPP Kevin Flynn publically opposed project
- C4CA (Citizens For Clean Air) is a non-profit Oakville organization opposed to locating power plants close to homes and schools. Frank Clegg is the Chairman and Director and former President of Microsoft Canada

Government Cancellation

- October 7, 2010 Energy Minister Brad Duguid, along with Oakville Liberal MPP Kevin Flynn, announced the Oakville power plant was not moving forward
- OPA provided TCE with letter, dated 7 October 2010, that stated *“The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract.”*
- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

Termination Negotiations

- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.
- These discussions began in October 2010 and continued until April 2011.
- All these discussions were on a confidential and without prejudice basis.

TCE Initial Concerns

- TCE identified 3 immediate concerns:
 1. Securities regulations requires TCE to report a write-down on the project if out-of-pocket costs not resolved by year-end (~\$37 MM)
 2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order (\$210 MM)
 3. Financial value of OGS

Confidentiality Agreement

- All OPA and TCE discussions related to the termination of the contract have occurred on a “without prejudice” basis.
- Oct. 8th OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.
- This agreement has a term of five years.

MOU

- TCE's Treasury Department needed documentation from the OPA stating there was a replacement project to which the OGS's out-of-pocket costs could be applied to avoid having to write them off at year-end
- MOU executed December 21, 2010:
 - Potential Project site identified for Cambridge
 - Potential Project will utilize the gas turbines sourced for OGS
 - OPA & TCE agree to work together in good faith to negotiate a Definitive Agreement for the Potential Project
 - Potential Project to be gas-fired peaking generation plant
 - Expired June 30, 2011

Replacement Project

- It was determined that the replacement project would be a gas-fired peaking generation (i.e. simple cycle) plant with a contract capacity of 400 - 450 MW
- TCE owns a site in Cambridge (Eagle St.) but close to schools and residential areas
- TCE identified the Boxwood Industrial Park in Cambridge as its preferred site
- TCE has had preliminary discussions with the City of Cambridge and they seem to be a willing host
- C4CA has commenced a letter writing campaign against the replacement project
- The 2 Mitsubishi M501GAC gas turbines purchased for OGS will be repurposed for the replacement project

Replacement Project Negotiations

- Negotiations focused on the following issues:
 - Capital costs of Replacement Project
 - Financial value of OGS
 - Disposition of Mitsubishi gas turbines
 - Proper allocation of project risk, i.e., who bears the approvals and permitting risk for the Replacement Project.
- The negotiations were premised on the financial value of OGS being “built” into the return that TCE would get from the Replacement Project.

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.
- Third party technical and financial consultants were hired to support this effort.
- The OPA believes that TCE's projected capital expenditure for the Replacement Project is far too high.
- TCE estimated that the CAPEX was on the order of \$540 million. Our estimate is \$375 million.

Fundamental Disagreement – Value of OGS

- TCE has claimed that the financial value of the OGS contract is \$500 million.
- TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

Residual Value of the OGS

- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

TCE Current Position on OGS Financial Value

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$385 million and not the earlier claimed \$503 million.
- Our independent expert believed that the NPV of OGS could be on the order of \$100 million. Given the problems in developing OGS the value is likely much lower.

Aleksandar Kojic

From: John Zych
Sent: August 2, 2011 7:56 PM
To: jmichaelcostello@gmail.com
Cc: Michael Killeavy
Subject: FW: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: TCE Board Presentation 2 Aug 2011 v6.pdf
Importance: High

Michael Costello, Does this work?

From: Michael Killeavy
Sent: Tue 8/2/2011 7:44 PM
To: John Zych
Subject: RE: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

John,

Slide #10 isn't blank. That page is a graph showing the relative cost of the various options. It's an embedded MS-EXCEL graph in the MS-POWERPOINT file. If Michael is using a iPad I think that the software he's using to view the presentation may not be displaying the embedded graph. Attached is a .pdf file. This should fix the problem. Let me know if this works or not.

Michael

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

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

From: John Zych
Sent: Tue 02-Aug-11 7:36 PM
To: Michael Killeavy
Subject: FW: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

See Michael Costello's comment about a missing page 10.

From: jmichaelcostello@gmail.com [<mailto:jmichaelcostello@gmail.com>]
Sent: Tue 8/2/2011 6:00 PM
To: John Zych
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

My page 10 is blank on slide deck...
MC

Sent from my iPad

On 2011-08-02, at 12:52 PM, "John Zych" <John.Zych@powerauthority.on.ca> wrote:

As agreed to at Monday's Board meeting, the Board will meet again by telephone tomorrow at 4:30 p.m., Toronto time, with one agenda item, to further discuss a proposal to submit to arbitration the dispute with TransCanada Energy Inc. arising out of the cancellation of the Oakville Generating Station.

Mr. David Livingston, President & Chief Executive Officer of Infrastructure Ontario, will be in attendance.

We attach the following materials:

- a slide deck;
- a term sheet (named "Original") for a commercial deal whereby TCE would acquire an interest in one of OPG's coal plants and convert it to burn natural gas;
- a term sheet (named "Preferred") for a commercial deal whereby TCE would acquire an interest in OPG's Lennox plant and to expand it and in it provision is also made for subsequent negotiations on a potential joint venture between TCE and OPG on the conversion of Nanticoke to gas (the "Original" term sheet is being provided for context but it has been superseded by the "Preferred" term sheet); and,
- a draft of an agreement whereby the parties would submit the dispute to arbitration.

The slide deck contains several pages that do not present new material - pages 16 to 35 are meant to jog your memory if needed as to the history of this matter.

It is hard to estimate the time required for this meeting but we estimate that 90 minutes will be needed.

The call-in details are as follows:

Toll Free: 1-877-320-7617
Board Members', Executive Team Access Code: 6802847#

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

416-416-324-5488 Personal Fax

John.Zych@powerauthority.on.ca <<mailto:John.Zych@powerauthority.on.ca>>

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<1 - TCE Board Presentation 2 Aug 2011 v6.pptx>

