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

Confidential and Without Prejudice

Carl,

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

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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Box 50, 1 First Canadian Place
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FACILITY RELOCATION AND SETTLEMENT AGREEMENT

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

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

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

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

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

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

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

"**Amended ARCES**" has the meaning given to that term in Section 2.5.

"**Arm's Length**" means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or that such Persons, as a matter of fact, deal with each other at a particular time at arm's length.

"**Business Day**" means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

"**Confidential Information**" means this Agreement, any prior drafts of this Agreement and correspondence related to this Agreement, any arbitration pursuant to this Agreement (including, without limitation, the proceedings, written materials and any decision) and all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representatives, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

"**Contractor**" means any Person engaged to perform work on the Facility.

"**Control**" means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise, provided that where such Person is a non-share capital corporation, in respect of which the majority of the members of the board of directors are appointed by the Lieutenant Governor in Council or a member of the Executive Council of Ontario, such Person shall be considered to be Controlled by the Government of Ontario.

"**Credit Facility**" means any loans, notes, bonds, letter of credit facilities, or debentures or other indebtedness, liabilities or obligations, for the financing of the Facility, which include a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier's Interest granted by Greenfield that is security for any indebtedness, liability or obligation of Greenfield, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

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

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

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

"**Government of Ontario**" means Her Majesty the Queen in right of Ontario.

"**Governmental Authority**" means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the Government of Ontario, the Independent Electricity System Operator, the Ontario Energy Board, the Electrical

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

"**Greenfield Holdco**" means Greenfield South Holdco Corp., the parent corporation of Greenfield.

"**HRSG**" means the heat recovery steam generator for the Facility.

"**Independent Engineer**" means [●], an engineer who has been selected by the OPA and is acceptable to Greenfield, that is:

(i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and

(ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by Greenfield or the OPA and that does not have a vested interest in the design, engineering, procurement, construction, testing, and/or operation of the Facility. **[NTD: The OPA is running an abbreviated procurement process to select an IE and will try to complete this by Friday.]**

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

"**Person**" means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

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

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

"**Relocated Facility**" has the meaning given to that term in Section 2.5.

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

"**Secured Lender**" has the meaning given to that term in the ARCES Contract.

"**Secured Lender's Security Agreement**" has the meaning given to that term in the ARCES Contract.

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

"**Supplier**" means any Person engaged to supply Facility Equipment.

"**Supplier's Interest**" means the right, title and interest of Greenfield in or to the Facility and the ARCES Contract, or any benefit or advantage of any of the foregoing.

1.2 Exhibits

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

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

1.3 Headings

The inclusion of headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Canadian dollars and cents.

1.6 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.7 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.8 Governing Law

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

1.9 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the OPA's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the OPA or in favour of Greenfield when interpreting such term or provision, by virtue of such fact.

1.10 Severability of Clauses

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

ARTICLE 2
COVENANTS

2.1 Cessation of Construction

(a) Greenfield shall forthwith cease construction of the Facility and any part thereof and shall cause all of its Contractors to cease any work at the Facility and to fully demobilize from the Site, other than any activities that may be reasonably necessary in the circumstances to bring such work to a conclusion. Greenfield shall also cause the Suppliers to cease manufacturing the Facility Equipment, except for the gas turbine, the HRSG, the transformers, and the pumps **[and the other material and Equipment that has been contracted for and which will be useable at the Relocated Facility and which is listed on Schedule 2.1(a)]** (collectively, the "**Relocated Equipment**"). Suppliers may continue to manufacture and supply the Relocated Equipment and Greenfield shall continue to perform its payment and other obligations under the contracts relating to the manufacture and supply of the Relocated Equipment. Greenfield shall not permit any of the Facility Equipment to be delivered to the Site. Greenfield shall arrange for suitable storage for the Relocated Equipment as completed and all costs for the completion of manufacture and supply, transportation, insurance and storage of the Relocated Equipment shall be dealt with in accordance with Section 2.2. **[NTD: The OPA reserves comment on this paragraph until it has had an opportunity to review Schedule 2.1(a).]**

(b) Notwithstanding Section 2.1(a), Greenfield shall, or shall cause a Contractor to (i) maintain safety and security of the Site consistent with the standards to which safety and security of the Site was maintained prior to the Effective Date, (ii) fulfill all applicable obligations under the *Occupational Health and Safety Act*

(Ontario), and (iii) maintain insurance coverage in accordance with Section 2.10 of the ARCES Contract, with the costs of maintaining such safety and security and the costs of such insurance to be included in the costs provided for in Section 2.2(a).

(c) Within thirty (30) days after the date that the Equity Sunk Costs have been paid, Greenfield shall apply for a review of Certificate of Approval-Air number 2023-7HUMVW (a copy of which is attached as Exhibit B) pursuant to section 20.4(1) of the *Environmental Protection Act* (Ontario) and request that such approval be revoked without the issuance of a new Certificate of Approval-Air for the Facility, and, to the extent permitted, Greenfield shall request that consideration of the application be expedited.

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

(e) During the Restricted Period, Greenfield shall not: (i)grant any security interests in the Facility, the Facility Equipment and the Site, and shall not intentionally grant any encumbrances to title to the Facility, the Facility Equipment or the Site **[NTD: this is intended to deal with construction and other liens that may be registered or claimed as a result of the ceasing of construction]**; or .(ii) sell, transfer, dispose of, or otherwise enter into any agreement (directly or indirectly) relating to the ownership of the Facility, the Facility Equipment or the Site, without in the case of each of (i) and (ii), the OPA's prior written consent, acting reasonably. "**Restricted Period**" means the period commencing on the Effective Date and ending on the earlier of: (x) the date the Amended ARCES is entered into; and (ii) the date of expiry of this Agreement in accordance with Section 4.1(a). **[NTD: Sales should be allowed after the new ARCES is signed since the FMV will be taken into account in determining the NRR. Any sale after the Restricted Period will be reflected in the calculation of Damages under Section 4.2]**.

Draft

2.2 Payment of Costs

(a) The OPA shall be responsible for and shall reimburse Greenfield for: (i) all costs (including cancellation costs required by contracts) incurred by Greenfield or for which Greenfield is or may become liable in complying with the obligations of Greenfield set out in Section 2.1(a) and Section 2.1(b), (ii) all costs incurred by Greenfield in connection with the development and construction of the Facility prior to the Effective Date and becoming due on or after the Effective Date, and (iii) all costs in respect of legal, accounting and other professional services incurred by Greenfield in connection with the negotiation and entering into of this Agreement and the completion of the transactions contemplated hereunder, including the negotiation of the Amended ARCES as contemplated by Section by Section 2.5 and the determination of damages as provided in Section 4.2, which have not been advanced, drawn, or committed by the Secured Lenders to be advanced or drawn, on any Credit Facility.

(b) Greenfield shall provide the OPA and the Independent Engineer with a detailed list of all costs incurred by Greenfield up to the Effective Date in connection with the design, development, permitting and construction of the Facility, including without limitation in respect of engineering, design, permitting, letter of credit interest and other development costs excluding any such costs which have been paid for or reimbursed by draws or advances from any Credit Facility and without duplication of those costs payable pursuant to Section 2.2(a) (the "**Equity Sunk Costs**"), along with such documentation as is reasonably required by the Independent Engineer to substantiate such Equity Sunk Costs and confirm that such costs have not been paid for or reimbursed by draws or advances from any Credit Facility. Attached hereto as Schedule 2.2(b) is Greenfield's submission of the Equity Sunk Costs as of the Effective Date, which shall be considered by the Independent Engineer for certification in accordance with Section 2.2(e). The OPA shall reimburse Greenfield for the Equity Sunk Costs in accordance with Section 2.2(e).

(c) The OPA shall indemnify, defend and hold harmless each of Greenfield, Greenfield Holdco and North Green Limited and each of their respective directors, officers and employees (collectively, the "**Greenfield Indemnified Parties**") from and against any and all Losses of the Greenfield Indemnified Parties relating to, arising out of, or resulting from any claims by Contractors, Suppliers, Governmental Authorities and employees resulting from the cessation of construction of the Facility, except if and to the extent that such Losses are the result of the negligence or wilful misconduct of any Greenfield Indemnified Party.

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

(d) The Parties acknowledge that the OPA has, upon execution of this Agreement, provided to Greenfield, security for the performance of the OPA's indemnity and other obligations set out in Section 2.2 in an amount equal to $150 million **[NTD: Greenfield to provide an e-mail summary of how it arrived at this number.]** in the form attached as Exhibit A (the "**Costs Security**"). If the OPA fails to pay any amount certified by the Independent Engineer as being properly owing under this Agreement as set out in Section 2.2(e) or fails to comply with its indemnity obligations under Section 2.2(c), Greenfield shall have the right to draw such unpaid amount from the Costs Security, provided that Greenfield provides the OPA with ten (10) Business Days' prior notice of its intent to draw on the Costs Security and at the end of such notice period, such unpaid amount remains outstanding or such indemnity obligations under Section 2.2(c) have not been complied with.

(e) Greenfield shall submit detailed invoices for the costs referred to in Section 2.2(a) and in connection with Equity Sunk Costs payable by the OPA to Greenfield to the Independent Engineer with a copy to the OPA. The Independent Engineer shall be instructed by the Parties to complete its review of such invoices and supporting documentation in an expeditious manner. The Independent Engineer shall, within ten (10) Business Days after receipt of such detailed invoices and any reasonably required supporting documentation, issue a certificate certifying the amounts set out in such invoices which the Independent Engineer does not dispute are payable. The OPA shall, within five (5) Business Days after receipt of such certificate from the Independent Engineer, pay Greenfield the amount certified by the Independent Engineer. Greenfield shall have the opportunity to make submissions to the Independent Engineer (with a copy to the OPA) regarding the amounts set out in such invoices disputed by the Independent Engineer and not certified and the Independent Engineer shall consider such submissions and if it agrees with such submissions, shall certify such amounts payable and if it does not agree with such submissions, shall provide its reasons to Greenfield and the OPA.

(f) Notwithstanding any provision in this Agreement to the contrary, to the extent the OPA is liable to Greenfield for any costs charged by a Person who does not deal at Arm's Length with Greenfield, such cost shall be deemed to exclude the amount that is in excess of the costs that would reasonably have been charged by a Person acting at Arm's Length with Greenfield providing substantially the same material or services in respect of such costs to Greenfield.

(g) The costs of the Independent Engineer shall be borne by the OPA.

2.3 ARCES Contract

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

2.4 Credit Facilities

(a) Greenfield agrees to promptly seek any required consent of any Secured Lenders to the entering into of this Agreement by the OPA and Greenfield.

(b) The OPA shall pay to the Secured Lenders all accrued and unpaid interest and any make whole payments or breakage fees which Greenfield is obliged to pay to the Secured Lenders pursuant to the Credit Facilities, together with the outstanding principal amount of the debt facilities funded under the Credit Facilities and shall replace or provide cash collateral for all outstanding letters of credit issued by the Secured Lenders on behalf of Greenfield in connection with the Facility, in exchange for full and final releases from the Secured Lenders: (i) of all obligations of Greenfield and Greenfield Holdco under the Credit Facilities and the Secured Lender's Security Agreements held by such Secured Lenders and the release by such Secured Lenders of all claims and equity or other interests of such Secured Lenders in or to Greenfield or Greenfield Holdco, including all security held by such Secured Lenders on and against the Site, the Facility and all other property and assets of Greenfield and Greenfield Holdco; and (ii) of all claims against the OPA and the Government of Ontario in connection with or arising from the Secured Lender's Security Agreements, the ARCES Contract and the Facility.