<2 - Original TS.pdf>

<3 - Preferred TS.pdf>

<4 - Draft Arbitration Agreement_FINAL12_IO.docx>



Arbitration Agreement with TCE
Presentation to Board of Directors
Prepared in Contemplation of
Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
 - » Scope of arbitration limited only to appropriate quantum of damages
 - » Crown and OPA both parties to the arbitration
 - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE
- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE leases Lennox facility and constructs new combined cycle gas plant on Lennox site under PPA with OEFC (the issues related to a gas plant at Lennox are discussed in the Appendix)
- Provision also made for subsequent negotiations on potential joint venture between TCE and OPG on conversion of Nanticoke to gas
- If commercial deal not finalized by September 1, then matters determined by way of binding arbitration in accordance with the arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
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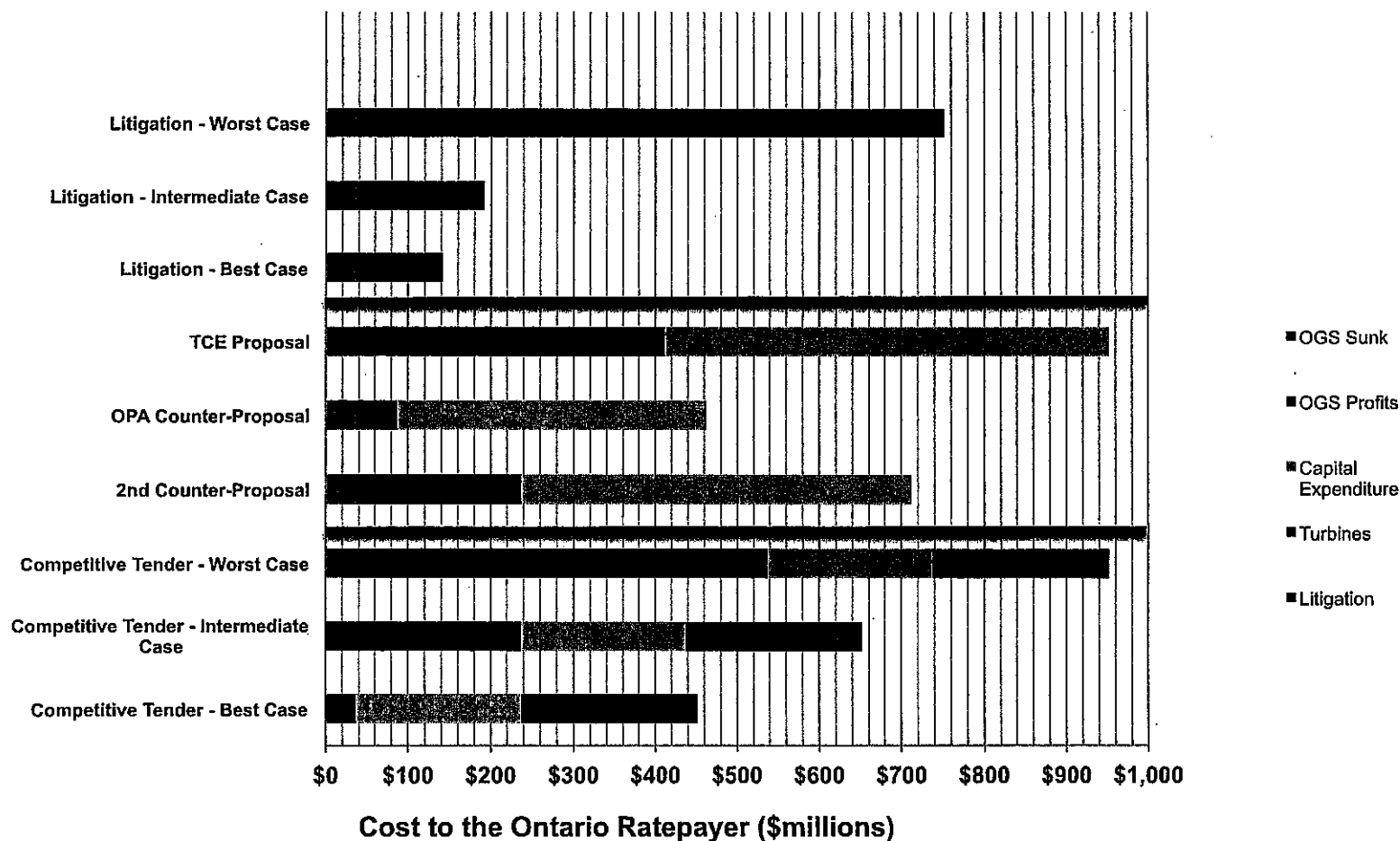
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- Mississauga Mayor Hazel McCallion publically opposed project
- Liberal MPP Kevin Flynn publically opposed project
- C4CA (Citizens For Clean Air) is a non-profit Oakville organization opposed to locating power plants close to homes and schools. Frank Clegg is the Chairman and Director and former President of Microsoft Canada

Government Cancellation

- October 7, 2010 Energy Minister Brad Duguid, along with Oakville Liberal MPP Kevin Flynn, announced the Oakville power plant was not moving forward
- OPA provided TCE with letter, dated 7 October 2010, that stated *"The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract."*
- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

Termination Negotiations

- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.
- These discussions began in October 2010 and continued until April 2011.
- All these discussions were on a confidential and without prejudice basis.

TCE Initial Concerns

- TCE identified 3 immediate concerns:
 1. Securities regulations requires TCE to report a write-down on the project if out-of-pocket costs not resolved by year-end (~\$37 MM)
 2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order (\$210 MM)
 3. Financial value of OGS

Confidentiality Agreement

- All OPA and TCE discussions related to the termination of the contract have occurred on a “without prejudice” basis.
- Oct. 8th OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.
- This agreement has a term of five years.

MOU

- TCE's Treasury Department needed documentation from the OPA stating there was a replacement project to which the OGS's out-of-pocket costs could be applied to avoid having to write them off at year-end
- MOU executed December 21, 2010:
 - Potential Project site identified for Cambridge
 - Potential Project will utilize the gas turbines sourced for OGS
 - OPA & TCE agree to work together in good faith to negotiate a Definitive Agreement for the Potential Project
 - Potential Project to be gas-fired peaking generation plant
 - Expired June 30, 2011

Replacement Project

- It was determined that the replacement project would be a gas-fired peaking generation (i.e. simple cycle) plant with a contract capacity of 400 - 450 MW
- TCE owns a site in Cambridge (Eagle St.) but close to schools and residential areas
- TCE identified the Boxwood Industrial Park in Cambridge as its preferred site
- TCE has had preliminary discussions with the City of Cambridge and they seem to be a willing host
- C4CA has commenced a letter writing campaign against the replacement project
- The 2 Mitsubishi M501GAC gas turbines purchased for OGS will be repurposed for the replacement project

Replacement Project Negotiations

- Negotiations focused on the following issues:
 - Capital costs of Replacement Project
 - Financial value of OGS
 - Disposition of Mitsubishi gas turbines
 - Proper allocation of project risk, i.e., who bears the approvals and permitting risk for the Replacement Project.
- The negotiations were premised on the financial value of OGS being “built” into the return that TCE would get from the Replacement Project.

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.
- Third party technical and financial consultants were hired to support this effort.
- The OPA believes that TCE's projected capital expenditure for the Replacement Project is far too high.
- TCE estimated that the CAPEX was on the order of \$540 million. Our estimate is \$375 million.

Fundamental Disagreement – Value of OGS

- TCE has claimed that the financial value of the OGS contract is \$500 million.
- TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

Residual Value of the OGS

- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

TCE Current Position on OGS Financial Value

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$385 million and not the earlier claimed \$503 million.
- Our independent expert believed that the NPV of OGS could be on the order of \$100 million. Given the problems in developing OGS the value is likely much lower.

Aleksandar Kojic

From: Michael Killeavy
Sent: August 3, 2011 8:22 AM
To: JoAnne Butler
Subject: RE: Confidential - TCE and Lennox

Simply put, if we've a 450 MW peaking plant that runs 5% of the time, the annual energy generated is $450 \text{ MW} * 24\text{h/day} * 364 \text{ days/year} * 5\%$ or about 200,000 MWh. The annual cost of imports avoided would be the cost/MWh of the imports by this annual energy figure. The cost of imports is HOEP + Hourly Uplift Charge.

If the Hourly Uplift Charge is \$2.00/MWh and average HOEP is \$35/MWh, the avoided cost of imported power is $200,000 \text{ MWh} * (\$35/\text{MWh} + \$2/\text{MWh})$ or \$7.4 million a year. Over a 20-year term, the present value of this avoided cost is about \$80 million.

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

From: JoAnne Butler
Sent: August 3, 2011 8:04 AM
To: Michael Killeavy; Michael Lyle; Amir Shalaby
Subject: Re: Confidential - TCE and Lennox

Can we discuss response at ETM?

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

From: Michael Killeavy
Sent: Wednesday, August 03, 2011 07:44 AM
To: Michael Lyle
Cc: JoAnne Butler
Subject: Re: Confidential - TCE and Lennox

Based on TCE's position in the negotiations, the all-in cost of the K-W peaker in terms of CAPEX, sunk costs, financial value of OGS is more expensive than our worst outcome under litigation - in the litigation scenario we'd forego CAPEX outlays.