2.5 Good Faith Negotiations

In furtherance of the commitment of the Government of Ontario to relocate the Facility, Greenfield and the OPA agree to work together in good faith to determine a suitable site for a new nominal 300 MW natural gas fuelled combined cycle generating facility (the "**Relocated Facility**") and for the future expansion of the Relocated Facility as contemplated below and the OPA shall in good faith cooperate with and assist Greenfield in obtaining all licenses, permits, certificates, registrations, authorizations, consents or approvals issued by Governmental Authorities and required for the development, construction and operation of the Relocated Facility, including by advising such Governmental Authorities of the OPA's support for the Relocated Facility, but subject to the OPA's limitations on corporate power and authority **[NTD: Please clarify what these may be?]**. In addition, Greenfield and the OPA agree to work together in good faith to negotiate an amendment to the ARCES Contract so that it relates to and applies to the Relocated Facility (the "**Amended ARCES**"). The Amended ARCES shall provide for (i) such amendments to the ARCES as are required to reflect the fact that the Relocated Facility is at a different location, (ii) the agreement of the OPA and Greenfield to negotiate in good faith during the term of the Amended ARCES regarding potential opportunities to expand the Relocated Facility by an incremental 300 MW or to find another suitable site for a further nominal 300 MW facility governed by a supply agreement with the OPA on terms substantially similar to the Amended ARCES, depending on the ability of the system to accommodate such incremental or further nominal 300 MW, IESO requirements and that there are no significant technical or commercial impediments that cannot be reasonably satisfied, (iii) a level of completion and performance security for the Amended ARCES, including for the incremental or additional 300 MW that is ninety percent (90%) less than that set out in the ARCES Contract, and (iv) an adjustment to the "Net Revenue Requirement" to take into account any amounts paid by the OPA in connection with the Facility which creates or results in a savings or reduced cost for the Relocated Facility, as well as any increased costs to be incurred because an alternate site than the Site will be used, (due to such alternate site being a further distance from the offices of Greenfield and due to other factors relating to the alternate site, such as, reduced performance of the Relocated Equipment, costlier consumables, services, equipment or material, such as insurance, costs of delivery of goods or equipment, increased costs in respect of environmental compliance, compliance with federal, provincial and municipal requirements, higher costs to procure financing and higher costs for interconnection).

2.6 Power and Authority

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

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

ARTICLE 3
CONFIDENTIALITY, FIPPA AND PRIVILEGED COMMUNICATIONS

3.1 Confidential Information

From the Effective Date to and following the expiry of the term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

(a) The Receiving Party may disclose Confidential Information to its Representatives for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential

Information and shall be responsible for any breach of this Article 3 by any of its Representatives.

(b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 3.2.

(c) Where Greenfield is the Receiving Party, Greenfield may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Relocated Facility, provided that any such prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such prospective lender or investor has covenanted in favour of the OPA to hold such Confidential Information confidential and entered into a Confidentiality Undertaking in substantially the form set out in Exhibit W to the ARCES Contract or in a similar form prepared by Greenfield and approved by the OPA.

3.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

3.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, or (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under laws and regulations, and shall keep such retained copy subject to the terms of this Article 3.

3.4 FIPPA Records and Compliance

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

3.5 Privileged Communications

(a) The Parties agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this Agreement, whether oral or written, and whether Confidential Information or not, in connection with the termination of the ARCES Contract or otherwise relating to any differences between the Parties respecting the ARCES Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged.

(b) Notwithstanding Section 3.5(a), nothing in this Agreement shall prevent Greenfield and the OPA from communicating with one another on a with prejudice basis at any point in time by designating its communication, whether oral or written, as a "with prejudice" communication, provided that such "with prejudice" communication does not include or refer, either directly or indirectly, to any without prejudice and privileged discussions, communications and correspondence.

ARTICLE 4
TERM AND EXPIRY

4.1 Term and Expiry

(a) The term of this Agreement shall be effective from the Effective Date for a period of 60 days and shall automatically expire at the end of such 60 day period, provided that the term may be extended once by an additional period of 60 days by either the OPA or Greenfield providing the other Party with written notice no less than five (5) Business Days prior to the expiry of the original term and may be further extended for an agreed upon period of time with the mutual agreement in writing of the OPA and Greenfield.

(b) Upon expiry of the term of this Agreement, following any extension exercised in accordance with Section 4.1(a):

(i) the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield in addition to those amounts payable pursuant to Section 2.2 shall be determined in accordance with Section 4.2(a);

(ii) Greenfield shall return to the OPA any remaining portion of the Costs Security which the Independent Engineer, acting reasonably, determines will not be required to cover any further obligations of Greenfield for costs or other liabilities in respect of the cessation of construction of the Facility as contemplated by Section 2.2, or for which the OPA may be liable to indemnify any of the Greenfield Indemnified Parties under Section 2.2(c); and

(iii) subject to Section 7.10, no Party shall have any further obligations hereunder.

4.2 Damages

(a) If the ARCES Contract is terminated in accordance with Section 4.1(b)(i) or Section 7.1(a) of this Agreement, Greenfield's damages shall be determined in accordance with the procedure set out in Schedule 4.2, as the net present value of the net revenues, assuming no discount rate, from the Facility that are forecast to be earned by Greenfield during the "Term" (as defined in the ARCES Contract), taking into account any actions that Greenfield should reasonably be expected to take to mitigate the effect of the termination of the ARCES Contract, (acknowledging the fact that as provided in this Agreement, Greenfield will not complete construction of or operate the Facility). For greater certainty, the net revenues from the Facility shall be calculated by deducting the costs that would have been incurred by Greenfield in connection with the development, construction, financing, operation and maintenance of the Facility from payments that would have been made to Greenfield under the ARCES Contract. Where any Facility Equipment or the Site has been sold, the quantification of Greenfield's damages under this Section 4.2(a) shall take into account the actual proceeds of any such sale, for which and to the extent the OPA has reimbursed Greenfield for such Facility Equipment or the Site. Where any Facility Equipment or the Site has not been sold, the quantification of Greenfield's damages under this Section 4.2(a) shall take into account the fair market value or salvage value of the Facility Equipment or the Site, at the time such damages are being determined, for which and to the extent the OPA has reimbursed Greenfield for such Facility Equipment and the Site. **[NTD: Greenfield will agree to not include a terminal value for the Facility at the end of the Term or revenues relating to periods after the end of the Term, provided no discount rate is applied to the NPV calculation. Given current rates, there are arguments that the rate should be nominal in any event]**

(b) Upon the OPA's payment of damages pursuant to Section 4.2(a), Greenfield shall provide a full and final release of all claims against the OPA and the Government of Ontario in connection with or arising from this Agreement, the ARCES Contract and the Facility.

ARTICLE 5
NOTICES

5.1 Notices

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

If to Greenfield:

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

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

and to:

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

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

If to the OPA:

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

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

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

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

ARTICLE 6
DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If any Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the affected Party or Parties describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the affected Party or Parties, a senior executive (Senior Vice-President or higher) from each affected Party shall meet, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute shall be settled by arbitration pursuant to Section 6.2.

6.2 Arbitration

Any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to this Section 6.2, provided, however, that the Parties have first completed a Senior Conference pursuant to Section 6.1. Any dispute to be decided in accordance with this Section 6.2 will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the reference of the dispute to arbitration, upon the application of any of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. ~~Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and~~ each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

ARTICLE 7
MISCELLANEOUS

7.1 Default

(a) If the OPA fails to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from Greenfield, the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield shall be determined in accordance with Section 4.2(a).

(b) If Greenfield fails to perform any covenant or obligation set forth in Section 2.1(a), Section 2.1(c), Section 2.1(d) or Section 2.4(c) of this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from the OPA, such failure shall constitute a "Supplier Event of Default" under the ARCES Contract and shall entitle the OPA to exercise any remedies thereunder in connection with such default.

7.2 Injunctive and Other Relief

Each of Greenfield and the OPA acknowledge that a breach of this Agreement by the other Party, including, without limitation, Section 2.1, 2.2, 2.4, and Article 3 shall cause irreparable harm to the non breaching Party, and that the injury to non breaching Party shall be difficult to calculate and inadequately compensable in damages. The breaching Party agrees that the non breaching Party is entitled to obtain injunctive relief (without proving any damage sustained by it) or any other remedy against any actual or potential breach of the provisions of this Agreement by the breaching Party.

7.3 Record Retention; Audit Rights

Greenfield shall keep complete and accurate records and all other data required for the purpose of proper administration of this Agreement. All such records shall be maintained as required by laws and regulations but for no less than seven (7) years after the Effective Date. Greenfield, on a confidential basis as provided for in Article 3 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the OPA to (i) comply with its obligations to Governmental Authorities, (ii) verify or audit billings or to verify or audit information provided in accordance with this Agreement, and (iii) to determine any amounts owing or payable pursuant to Sections 2.2(a), 2.2(b), 2.2(c) and 2.4(b). The OPA may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 3. Alternatively, the OPA may at its own expense appoint an auditor to conduct its review.

7.4 Inspection of Site

(a) The OPA and its authorized agents and Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after execution of this Agreement and during the term of this Agreement, have access to the Site and every part thereof during regular business hours and Greenfield shall, and shall cause all personnel at the Site within the control of Greenfield to furnish the OPA with all reasonable assistance in inspecting the Site for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of Greenfield.

(b) The inspection of the Site by or on behalf of the OPA shall not relieve Greenfield of any of its obligations to comply with the terms of this Agreement. In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and laws and regulations.

7.5 Inspection Not Waiver

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

7.6 No Publicity

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

Draft

7.7 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by any of the Parties shall be considered employees of any other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

7.8 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

7.9 Assignment

(a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by Greenfield, without the prior written consent of the OPA, which consent shall not be unreasonably withheld; provided that Greenfield may without the consent of the OPA assign this Agreement and all benefits and obligations hereunder to the Affiliate which will develop, construct, own and operate the Relocated Facility as contemplated by Section 2.5, provided that the assignee agrees in writing in a form satisfactory to the OPA, acting reasonably, to assume and be bound by the terms and conditions of this Agreement.

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

7.10 Survival

The provisions of Section 2.1, Section 2.2, Article 3, Section 4.1(b), Section 4.2, Article 6, and Section 7.3, shall survive the expiration of the term.

7.11 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

7.12 Time of Essence

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

7.13 No Third-Party Beneficiaries

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

7.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

GREENFIELD SOUTH POWER CORPORATION

By: ______________________________

Name: Gregory M. Vogt

Title: President

I have authority to bind the corporation

ONTARIO POWER AUTHORITY

By: ______________________________

Name: Colin Andersen

Title: Chief Executive Officer

I have authority to bind the corporation.

EXHIBIT A
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE:	●
APPLICANT:	Ontario Power Authority
BENEFICIARY:	Greenfield South Power Corporation
AMOUNT:	●
EXPIRY DATE:	●
EXPIRY PLACE:	Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING:	**[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]**
TYPE:	Irrevocable Standby Letter of Credit
NUMBER:	

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

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

   "The Ontario Power Authority is in breach of its obligation set out in Section 2.2 of the Facility Relocation and Settlement Agreement between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."; and

2. A certified true copy of a letter sent by the Beneficiary to the Applicant, by facsimile to 416-969-6071 and by courier to the attention of Michael Lyle, General Counsel, 120 Adelaide Street West, Suite 1600, Toronto ON M5H 1T1, notifying the Applicant that the Beneficiary intends to draw on this Credit, together with a copy of the facsimile confirmation and courier receipt evidencing that the letter was received by the Beneficiary no less than **[ten (10)]** business days prior to the date of the draw.

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

Partial drawings are permitted.

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

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

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

– END –

[Insert name of Financial Institution]

By: ______________________________
Authorized Signatory

____

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

SCHEDULE 4.2 – TERMINATION COMPENSATION

(a) In order to determine the amount of compensation payable pursuant to Section 4.2(a) (the "**Termination Compensation**"), Greenfield shall deliver to the OPA a notice setting out the amount claimed as compensation and details of the computation thereof (the "**Compensation Notice**"). The OPA shall be entitled, by notice given within thirty (30) days after the date of receipt of the Compensation Notice, to require Greenfield to provide such further supporting particulars as the OPA considers necessary, acting reasonably.