I'll have to think about Jim's question/comment some more. There is value in having a peaking plant, I suppose. Amir will need to weigh in, though. Is the value perhaps the avoided cost of imported power?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management

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Michael.killeavy@powerauthority.on.ca

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

From: Michael Lyle
Sent: Wednesday, August 03, 2011 07:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

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

From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 07:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

Mathematically true, but not the full story and not an accurate reading of where we find ourselves right now.

If it were to go to litigation and if the ratepayer is assumed to bear the full burden of the outcome, the ratepayer gets no electrons. If a Replacement Project is done, the ratepayer gets electrons. We should be biased towards some form of Replacement Project.

When we were in negotiations with TCE about a KW peaker, we tried to establish parameters whereby we could accommodate TCE's costs on the cancelled 945MW Oakville combined cycle plant within the envelope of a 500MW peaker. Slides 8 and 10, previously seen by the Board. We established an "out edge" of this envelope in respect of a peaker; this was not acceptable to TCE.

When IO took over negotiations, they changed the envelope to Lennox, an antiquated 2,100MW baseload dual fuel plant and Nantikoke, a 4,400MW coal-to-gas conversion opportunity. On the face of it, it makes more sense that TCE's demands can be accommodated by folding in the business proposition of a 945MW combined cycle plant into either of these alternative sites.

The question isn't just "cost to the ratepayer" - it is "value to the ratepayer".

Let's focus on Lennox. Since 2006, Lennox has been running on a yearly contract which presently costs the ratepayer \$110MM per year. And for what? What is its capacity utilization? The only time I've seen it running recently was once during the heat spell this past July. It is my understanding that OPG has written the plant off to zero and has filed notice to close it; the only reason it is still running is the must-run contract. Absent the TCE discussion, we were wanting to extend the contract on Lennox for three to ten years. What

is the NPV of that contract extension - \$300MM to \$900MM by a quick calculation. What value does running Lennox this way create for the ratepayer?

If the proposed Lennox rebuild eliminates some or all of those costs currently borne by the ratepayer, isn't that a source of ratepayer value?

My point is that the real question here is this: what is the value for ratepayer of Lennox as presently run and Lennox reconfigured with the Oakville turbines? Costs to the ratepayer under the latter will probably be higher, but the question is the value to the ratepayer. We need to have a more practical and financially articulate position before we engage in this discussion this afternoon.

Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: Michael Killeavy
Sent: August 3, 2011 8:24 AM
To: Kevin Dick
Subject: FW: Confidential - TCE and Lennox

Please see below. It deals with Lennox.

Michael Killeavy, LL.B., MBA, P.Eng.
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Sent: Wednesday, August 03, 2011 07:38 AM
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Subject: Confidential - TCE and Lennox

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Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: Michael Killeavy
Sent: August 3, 2011 10:41 AM
To: 'Sebastiano, Rocco'
Subject: RE: IO Deal - Arbitration ...

Thank you Rocco. Sorry to jam you.

Michael Killeavy, LL.B., MBA, P.Eng.
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416-967-1947 (FAX)

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: August 3, 2011 10:40 AM
To: Michael Killeavy
Subject: RE: IO Deal - Arbitration ...

I will try to get an answer to this question before our internal 3 pm meeting with Mike Lyle.

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, August 03, 2011 10:20 AM
To: Sebastiano, Rocco
Subject: IO Deal - Arbitration ...

Can you please ask a securities law partner whether or not TCE will need to disclose the fact that it's entered into an arbitration with the OPA and/or Crown?

I understand we're meeting today. If you could have an answer today it would be helpful for the Board meeting.

Michael Killeavy, LL.B., MBA, P.Eng.
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Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: August 3, 2011 10:40 AM
To: Michael Killeavy
Subject: RE: IO Deal - Arbitration ...

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Sent: Wednesday, August 03, 2011 10:20 AM
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Aleksandar Kojic

From: Michael Killeavy
Sent: August 4, 2011 8:17 AM
To: Michael Lyle; Colin Andersen; JoAnne Butler; Brett Baker
Subject: RE: TCE
Attachments: arbagreementnewclauses-MK Comments.docx
Importance: High

I have a few minor suggestions in the attached mark-up.

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From: Michael Lyle
Sent: August 3, 2011 10:54 PM
To: Colin Andersen; JoAnne Butler; Michael Killeavy; Brett Baker
Subject: TCE

See attached proposed clauses for the arbitration agreement developed by Oslers.

Michael Lyle
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Proposed New Clauses for the Draft Arbitration Agreement

Section 4.3(d)

(d) The Parties agree that the waiver of defences relating to Section 14.1 of the CES Contract set out in this Arbitration Agreement is intended to apply to the determination of TCE's reasonable damages associated with the anticipated financial value of the CES Contract (such as loss of profits under the CES Contract), but is not intended to apply to other special, indirect, incidental, punitive, exemplary or consequential damages (such as loss of revenues not contemplated by the CES Contract).

Section 4.7 Gas Turbines

The Parties acknowledge that TCE has entered into an equipment supply contract (as amended, the "Equipment Supply Contract") with MPS Canada, Inc. ("MPS") dated July 7, 2009, for the purchase of two M501GAC gas turbines, which were subsequently modified to include "fast start" capability (the "Gas Turbines").

(a) TCE shall mitigate any damages it may suffer in connection with the Gas Turbines resulting from the cancellation of the OGS, by assigning, selling or otherwise disposing of the Gas Turbines or assigning or amending the Equipment Supply Contract ("Proposed Gas Turbine Mitigation Measures").

(b) After all material details relating to a Proposed Gas Turbine Mitigation Measures have been finalized, and prior to the commencement of the Arbitration Hearing, TCE shall provide the OPA with a detailed explanation of such Proposed Gas Turbine Mitigation Measures. For a period of [90 days] after the OPA has received such explanation, the OPA (or a third party to be designated by the OPA) shall have the right to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such right of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.

(c) If the OPA does not exercise the right set out in Section 4.7(b), TCE may proceed with the Proposed Gas Turbine Mitigation Measures in accordance with its obligation set out in Section 4.7(a).

Section 7.5 Split of Final Award between Respondents

Notwithstanding any finding of liability as between the Respondents which may be determined by the Arbitrator in the Final Award [or interim final award], except where the Final Award [or interim final award] is satisfied by the transfer of an asset of Equivalent Value, the Respondents agree that the liability for payment of the Final Award [or interim final award] shall be split equally between the Respondents.

Aleksandar Kojic

From: Michael Lyle
Sent: August 4, 2011 9:11 PM
To: 'Sebastiano, Rocco'; Michael Killeavy
Subject: TCE

Not surprisingly, TCE has stated that it does not like either of the changes to limit their damages to exclude other financial loss arising outside the contract or the option for the turbines. On the first issue, they asserted they were being "nickel and dimed". Do we have any sense of what might be the potential additional damages from ancillary services income etc ? Of course, we are on a crazy deadline. TCE has threatened to "do something" if we have not all signed the arbitration agreement by 2 tomorrow.

Michael Lyle
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Aleksandar Kojic

From: Michael Killeavy
Sent: August 4, 2011 9:19 PM
To: Michael Lyle; 'RSebastiano@osler.com'
Subject: Re: TCE

I'm not sure about what ancillary services would be worth. I'll do some number crunching tomorrow. Thank you for the update.

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Michael.killeavy@powerauthority.on.ca

From: Michael Lyle
Sent: Thursday, August 04, 2011 09:11 PM
To: 'Sebastiano, Rocco' <RSebastiano@osler.com>; Michael Killeavy
Subject: TCE

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Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: August 5, 2011 1:51 AM
To: Michael Lyle; Michael Killeavy
Subject: Re: TCE

Perhaps Kevin Dick could do a rough cut of the value of OR. As for other possible claims for lost revenue outside of the CES Contract, considering GEC is claiming \$10 million/yr for MR356 for a comparably-sized facility, I could imagine a situation where TCE's claim includes a significant amount on account of GCGs, in the millions of dollars per year. Also, PEC advised that as a result of MR356, they had lost in excess of \$1 million in revenue since the introduction of the rule 18 months ago and that plant's economics are more generous to the Supplier than OGS.