(b) If the OPA does not dispute the Termination Compensation, the OPA shall pay to Greenfield the Termination Compensation within sixty (60) days after the date of receipt of the Compensation Notice. If the Termination Compensation is disputed, the OPA shall pay to Greenfield the amount of Termination Compensation as determined in accordance with paragraph (d) not later than sixty (60) days after the date on which the dispute with respect to the amount of Termination Compensation is resolved.

(c) If the OPA wishes to dispute the Termination Compensation, the OPA shall give to Greenfield a notice (the "**OPA Compensation Notice**") setting out an amount that the OPA proposes as the Termination Compensation payable pursuant to Section 4.2(a), together with details of the computation. If Greenfield does not give notice (the "**Greenfield Non-acceptance Notice**") to the OPA stating that it does not accept the amount proposed in the OPA Compensation Notice within thirty (30) days after the date of receipt of the OPA Compensation Notice, Greenfield shall be deemed to have accepted the amount of Termination Compensation so proposed. If a Greenfield Non-acceptance Notice is given, the OPA and Greenfield shall attempt to determine the Termination Compensation through negotiation. If the OPA and Greenfield do not agree in writing upon the Termination Compensation within sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, the Termination Compensation shall be determined in accordance with the procedure set forth in paragraph (d) and Sections 6.1 and 6.2 shall not apply to such determination.

(d) **Dispute Resolution**

(i) If the negotiation described in paragraph (c), above, does not result in an agreement in writing on the amount of the Termination Compensation, either the OPA or Greenfield may, after the date of the expiry of a period of sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The OPA and Greenfield shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Termination Compensation. The valuator so appointed shall be a duly qualified business valuator, independent of each of the OPA and Greenfield, where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the OPA and Greenfield are unable to agree upon a valuator within such period, the OPA and Greenfield shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Termination Compensation within sixty (60) Business Days after the date of his or her appointment. The fees and expenses of the valuator shall be paid by the OPA. Greenfield's and the OPA's respective determinations of the Termination Compensation shall be based upon the Compensation Notice and the OPA Compensation Notice, as applicable.

(ii) In order to facilitate the determination of the Termination Compensation by the valuator, each of the OPA and Greenfield shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and each of the OPA and Greenfield shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.

(iii) The Termination Compensation as determined by the valuator shall be final, conclusive and binding and not subject to any appeal.

(e) Any amount to be paid under paragraph (b) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the Effective Date to the date of payment. For the purposes of this paragraph, "**Interest Rate**" means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Canadian dollars to its commercial customers in Canada and which it designates as its "**prime rate**" based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 22, 2011 10:43 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

Can we have a meeting or call at 11:30 today to discuss Section 4.2 and any other concerns on the FRSA revised draft?

Carl has advised that their debt on the project has been set at a spread above US long term treasury bills which are very low, likely less than 1%. I will call Carl to find out the cost of debt.

Thanks, Rocco

----- Original Message -----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:25 AM
To: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

I agree. The cost of carbon some twenty years hence might make the plant a net liability.

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)

-----Original Message-----
From: JoAnne Butler
Sent: November 22, 2011 10:08 AM
To: 'Sebastiano, Rocco'; Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

To refresh my memory, I went back to my now retired CFO when we were developing our plants in Mexico as he was always adamant that we should not include residual value in our bids (in some cases, it meant the difference between winning and losing, though, the competition was so intense....). He confirmed that we used that approach due to the simplistic assumption that ignoring residual value assuming we ran the plant to its end of life would give us a hedge on clean up costs which were so difficult to predict. He did acknowledge that there is more certainty now so that assumption may no longer be necessary but having said that, by the time you NPV the residual value "there's not likely to be a lot of value in current dollars."

(his words) I am having lunch with him tomorrow and will explore further, especially his thoughts around discount rate.

So, we can remain silent for now and MK's analysis clearly shows that we cannot accept a 0 discount rate. In 2034, "dirty coal" might now have moved to "dirty gas"; there might be a huge value on carbon and gas prices might be way up there. It would be interesting to see if they put a major maintenance outage in year 18 (usually every six years and very expensive). If they didn't, then they have no intention of going longer than the twenty years. And there would be clean up costs.

JCB

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

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

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

-----Original Message-----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Lunes, 21 de Noviembre de 2011 10:47 p.m.
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

I just spoke to Carl as he wanted to gauge my reaction to the redraft. I told him that I had a concern about the no discount on the NPV. He made the point that this was a "concession" on their part to concede the no terminal value, but I pointed out to him that he did not expressly provide that there would be no terminal value, so that he left it open to raise it in any future dispute on the quantification of damages. I advised that the discount rate should as a minimum reflect the reduced time value of money given CPI if all else remained unchanged. I told him that I preferred to remain silent on both the discount rate and terminal value and we'll argue about it when it comes time to negotiate the damages on lost net revenues, but I told him that this requires further discussion with my clients.

The question is this, does taking the terminal value definitively off the table worth a difference between zero discount rate versus, say at least a 5 or 6 percent discount rate on the NPV calculation of net revenues. If it isn't (as I suspect it is not), then I would recommend that we stay silent on both points and we negotiate both points at a later date after we have the FRSA in place.

Let's discuss this further. Regards, Rocco

----- Original Message -----
From: Sebastiano, Rocco
Sent: Monday, November 21, 2011 10:08 PM
To: Michael Lyle (Michael.Lyle@powerauthority.on.ca) <Michael.Lyle@powerauthority.on.ca>; Michael Killeavy (Michael.killeavy@powerauthority.on.ca) <Michael.killeavy@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: FW: Revised FRSA

This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:

- In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
- In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
- In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
- In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me, as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.

Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.

Regards, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Monday, November 21, 2011 9:39 PM
To: Smith, Elliot
Cc: Sebastiano, Rocco
Subject: RE: Revised FRSA

Rocco and Elliot,

Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.

~~Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.~~

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

From: Smith, Elliot [ESmith@osler.com]
Sent: November 20, 2011 8:58 PM
To: Carl De Vuono
Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
Subject: RE: Revised FRSA

Carl,
Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.