Bottom-line here is that there are other sources of revenues from the IESO markets which are not contemplated in the CES Contract and which would have generated in excess of \$1 million per year in actual net revenue to OGS. This does not amount to nickels and dimes, rather tens of millions of dollars. TCE is not coming clean on this issue in my estimation.

Regarding the turbine issue, as I indicated to the OPA board, this is a potential liability in the order of \$100 million which according to the agreed split on damages between the OPA and the Province (as per the draft side letter) would fall into the damages category for which the OPA would be on the hook. Maybe that's why the Province is not as concerned about the damages flowing from the turbines as we are.

I would hope that the Province would take a careful approach on these issues. At this stage, TCE is not going to pull the trigger and jeopardize the only leverage they have because once they issue their claim in court, their leverage is gone. This is why it is unfortunate that the OPA is not at the negotiating table with TCE... Sorry, I know that I am preaching to the converted...

Rocco

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Rocco

From: Michael Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]
Sent: Thursday, August 04, 2011 09:11 PM
To: Sebastiano, Rocco; Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>
Subject: TCE

Not surprisingly, TCE has stated that it does not like either of the changes to limit their damages to exclude other financial loss arising outside the contract or the option for the turbines. On the first issue, they asserted they were being "nickel and dimed". Do we have any sense of what might be the potential additional damages from ancillary services income etc? Of course, we are on a crazy deadline. TCE has threatened to "do something" if we have not all signed the arbitration agreement by 2 tomorrow.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: August 5, 2011 4:32 AM
To: 'RSebastiano@osler.com'; Michael Lyle
Subject: Re: TCE

Thank. I agree with you. I'll work on OR this morning.

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Friday, August 05, 2011 01:50 AM
To: Michael Lyle; Michael Killeavy
Subject: Re: TCE

Perhaps Kevin Dick could do a rough cut of the value of OR. As for other possible claims for lost revenue outside of the CES Contract, considering GEC is claiming \$10 million/yr for MR356 for a comparably-sized facility, I could imagine a situation where TCE's claim includes a significant amount on account of GCGs, in the millions of dollars per year. Also, PEC advised that as a result of MR356, they had lost in excess of \$1 million in revenue since the introduction of the rule 18 months ago and that plant's economics are more generous to the Supplier than OGS.

Bottom-line here is that there are other sources of revenues from the IESO markets which are not contemplated in the CES Contract and which would have generated in excess of \$1 million per year in actual net revenue to OGS. This does not amount to nickels and dimes, rather tens of millions of dollars. TCE is not coming clean on this issue in my estimation.

Regarding the turbine issue, as I indicated to the OPA board, this is a potential liability in the order of \$100 million which according to the agreed split on damages between the OPA and the Province (as per the draft side letter) would fall into the damages category for which the OPA would be on the hook. Maybe that's why the Province is not as concerned about the damages flowing from the turbines as we are.

I would hope that the Province would take a careful approach on these issues. At this stage, TCE is not going to pull the trigger and jeopardize the only leverage they have because once they issue their claim in court, their leverage is gone. This is why it is unfortunate that the OPA is not at the negotiating table with TCE... Sorry, I know that I am preaching to the converted...

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Aleksandar Kojic

From: Michael Killeavy
Sent: August 5, 2011 8:18 AM
To: Michael Lyle; 'Sebastiano, Rocco'
Subject: RE: TCE

We did some number crunching. The OR market in Ontario is a bit fickle, but assuming that a TCE were to have captured all the OR that is could with the plant, we think that this revenue stream might be worth \$2-\$4 million annually, or in NPV terms over a 20-year term with a 5.25% discount rate it's worth \$24 to \$48 million.

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416-969-6288
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416-967-1947 (FAX)

From: Michael Lyle
Sent: August 4, 2011 9:11 PM
To: 'Sebastiano, Rocco'; Michael Killeavy
Subject: TCE

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Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: August 5, 2011 8:37 AM
To: Michael Killeavy
Subject: Re: TCE

How's that for "nickel and dimes"! These guys at TCE are just sticking it to the Province...

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, August 05, 2011 08:18 AM
To: Michael Lyle <Michael.Lyle@powerauthority.on.ca>; Sebastiano, Rocco
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Aleksandar Kojic

From: Michael Killeavy
Sent: August 5, 2011 8:41 AM
To: 'RSebastiano@osler.com'
Subject: Re: TCE

Fuck.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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Aleksandar Kojic

From: Tim Butters
Sent: August 9, 2011 3:02 PM
To: Michael Killeavy
Subject: Updated Critical Issues List (Request for Revisions)

Importance: High

Hi Michael,

As you know, communications is responsible for the Critical Issues List that is delivered to the Board as an attachment to the monthly CEO report.

Per Colin's direction, the approach for the revised document is it will feature no more than 10 urgent issues that require discussion or analysis at the board level.

For the purpose of this update, I am looking for your revisions to the **TransCanada settlement negotiations** entry.

I'm hoping I can get your edits to the below entry by tomorrow (**August 10**) at 2:00 PM.

ISSUE	IMPACT & STATUS
<p>TransCanada - Settlement Negotiations for Oakville Generating Station (OGS)</p> <p>The cancellation by the government of the Oakville Generating Station (OGS) in October 2010 triggered discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO Colin Andersen has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute.</p>	<p>Both organizations have avoided speculating on the potential outcome of the negotiations; however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.</p>

Tim Butters | Media Relations Specialist

Ontario Power Authority

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

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

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Aleksandar Kojic

From: Michael Killeavy
Sent: August 9, 2011 3:15 PM
To: Tim Butters
Cc: Deborah Langelaan
Subject: Re: Updated Critical Issues List (Request for Revisions)

Please ask Mike Lyle about what we can put in this document. It's a "live" litigation matter and we need to be careful. Deb's my delegate while I'm away.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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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

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Sent: Tuesday, August 09, 2011 03:02 PM
To: Michael Killeavy
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Aleksandar Kojic

From: Tim Butters
Sent: August 9, 2011 3:16 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: Updated Critical Issues List (Request for Revisions)

Thank you, Michael.

Tim B

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Sent: August 9, 2011 3:15 PM
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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 21, 2011 5:09 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

From: Kristin Jenkins
Sent: September 21, 2011 4:56 PM
To: Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'
Subject: Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | www.powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 5:10 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

But we aren't in discussions with TCE.

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

From: Kristin Jenkins
Sent: Wednesday, September 21, 2011 05:08 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 21, 2011 5:11 PM
To: Michael Killeavy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Colin talked to Alex last week. And, they haven't filed for arbitration have they? At the board, David Livingston said that even if we were to go into arbitration it would always be accurate to say discussions continue because there is always the possibility of a negotiated settlement.

From: Michael Killeavy
Sent: September 21, 2011 5:10 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

But we aren't in discussions with TCE.

Michael Killeavy, LL.B., MBA, P.Eng.
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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 5:13 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Colin talked to Alex last week to set up a call next week. There are no settlement discussions ongoing right now.

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

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Aleksandar Kojic

From: Kristin Jenkins
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Aleksandar Kojic

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Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

There are no discussions period. It's implied from the question.

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 5:16 PM
To: 'Pivanoff@osler.com'; 'RSebastiano@osler.com'; 'ESmith@osler.com'
Cc: Susan Kennedy
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 6:38 PM
To: Kristin Jenkins
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 21, 2011 6:39 PM
To: Susan Kennedy
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

FYI ... Please see below. I am not comfortable referring to discussions that aren't frankly taking place.