Elliot

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 2:20 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot
Subject: RE: Revised FRSA

Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .

Regarding the proposed payment of the $5.23 million over time under the NUG contract, we are ok with the idea but were hoping we could reduce the period to 12 months rather than remning term of the contrcat. Based on the current payments under that contract, the increased monthly payment on the 12 month schedule should not be an issue for the OPA.

North Green Limited is a sister of Greenfield Holdco, both owned by the same corporation. As mentioned, Greenfield Holdco owns Greenfield.

I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.

I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

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

Sent: November 20, 2011 9:59 AM
To: Carl De Vuono
Subject: Re: Revised FRSA

Can we delay the call to 10:30? Thanks, Rocco

----- Original Message -----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 09:03 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

Would you rather do it later because of the parade?

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 08:55 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>
Subject: RE: Revised FRSA

Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.

Call-in: 416-343-4295
Conference ID: 9215401

Thanks, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 6:38 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

I'll follow up on your comments below and let's speak at 9:30 or 10.

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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Sent: Sunday, November 20, 2011 01:09 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle (Michael.Lyle@powerauthority.on.ca)' <Michael.Lyle@powerauthority.on.ca>
Subject: RE: Revised FRSA

Carl, can we speak Sunday morning around 9:30 or 10 am?

I have been through your changes and many of them look fine. Obviously, some of the dollars figures will require consideration by my client, but the sooner you can get us the breakdown of the Equity Sunk costs the better. Also, can Greg please provide us with a break down of how he calculated the additional $90 million to get to $150 million? It would be helpful to us to get comfortable that this is a reasonable number.

Regarding the Relocated Equipment, does Greg has a Schedule 2.1(a) that we can look at? I don't understand why he is pushing so hard on these items, as we have already listed the key large ticket items in the list. The rest of the equipment he should be able to tell the Suppliers to suspend because even if we find a replacement site, it is going to take time to get it approved and permitted and then we'd simply be paying to have this other equipment stored in a warehouse somewhere. To suspend these other items for 60 or so days is not an unreasonable request on our part.

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Sent: Saturday, November 19, 2011 11:38 PM
To: Smith, Elliot; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: RE: Revised FRSA

Elliot and Rocco, Thanks for your draft of the FRSA sent earlier today. Attached is a revised draft, together with a blackline showing changes from the draft you sent. GSPC is looking at these changes at the same time and accordingly they are subject to GSPC's comments. I understand that we may should be receiving a form of release with the amount to be received from the OEFC in respect of the OEFC matter and a draft letter from the OPA to provide for the balance of the amount.

Let me know what time you would like to speak tomorrow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

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Cc: Michael.Lyle@powerauthority.on.ca
Subject: Revised FRSA

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

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

Elliot
[cid:image002.gif@01CCA6A8.90605290]

Elliot Smith, P.Eng.
Associate

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

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

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

Please see fully signed agreement attached.

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

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

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Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

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

Thanks, Rocco

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

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

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

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

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Sent: Friday, November 18, 2011 5:57 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

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

Regards, Rocco

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

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

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

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

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

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Please consider the environment before printing this e-mail.

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

Confidential and Without Prejudice

Carl,

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

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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

[cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>

Aleksandar Kojic

From: Michael Killeavy
Sent: November 22, 2011 10:45 AM
To: 'RSebastiano@osler.com'; JoAnne Butler; Michael Lyle
Cc: 'PIvanoff@osler.com'; 'ESmith@osler.com'
Subject: Re: Revised FRSA

Yes we can. Can you please tee it up.

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

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, November 22, 2011 10:43 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: Re: Revised FRSA

Can we have a meeting or call at 11:30 today to discuss Section 4.2 and any other concerns on the FRSA revised draft?

Carl has advised that their debt on the project has been set at a spread above US long term treasury bills which are very low, likely less than 1%. I will call Carl to find out the cost of debt.

Thanks, Rocco

----- Original Message -----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:25 AM
To: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

I agree. The cost of carbon some twenty years hence might make the plant a net liability.

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)

-----Original Message-----
From: JoAnne Butler
Sent: November 22, 2011 10:08 AM
To: 'Sebastiano, Rocco'; Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

To refresh my memory, I went back to my now retired CFO when we were developing our plants in Mexico as he was always adamant that we should not include residual value in our bids (in some cases, it meant the difference between winning and losing, though, the competition was so intense....). He confirmed that we used that approach due to the simplistic assumption that ignoring residual value assuming we ran the plant to its end of life would give us a hedge on clean up costs which were so difficult to predict. He did acknowledge that there is more certainty now so that assumption may no longer be necessary but having said that, by the time you NPV the residual value "there's not likely to be a lot of value in current dollars." (his words) I am having lunch with him tomorrow and will explore further, especially his thoughts around discount rate.

So, we can remain silent for now and MK's analysis clearly shows that we cannot accept a 0 discount rate. In 2034, "dirty coal" might now have moved to "dirty gas"; there might be a huge value on carbon and gas prices might be way up there. It would be interesting to see if they put a major maintenance outage in year 18 (usually every six years and very expensive). If they didn't, then they have no intention of going longer than the twenty years. And there would be clean up costs.

JCB

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

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

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

-----Original Message-----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Lunes, 21 de Noviembre de 2011 10:47 p.m.
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

I just spoke to Carl as he wanted to gauge my reaction to the redraft. I told him that I had a concern about the no discount on the NPV. He made the point that this was a "concession" on their part to concede the no terminal value, but I pointed out to him that he did not expressly provide that there would be no terminal value, so that he left it open to raise it in any future dispute on the quantification of damages. I advised that the discount rate should as a minimum reflect the reduced time value of money given CPI if all else remained unchanged. I told him that I preferred to remain silent on both the discount rate and terminal value and we'll argue about it when it comes time to negotiate the damages on lost net revenues, but I told him that this requires further discussion with my clients.

The question is this, does taking the terminal value definitively off the table worth a difference between zero discount rate versus, say at least a 5 or 6 percent discount rate on the NPV calculation of net revenues. If it isn't (as I suspect it is not), then I would recommend that we stay silent on both points and we negotiate both points at a later date after we have the FRSA in place.

Let's discuss this further. Regards, Rocco

----- Original Message -----
From: Sebastiano, Rocco
Sent: Monday, November 21, 2011 10:08 PM
To: Michael Lyle (Michael.Lyle@powerauthority.on.ca) <Michael.Lyle@powerauthority.on.ca>; Michael Killeavy (Michael.killeavy@powerauthority.on.ca) <Michael.killeavy@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: FW: Revised FRSA

This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:

- In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
- In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
- In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
- In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me, as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.

Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.

Regards, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Monday, November 21, 2011 9:39 PM
To: Smith, Elliot
Cc: Sebastiano, Rocco

Subject: RE: Revised FRSA

Rocco and Elliot,

Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.

Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

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Sent: November 20, 2011 8:58 PM
To: Carl De Vuono
Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
Subject: RE: Revised FRSA

Carl,
Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.

Elliot

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 2:20 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot
Subject: RE: Revised FRSA

Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .

Regarding the proposed payment of the $5.23 million over time under the NUG contract, we are ok with the idea but were hoping we could reduce the period to 12 months rather than remning term of the contrcat. Based on the current payments under that contract, the increased monthly payment on the 12 month schedule should not be an issue for the OPA.

North Green Limited is a sister of Greenfield Holdco, both owned by the same corporation. As mentioned, Greenfield Holdco owns Greenfield.

I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.

I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.

Carl De Vuono
McMillan LLP
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Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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Elliot Smith, P.Eng.
Associate

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FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

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

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

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

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

Confidential and Without Prejudice

Carl,

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

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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

[cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: November 22, 2011 10:46 AM
To: Michael Killeavy; Sebastiano, Rocco; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul
Subject: RE: Revised FRSA

I have a room booked here (with lunch) that was originally for another meeting at 11:30 that was cancelled. Why don't we use that room, and for those wishing to dial in, details are below:

Local Dial-in number: 416-343-4295
Toll-free Dial-in number: 866-862-7871
Conference ID: 6133636#

Elliot

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:45 AM
To: Sebastiano, Rocco; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

Yes we can. Can you please tee it up.

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

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, November 22, 2011 10:43 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: Re: Revised FRSA

Can we have a meeting or call at 11:30 today to discuss Section 4.2 and any other concerns on the FRSA revised draft?

Carl has advised that their debt on the project has been set at a spread above US long term treasury bills which are very low, likely less than 1%. I will call Carl to find out the cost of debt.

Thanks, Rocco

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:25 AM
To: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

I agree. The cost of carbon some twenty years hence might make the plant a net liability.

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)

-----Original Message-----
From: JoAnne Butler
Sent: November 22, 2011 10:08 AM
To: 'Sebastiano, Rocco'; Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

To refresh my memory, I went back to my now retired CFO when we were developing our plants in Mexico as he was always adamant that we should not include residual value in our bids (in some cases, it meant the difference between winning and losing, though, the competition was so intense....). He confirmed that we used that approach due to the simplistic assumption that ignoring residual value assuming we ran the plant to its end of life would give us a hedge on clean up costs which were so difficult to predict. He did acknowledge that there is more certainty now so that assumption may no longer be necessary but having said that, by the time you NPV the residual value "there's not likely to be a lot of value in current dollars." (his words) I am having lunch with him tomorrow and will explore further, especially his thoughts around discount rate.

So, we can remain silent for now and MK's analysis clearly shows that we cannot accept a 0 discount rate. In 2034, "dirty coal" might now have moved to "dirty gas"; there might be a huge value on carbon and gas prices might be way up there. It would be interesting to see if they put a major maintenance outage in year 18 (usually every six years and very expensive). If they didn't, then they have no intention of going longer than the twenty years. And there would be clean up costs.

JCB

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

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

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

-----Original Message-----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Lunes, 21 de Noviembre de 2011 10:47 p.m.
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

I just spoke to Carl as he wanted to gauge my reaction to the redraft. I told him that I had a concern about the no discount on the NPV. He made the point that this was a "concession" on their part to concede the no terminal value, but I pointed out to him that he did not expressly provide that there would be no terminal value, so that he left it open to raise it in any future dispute on the quantification of damages. I advised that the discount rate should as a minimum reflect the reduced time value of money given CPI if all else remained unchanged. I told him that I preferred to remain silent on both the discount rate and terminal value and we'll argue about it when it comes time to negotiate the damages on lost net revenues, but I told him that this requires further discussion with my clients.

The question is this, does taking the terminal value definitively off the table worth a difference between zero discount rate versus, say at least a 5 or 6 percent discount rate on the NPV calculation of net revenues. If it isn't (as I suspect it is not), then I would recommend that we stay silent on both points and we negotiate both points at a later date after we have the FRSA in place.

Let's discuss this further. Regards, Rocco

----- Original Message -----
From: Sebastiano, Rocco
Sent: Monday, November 21, 2011 10:08 PM
To: Michael Lyle (Michael.Lyle@powerauthority.on.ca) <Michael.Lyle@powerauthority.on.ca>; Michael Killeavy (Michael.killeavy@powerauthority.on.ca) <Michael.killeavy@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: FW: Revised FRSA

This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:

- In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
- In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
- In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
- In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me,

as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.

Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.

Regards, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Monday, November 21, 2011 9:39 PM
To: Smith, Elliot
Cc: Sebastiano, Rocco
Subject: RE: Revised FRSA

Rocco and Elliot,

Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.

Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

---

From: Smith, Elliot [ESmith@osler.com]
Sent: November 20, 2011 8:58 PM
To: Carl De Vuono
Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
Subject: RE: Revised FRSA

Carl,
Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.

Elliot

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 2:20 PM
To: Sebastiano, Rocco

Cc: Smith, Elliot
Subject: RE: Revised FRSA

Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .

Regarding the proposed payment of the $5.23 million over time under the NUG contract, we are ok with the idea but were hoping we could reduce the period to 12 months rather than remning term of the contrcat. Based on the current payments under that contract, the increased monthly payment on the 12 month schedule should not be an issue for the OPA.