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 21, 2011 6:49 PM
To: Michael Killeavy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Thanks.

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Aleksandar Kojic

From: Michael Lyle
Sent: September 22, 2011 7:49 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

This looks fine. I do not recall any obligation to notify them before making a statement to the media but I do not currently have access to the agreement.

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Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: September 22, 2011 8:02 AM
To: Michael Killeavy; Sebastiano, Rocco; Smith, Elliot
Cc: Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Michael, we will get back to you this morning.
Regards,
Paul

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, September 21, 2011 05:15 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Cc: Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

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To: 'PIvanoff@osler.com'
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Cc: Colin Andersen; Susan Kennedy
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I agree as well. As for notification, maybe Colin could, out of courtesy, mention to Alex on his call that the press are getting nosy on this one and we providing holding messages??

JCB

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

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416-969-6005 Tel.
416-969-6071 Fax.
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To: Michael Lyle; Kristin Jenkins; JoAnne Butler
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Cc: Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

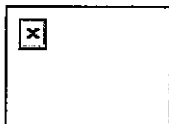
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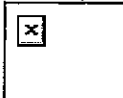
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Elliot Smith, P.Eng.
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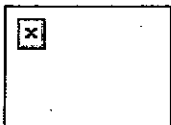
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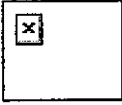
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Ok. I will eliminate the last sentence originally proposed and change to Discussion are continuing with Trans Canada... and send to the ministry. Who is going to give TCE a heads up? Whoever does should let them know we are awaiting word from the ministry on wording of the response and that it may change somewhat.

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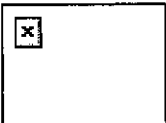
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Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Kristin Jenkins
Sent: Wednesday, September 21, 2011 05:08 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Cc: Colin Andersen
Subject: FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

From: Kristin Jenkins
Sent: September 21, 2011 4:56 PM
To: Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'
Subject: Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

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

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 22, 2011 10:45 AM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

I can have Deb notify John Mikkelsen of TCE - that's our agreed to protocol. Please advise.

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Michael.killeavy@powerauthority.on.ca

From: Kristin Jenkins
Sent: Thursday, September 22, 2011 10:22 AM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Ok. I will eliminate the last sentence originally proposed and change to Discussion are continuing with Trans Canada... and send to the ministry. Who is going to give TCE a heads up? Whoever does should let them know we are awaiting word from the ministry on wording of the response and that it may change somewhat.

From: Michael Killeavy
Sent: September 22, 2011 10:20 AM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

Here are Osler's comments on the proposed answer.

Michael Killeavy, LL.B., MBA, P.Eng.
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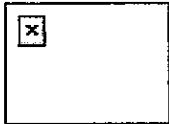
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, September 22, 2011 09:49 AM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Michael,
We propose responding with the following:

The Ontario Power Authority is continuing to work with TransCanada, the company originally selected to develop the Oakville plant, regarding the cancellation of Oakville Generating Station. A final resolution has not yet been reached.

As a courtesy we'd suggest calling TCE to let them know about this.

Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Wednesday, September 21, 2011 5:16 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Cc: Susan Kennedy
Subject: Fw: Toronto Star Request - Cancellation of Oakville Contract

Can you guys comment on this proposed response to a media inquiry about OGS? Please see below. Thx.

Michael Killeavy, LL.B., MBA, P.Eng.
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Kristin

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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 22, 2011 12:30 PM
To: Michael Killeavy; Deborah Langelaan
Cc: JoAnne Butler
Subject: RE: Email to TCE ...

Thanks.

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

From: Michael Killeavy
Sent: September 22, 2011 12:29 PM
To: Deborah Langelaan
Cc: Kristin Jenkins; JoAnne Butler
Subject: Email to TCE ...

We need to tell John Mikkelson of TCE that we have responded to a Toronto Star question as follows:

"Discussions with TransCanada, the company selected to develop the Oakville plant, are continuing. These are ongoing discussions and we have no further information to provide at this time."

We do not know why the inquiry was made.

I will help draft the email.

Michael

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: September 22, 2011 1:59 PM
To: Deborah Langelaan
Subject: RE: Confidential and Without Prejudice

Excellent. Please send it when you can. Thank you for attending to this.

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: September 22, 2011 1:50 PM
To: Michael Killeavy
Subject: Confidential and Without Prejudice

Michael – below is the e-mail I've crafted to send to TCE. Let me know what you think.

"John;

The OPA received an inquiry from the Toronto Star regarding our discussions with TransCanada Energy on the cancellation of the Oakville Generating Station. We do not know why the inquiry was made but have provided the following response to the inquiry:

"Discussions with TransCanada, the company selected to develop the Oakville plant, are continuing. These are ongoing discussions and we have no further information to provide at this time."

Kind Regards,
Deb"

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

Aleksandar Kojic

From: Ronak Mozayyan
Sent: September 26, 2011 1:42 PM
To: Michael Killeavy; Deborah Langelaan
Subject: OGS CAPEX goal seek

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

Michael/Deb,

Would it be relevant to goal seek the profits (OGS NPV) starting from \$100M increasing in increments of \$50M for each scenario presented in the comparison of settlement proposals? So, for example for the TCE Proposal, the outcome would be as follows:

OGS PROFITS		\$100 M	\$150	\$200	\$250	\$300
TCE Proposal						
\$16,900/MW-month 20+	CAPEX	\$697,550,490	\$629,444,765	\$561,339,039	\$493,233,314	\$425,127,588
450 MW	IRR	6.67%	7.54%	8.56%	9.78%	11.27%

I couldn't get the format of the table to paste properly, so disregard that. The table will go up to \$700M and for each scenario the NRR, contract yr and Contract Capacity would remain fixed.

That's the best method I can think of at this time to back calculate for the CAPEX using the model.

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: September 26, 2011 1:44 PM
To: Ronak Mozayyan; Deborah Langelaan
Subject: Re: OGS CAPEX goal seek

Ok. I'll review. Maybe you could attach it as a spreadsheet?

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Aleksandar Kojic

From: Ronak Mozayyan
Sent: September 26, 2011 1:52 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: OGS CAPEX goal seek

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 27, 2011 8:56 AM
To: Ronak Mozayyan
Subject: Re: OGS CAPEX goal seek

Deb's ill today. Let me know if you've run out of work.

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From: Ronak Mozayyan
Sent: Monday, September 26, 2011 01:51 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: OGS CAPEX goal seek

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F: 416.967.1947

Aleksandar Kojic

From: Ronak Mozayyan
Sent: September 27, 2011 9:40 AM
To: Michael Killeavy
Subject: RE: OGS CAPEX goal seek

Okay, will do. I have a few things on my plate, so I'll keep busy. ☺

From: Michael Killeavy
Sent: Tuesday, September 27, 2011 8:56 AM
To: Ronak Mozayyan
Subject: Re: OGS CAPEX goal seek

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Aleksandar Kojic

From: Deborah Langelaan
Sent: September 28, 2011 8:52 AM
To: Michael Killeavy
Subject: FW: OGS L/C

Michael;

John Mikkelsen left me a v/m yesterday wanting to discuss TCE's L/C and a couple of options they have come up with. Before I return his call I wanted to give you the heads up and see if the OPA's position remains the same as it was in March.

Deb

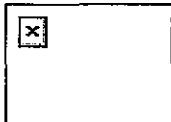
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Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

Deb,
We certainly understand the OPA's desire to mitigate the costs associated with the termination of the OGS contract, but we do have some concerns with returning the LC. In particular, returning the LC would be a fact that could be admissible in potential litigation and may support TCE's allegation that the contract has been repudiated. Conversely, the fact that they have not requested the return of the LC could support the OPA's position that we are negotiating a mutual termination.

At this time, we would suggest waiting until after we meet with TCE and gauge their reaction to our proposal, when we'll have a better idea of where things stand. If the process is moving forward productively then there may be an opportunity to mitigate the LC costs as well as some of the interest costs.

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: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

Privileged & Confidential

TCE has provided the OPA with an L/C in the amount of \$30 million for their Completion and Performance Security under the OGS Contract. TCE's cost to maintain the L/C is approximately \$25,000/month and they have rolled this monthly cost into their OGS Sunk Costs. Given the circumstances, is TCE still obligated to provide the OPA with this security?

Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |
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Aleksandar Kojic

From: Michael Killeavy
Sent: September 28, 2011 9:02 AM
To: Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler
Subject: Re: OGS L/C

Deb,

We need to tread carefully here. I agree with Osler's comments, which are reflective of our position all along.

We have not repudiated the contract. We have entered into settlement discussions with TCE to terminate the contract. The contract subsists. The security is still required.

Mike and JoAnne, do you have any comments on this?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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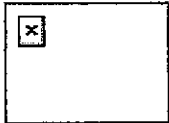
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Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

Privileged & Confidential

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T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

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Aleksandar Kojic

From: Michael Killeavy
Sent: September 28, 2011 9:11 AM
To: Susan Kennedy
Subject: Fw: OGS L/C

I forgot to copy you on this. I apologize.

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 Killeavy
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To: Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler
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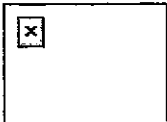
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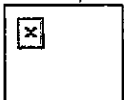
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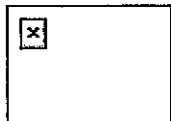
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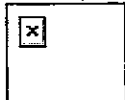
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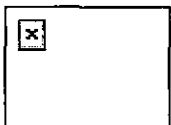
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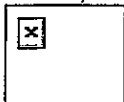


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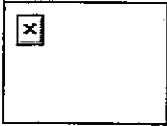
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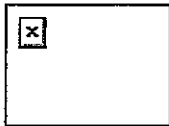
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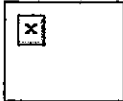
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Keep in mind that in the recitals to the arbitration agreement it states that OPA terminated the CES Contract by letter dated October 7, 2010.

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
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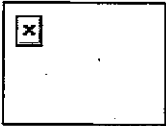
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Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
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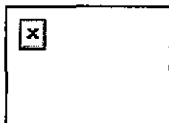
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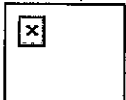
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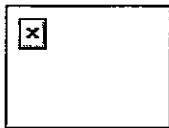
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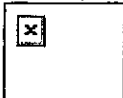
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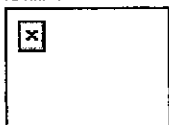
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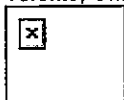
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Sent: Wednesday, September 28, 2011 08:51 AM
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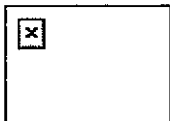
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Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

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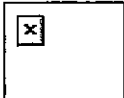
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Box 50, 1 First Canadian Place
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From: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

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Aleksandar Kojic

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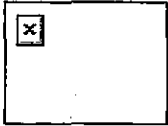
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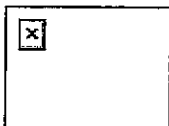
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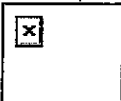
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From: Deborah Langelaan
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Is it possible to acquire a copy of the final, executed Arbitration Agreement?

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Deb

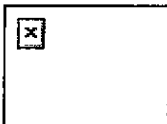
Deborah Langelaan | Manager, Natural Gas Projects| OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

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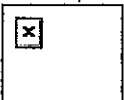
Elliot



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: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

Privileged & Confidential

TCE has provided the OPA with an L/C in the amount of \$30 million for their Completion and Performance Security under the OGS Contract. TCE's cost to maintain the L/C is approximately \$25,000/month and they have rolled this monthly cost into their OGS Sunk Costs. Given the circumstances, is TCE still obligated to provide the OPA with this security?

Deb

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de le divulguer sans autorisation.

Aleksandar Kojic

From: Michael Lyle
Sent: September 29, 2011 5:05 PM
To: Deborah Langelaan; JoAnne Butler; Michael Killeavy
Subject: RE: OGS L/C
Attachments: Arbitration Agreement August 5 2011 (3).pdf

Of course.

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: Deborah Langelaan
Sent: September 29, 2011 4:34 PM
To: JoAnne Butler; Michael Killeavy; Michael Lyle
Subject: RE: OGS L/C

Is it possible to acquire a copy of the final, executed Arbitration Agreement?

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

From: JoAnne Butler
Sent: September 28, 2011 4:56 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan
Subject: Re: OGS L/C

Ok...please proceed as discussed..

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 04:46 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Thank you.

Deb, JoAnne I think we have to return the security. We have conceded the termination point in the arbitration agreement we entered into. I had forgotten about the recital Mike mentions. I apologize for the confusion on this.

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: Wednesday, September 28, 2011 04:43 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes

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: September 28, 2011 4:40 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Then I don't think we have a right to hold security on a contract that's been terminated. Would you agree?

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: Wednesday, September 28, 2011 04:36 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes.

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
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From: Michael Killeavy
Sent: September 28, 2011 4:32 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

I had forgotten about that. Does the agreement state that the parties represent that the recitals are true and correct?

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: Wednesday, September 28, 2011 04:25 PM
To: JoAnne Butler; Michael Killeavy; Deborah Langelaan

Subject: RE: OGS L/C

Keep in mind that in the recitals to the arbitration agreement it states that OPA terminated the CES Contract by letter dated October 7, 2010.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
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From: JoAnne Butler
Sent: September 28, 2011 3:56 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Michael Lyle
Subject: Re: OGS L/C

No comments. I agree with your position.

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 09:02 AM
To: Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler
Subject: Re: OGS L/C

Deb,

We need to tread carefully here. I agree with Osler's comments, which are reflective of our position all along.

We have not repudiated the contract. We have entered into settlement discussions with TCE to terminate the contract. The contract subsists. The security is still required.

Mike and JoAnne, do you have any comments on this?

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)
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Michael.killeavy@powerauthority.on.ca

From: Deborah Langelaan
Sent: Wednesday, September 28, 2011 08:51 AM
To: Michael Killeavy
Subject: FW: OGS L/C

Michael;

John Mikkelsen left me a v/m yesterday wanting to discuss TCE's L/C and a couple of options they have come up with. Before I return his call I wanted to give you the heads up and see if the OPA's position remains the same as it was in March.

Deb

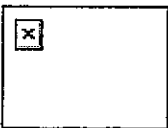
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At this time, we would suggest waiting until after we meet with TCE and gauge their reaction to our proposal, when we'll have a better idea of where things stand. If the process is moving forward productively then there may be an opportunity to mitigate the LC costs as well as some of the interest costs.

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO
POWER AUTHORITY**

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "OPA") and the Claimant TransCanada Energy Ltd. ("TCE" or the "Claimant") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "CES Contract") for the construction of a 900 megawatt gas fired generating station in Oakville Ontario (the "OGS");

AND WHEREAS by letter dated October 7, 2010 the OPA terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "Province of Ontario"), under section 7 of the *Proceedings Against the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the

damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for consent to sever for the Oakville Generating Station site by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "Act");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 Consideration

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

- (a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and
- (b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3 ARBITRATOR

Section 3.1 Arbitrator

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "Arbitrator").

ARTICLE 4 JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 The Disputes

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 Waiver of Defences

- (a) The Respondents agree that they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

- (b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:
 - (i) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or
 - (ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.
- (c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:
 - (i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and
 - (ii) the reasonable damages including the anticipated financial value of the CES Contract is understood to include the following components:
 - (A) the net profit to be earned by TCE over the 20 year life of the CES Contract;
 - (B) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (A); and
 - (C) each Party reserves its rights to argue whether the Respondents are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by the Claimant in the period after the expiration of the twenty year term of the CES Contract for its remaining useful life.

Section 4.4

Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

- (a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;
- (b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;
- (c) determine any question of law arising in the Arbitration;
- (d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;
- (e) make one or more interlocutory or interim orders;
- (f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and
- (g) proceed in the Arbitration and make any interlocutory or interim award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below).

Section 4.5

Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "*Expenses*"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the *Rules* and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

**ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS**

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before September 30, 2012.

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

**ARTICLE 6
CONDUCT OF THE ARBITRATION**

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this

Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties. In the event that the Parties cannot come to an agreement on these dates or the extent or nature of production they will refer the decision back to the Arbitrator.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

- (a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations;
- (b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports; and
- (c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 8 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement substantially in the form attached hereto as Schedule "A".

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final

Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications to TCE of the transaction, being equal to the Final Award [or interim final award] (the “**Equivalent Value**”).

- (a) Upon the request of the Respondent, the Province of Ontario, to satisfy the Final Award [or interim final award] as against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the “**Assets of Interest**”) to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amongst the Parties. Assets which will provide partial Equivalent Value may be considered.
- (b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:
 - (i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;
 - (ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;
 - (iii) there are no restrictions on TCE’s ability to develop, operate, sell or otherwise dispose of the asset; and

- (iv) TCE does not become liable for any pre-closing liabilities relating to the asset.
- (e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.
- (f) If more than ninety (90) days have passed after the date of the issuance of the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4

Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8 CONFIDENTIALITY

Section 8.1

Confidentiality

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except to their legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under

applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, employees, agents, servants, administrators, successors, members, subsidiaries, affiliates, insurers, and assigns of the terms and conditions of this Article. Notwithstanding the foregoing, the OPA and the Province of Ontario are entitled to share confidential information for the purpose of defending the Claim.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7**Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8**Counsel**

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

**Counsel for the Claimant,
TransCanada Energy Ltd.**

Thornton Grout Finnigan LLP
3200 - 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

**Counsel for the Respondent,
The Ontario Power Authority**

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223
Fax: (416) 862-6666
Email: pivanoff@osler.com

**Counsel for the Respondent,
Her Majesty The Queen in Right of
Ontario**

**Ministry of the Attorney General
Crown Law Office -Civil**
McMurtry - Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
Tel: (416) 601-7887
Email: john.kelly@ontario.ca

Eunice Machado
Tel: (416) 601-7562
Fax: (416) 868-0673
Email: eunice.machado@ontario.ca

Section 9.9

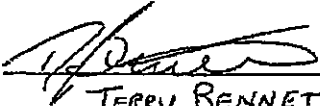
Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this 5th day of August, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By: 
TERRY BENNETT
Title Vice-President, Power, Eastern Growth
**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

By: _____
David Lindsay
Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____
Title

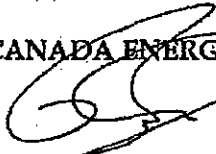
Section 9.9

Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this 5th day of August, 2011.

TRANSCANADA ENERGY LTD.



By: WILLIAM C. TAYLOR

Title SENIOR VICE-PRESIDENT, EASTERN POWER

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO

By: David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By:

Title

AUG-05-2011 10:40

(416) 325-4646

P.015

David Lindsay To David Lindsay

Section 9.9

Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this

day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

By _____

Title

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

By: David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: Colin Andersen

Title Chief Executive Officer

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT sets forth the terms pursuant to which ► will provide or receive certain confidential information during the course of participating at the Arbitration Hearing between the Claimant, TransCanada Energy Ltd., and the Respondents, Her Majesty the Queen in Right of Ontario and the Ontario Power Authority.

The information that will be disclosed is considered to be proprietary and confidential information ("Confidential Information"). For the purpose of this Agreement the party disclosing Confidential Information is referred to as the "Disclosing Party", the party receiving such Confidential Information is referred to as the "Receiving Party".

The Receiving Party agrees that he/she has been made aware of the confidentiality terms in Article 8 of the Arbitration Agreement dated August ,2011 and agrees to maintain in strict confidence all Confidential Information disclosed by the Disclosing Party. The Receiving Party shall not disclose and shall prevent disclosure of Confidential Information to any third party without the express written permission of the Disclosing Party and shall not use Confidential Information for any commercial use, except for the purpose consistent with giving evidence at the Arbitration Hearing. In the event the Receiving Party is required by judicial or administrative process to disclose Confidential Information, the Receiving Party will promptly notify the Disclosing Party and permit adequate time to oppose such process.

The obligation of confidentiality and restricted use imposed herein shall not apply to Confidential Information that:

1. is known to the public or the Receiving Party prior to disclosure;
2. becomes known to the public through no breach of this Agreement by the Receiving Party;
3. is disclosed to the Receiving Party by a third party having a legal right to make such disclosure; or
4. is developed independently of the Confidential Information by the Receiving Party.

The Receiving Party agrees that the Confidential Information disclosed by the Disclosing Party will be used solely for the purposes consistent with the Arbitration Agreement and participation at the Arbitration Hearing or providing evidence during the course of the Arbitration Hearing. The Receiving Party will restrict transmission of such Confidential Information to those advisors and representatives who need to know the Confidential Information, for the purposes of the Agreement it is being agreed by the Receiving Party that such advisors and representatives are or will be placed under similar written obligations of confidentiality and restricted use as are contained in this Agreement and in the Arbitration Agreement.

It is understood that unauthorized disclosure or use by the Receiving Party hereto of Confidential Information may cause irreparable harm to the Disclosing Party and result in significant commercial damages, which may not adequately compensate for the breach. In addition to any remedies that may be available at law, in equity or otherwise, the Receiving Party agrees that the Disclosing Party shall be entitled to obtain injunctive relief enjoining the Receiving Party from engaging in any of the activities or practices which may constitute a breach or threatened breach of this Agreement, without the necessity of proving actual damages.

Upon written request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all materials furnished by the Disclosing Party pursuant to this Agreement. The Receiving Party will not retain samples, copies, extracts, electronic data storage, or other reproduction in whole or in part of such materials. All documents, memoranda, notes and other writing based on such Confidential Information shall be destroyed.

Notwithstanding anything to the contrary in this Agreement, the Receiving Party acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with the Arbitration Agreement or Arbitration Hearing, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

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

AGREED TO as of the ► day of ►

Witness

(Name)

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 7 of the *Proceedings Against the Crown Act* (the "Claim");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising out of and in relation to the CES Contract, the October 7 Letter and the Claim [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the "Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of \$5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. Notwithstanding the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made by the Arbitrator in favour of the Releasor pursuant to the Arbitration.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract, the October 7 Letter or the Claim or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter, or the Claim and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract, the October 7 Letter or the Claim which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract, the October 7 Letter or the Claim.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as they case may be, of all the Parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

Aleksandar Kojic

From: Deborah Langelaan
Sent: October 4, 2011 11:32 AM
To: 'Ron Clark'
Cc: Michael Killeavy
Subject: FW: OGS L/C

Ron;

TCE has asked the OPA to return the L/C they issued for the OGS contract. You will see in the thread of e-mails below the OPA has concluded that TCE's security should be returned to them. Would you please review the attached letter and let me know if you're okay with the language?

Thanks,
Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

From: JoAnne Butler
Sent: September 28, 2011 4:56 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan
Subject: Re: OGS L/C

Ok...please proceed as discussed..

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 04:46 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Thank you.

Deb, JoAnne I think we have to return the security. We have conceded the termination point in the arbitration agreement we entered into. I had forgotten about the recital Mike mentions. I apologize for the confusion on this.

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: Wednesday, September 28, 2011 04:43 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes

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: September 28, 2011 4:40 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Then I don't think we have a right to hold security on a contract that's been terminated. Would you agree?

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: Wednesday, September 28, 2011 04:36 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes.

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: September 28, 2011 4:32 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

I had forgotten about that. Does the agreement state that the parties represent that the recitals are true and correct?

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: Wednesday, September 28, 2011 04:25 PM
To: JoAnne Butler; Michael Killeavy; Deborah Langelaan
Subject: RE: OGS L/C

Keep in mind that in the recitals to the arbitration agreement it states that OPA terminated the CES Contract by letter dated October 7, 2010.

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: JoAnne Butler
Sent: September 28, 2011 3:56 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Michael Lyle
Subject: Re: OGS L/C

No comments. I agree with your position.

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 09:02 AM
To: Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler
Subject: Re: OGS L/C

Deb,

We need to tread carefully here. I agree with Osler's comments, which are reflective of our position all along.

We have not repudiated the contract. We have entered into settlement discussions with TCE to terminate the contract. The contract subsists. The security is still required.

Mike and JoAnne, do you have any comments on this?

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

From: Deborah Langelaan
Sent: Wednesday, September 28, 2011 08:51 AM
To: Michael Killeavy
Subject: FW: OGS L/C

Michael;

John Mikkelsen left me a v/m yesterday wanting to discuss TCE's L/C and a couple of options they have come up with. Before I return his call I wanted to give you the heads up and see if the OPA's position remains the same as it was in March.

Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

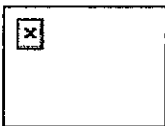
From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

Deb,

We certainly understand the OPA's desire to mitigate the costs associated with the termination of the OGS contract, but we do have some concerns with returning the LC. In particular, returning the LC would be a fact that could be admissible in potential litigation and may support TCE's allegation that the contract has been repudiated. Conversely, the fact that they have not requested the return of the LC could support the OPA's position that we are negotiating a mutual termination.

At this time, we would suggest waiting until after we meet with TCE and gauge their reaction to our proposal, when we'll have a better idea of where things stand. If the process is moving forward productively then there may be an opportunity to mitigate the LC costs as well as some of the interest costs.

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: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

Privileged & Confidential

TCE has provided the OPA with an L/C in the amount of \$30 million for their Completion and Performance Security under the OGS Contract. TCE's cost to maintain the L/C is approximately \$25,000/month and they have

rolled this monthly cost into their OGS Sunk Costs. Given the circumstances, is TCE still obligated to provide the OPA with this security?

Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

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de le divulguer sans autorisation.

Aleksandar Kojic

From: Ron Clark [rclark@airdberlis.com]
Sent: October 5, 2011 5:27 PM
To: Deborah Langelaan
Cc: Michael Killeavy
Subject: RE: OGS L/C

The letter looks fine to me.

Ron

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: October 4, 2011 11:32 AM
To: Ron Clark
Cc: Michael Killeavy
Subject: FW: OGS L/C

Ron;

TCE has asked the OPA to return the L/C they issued for the OGS contract. You will see in the thread of e-mails below the OPA has concluded that TCE's security should be returned to them. Would you please review the attached letter and let me know if you're okay with the language?

Thanks,
Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |
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From: JoAnne Butler
Sent: September 28, 2011 4:56 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan
Subject: Re: OGS L/C

Ok...please proceed as discussed..

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 04:46 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Thank you.

Deb, JoAnne I think we have to return the security. We have conceded the termination point in the arbitration agreement we entered into. I had forgotten about the recital Mike mentions. I apologize for the confusion on this.

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)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Michael Lyle
Sent: Wednesday, September 28, 2011 04:43 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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From: Michael Killeavy
Sent: September 28, 2011 4:40 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

Then I don't think we have a right to hold security on a contract that's been terminated. Would you agree?

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

From: Michael Lyle
Sent: Wednesday, September 28, 2011 04:36 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
Subject: RE: OGS L/C

Yes.

Michael Lyle
General Counsel and Vice President
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From: Michael Killeavy
Sent: September 28, 2011 4:32 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

I had forgotten about that. Does the agreement state that the parties represent that the recitals are true and correct?

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Michael.killeavy@powerauthority.on.ca

From: Michael Lyle
Sent: Wednesday, September 28, 2011 04:25 PM
To: JoAnne Butler; Michael Killeavy; Deborah Langelaan
Subject: RE: OGS L/C

Keep in mind that in the recitals to the arbitration agreement it states that OPA terminated the CES Contract by letter dated October 7, 2010.

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From: JoAnne Butler
Sent: September 28, 2011 3:56 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Michael Lyle
Subject: Re: OGS L/C

No comments. I agree with your position.

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 09:02 AM
To: Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler
Subject: Re: OGS L/C

Deb,

We need to tread carefully here. I agree with Osler's comments, which are reflective of our position all along.

We have not repudiated the contract. We have entered into settlement discussions with TCE to terminate the contract. The contract subsists. The security is still required.

Mike and JoAnne, do you have any comments on this?

Michael

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From: Deborah Langelaan
Sent: Wednesday, September 28, 2011 08:51 AM
To: Michael Killeavy
Subject: FW: OGS L/C

Michael;

John Mikkelsen left me a v/m yesterday wanting to discuss TCE's L/C and a couple of options they have come up with. Before I return his call I wanted to give you the heads up and see if the OPA's position remains the same as it was in March.

Deb

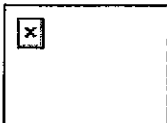
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From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

Deb,
We certainly understand the OPA's desire to mitigate the costs associated with the termination of the OGS contract, but we do have some concerns with returning the LC. In particular, returning the LC would be a fact that could be admissible in potential litigation and may support TCE's allegation that the contract has been repudiated. Conversely, the fact that they have not requested the return of the LC could support the OPA's position that we are negotiating a mutual termination.

At this time, we would suggest waiting until after we meet with TCE and gauge their reaction to our proposal, when we'll have a better idea of where things stand. If the process is moving forward productively then there may be an opportunity to mitigate the LC costs as well as some of the interest costs.

Elliot



Elliot Smith
Associate

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Toronto, Ontario, Canada M5X 1B8



From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

Privileged & Confidential

TCE has provided the OPA with an L/C in the amount of \$30 million for their Completion and Performance Security under the OGS Contract. TCE's cost to maintain the L/C is approximately \$25,000/month and they have rolled this monthly cost into their OGS Sunk Costs. Given the circumstances, is TCE still obligated to provide the OPA with this security?

Deb

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Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: October 27, 2011 6:37 PM
To: Michael Lyle; Sebastiano, Rocco
Cc: Michael Killeavy
Subject: Re: Greenfield South

Mike,

I suggest that a litigation hold memo be circulated within the OPA to preserve documents relating to the project etc. (similar to what was prepared for TCE/SWGTA). Let me know if you want me to prepare it for Greenfield South.
Paul

From: Michael Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]
Sent: Thursday, October 27, 2011 06:18 PM
To: Sebastiano, Rocco; Ivanoff, Paul
Cc: Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>
Subject: Greenfield South

We have been working under the view that all required regulatory approvals for the plant are in place. However, as a matter of due diligence we think it would be appropriate to review the full range of necessary approvals to ensure that something has not been missed. This would include approvals and processes for any supporting infrastructure including gas, tx connection, municipal waste and water etc. I would be happy to discuss this with you further.

Privileged and Confidential – Prepared in Contemplation of Litigation

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