North Green Limited is a sister of Greenfield Holdco, both owned by the same corporation. As mentioned, Greenfield Holdco owns Greenfield.

I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.

I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

---

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 20, 2011 9:59 AM
To: Carl De Vuono
Subject: Re: Revised FRSA

Can we delay the call to 10:30? Thanks, Rocco

----- Original Message -----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 09:03 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

Would you rather do it later because of the parade?

Carl De Vuono
McMillan LLP

direct - 416.307.4055

mobile - 416.918.1046

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 08:55 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>
Subject: RE: Revised FRSA

Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.

Call-in: 416-343-4295
Conference ID: 9215401

Thanks, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 6:38 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

I'll follow up on your comments below and let's speak at 9:30 or 10.

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 01:09 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle (Michael.Lyle@powerauthority.on.ca)' <Michael.Lyle@powerauthority.on.ca>
Subject: RE: Revised FRSA

Carl, can we speak Sunday morning around 9:30 or 10 am?

I have been through your changes and many of them look fine. Obviously, some of the dollars figures will require consideration by my client, but the sooner you can get us the breakdown of the Equity Sunk costs the better. Also, can Greg please provide us with a break down of how he calculated the additional $90 million to get to $150 million? It would be helpful to us to get comfortable that this is a reasonable number.

Regarding the Relocated Equipment, does Greg has a Schedule 2.1(a) that we can look at? I don't understand why he is pushing so hard on these items, as we have already listed the key large ticket items in the list. The rest of the equipment he should be able to tell the Suppliers to suspend because even if we find a replacement site, it is going to take time to get it approved and permitted and then we'd simply be paying to have this other equipment stored in a warehouse somewhere. To suspend these other items for 60 or so days is not an unreasonable request on our part.

I am quite troubled by your change to Section 4.2 to add a dollar amount for the "deemed terminal value of the Facility". This concept is not part of the "Discriminatory Action Compensation" language in the ARCES that we discussed on Friday and furthermore, is completely outside of the ARCES Contract. Once the end of the Term of ARCES Contract would have been reached, this Facility would have become a merchant power plant as there is no obligation on the part of the OPA to provide any extension or replacement contract. Therefore, the terminal value is completely speculative and in fact, could be zero or a negative amount depending upon assumptions of future market conditions or system needs at the end of the Term. This ask needs to come off the table if we are to come to an agreement by Monday.

Thanks, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Saturday, November 19, 2011 11:38 PM
To: Smith, Elliot; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: RE: Revised FRSA

Elliot and Rocco, Thanks for your draft of the FRSA sent earlier today. Attached is a revised draft, together with a blackline showing changes from the draft you sent. GSPC is looking at these changes at the same time and accordingly they are subject to GSPC's comments. I understand that we may should be receiving a form of release with the amount to be received from the OEFC in respect of the OEFC matter and a draft letter from the OPA to provide for the balance of the amount.

~~Let me know what time you would like to speak tomorrow.~~

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

From: Smith, Elliot [ESmith@osler.com]
Sent: November 19, 2011 10:46 AM
To: Carl De Vuono; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: Revised FRSA

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

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

Elliot
[cid:image002.gif@01CCA6A8.90605290]

Elliot Smith, P.Eng.
Associate

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

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

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

Please see fully signed agreement attached.

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

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

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

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

Thanks, Rocco

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

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

Thanks, Rocco

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

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

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

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

prohibited. If you are not the intended recipient, please notify us by reply email or telephone call and permanently delete this email and any copies immediately.

Please consider the environment before printing this e-mail.

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

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

Regards, Rocco

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

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

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

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

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

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

Confidential and Without Prejudice

Carl,

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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

[cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>

Aleksandar Kojic

From: Michael Killeavy
Sent: November 22, 2011 10:47 AM
To: 'RSebastiano@osler.com'
Subject: Re: Revised FRSA

That's a good deal on debt.

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

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, November 22, 2011 10:43 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: Re: Revised FRSA

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Carl has advised that their debt on the project has been set at a spread above US long term treasury bills which are very low, likely less than 1%. I will call Carl to find out the cost of debt.

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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:25 AM
To: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

I agree. The cost of carbon some twenty years hence might make the plant a net liability.

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)

-----Original Message-----
From: JoAnne Butler
Sent: November 22, 2011 10:08 AM
To: 'Sebastiano, Rocco'; Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

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So, we can remain silent for now and MK's analysis clearly shows that we cannot accept a 0 discount rate. In 2034, "dirty coal" might now have moved to "dirty gas"; there might be a huge value on carbon and gas prices might be way up there. It would be interesting to see if they put a major maintenance outage in year 18 (usually every six years and very expensive). If they didn't, then they have no intention of going longer than the twenty years. And there would be clean up costs.

JCB

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

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

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

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Sent: Lunes, 21 de Noviembre de 2011 10:47 p.m.
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

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The question is this, does taking the terminal value definitively off the table worth a difference between zero discount rate versus, say at least a 5 or 6 percent discount rate on the NPV calculation of net revenues. If it isn't (as I suspect it is not), then I would recommend that we stay silent on both points and we negotiate both points at a later date after we have the FRSA in place.

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----- Original Message -----
From: Sebastiano, Rocco
Sent: Monday, November 21, 2011 10:08 PM
To: Michael Lyle (Michael.Lyle@powerauthority.on.ca) <Michael.Lyle@powerauthority.on.ca>; Michael Killeavy (Michael.killeavy@powerauthority.on.ca) <Michael.killeavy@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: FW: Revised FRSA

This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:

- In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
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Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.

Regards, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Monday, November 21, 2011 9:39 PM
To: Smith, Elliot
Cc: Sebastiano, Rocco

Subject: RE: Revised FRSA

Rocco and Elliot,

Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.

Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

---

From: Smith, Elliot [ESmith@osler.com]
Sent: November 20, 2011 8:58 PM
To: Carl De Vuono
Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
Subject: RE: Revised FRSA

Carl,
Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.

Elliot

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 2:20 PM
To: Sebastiano, Rocco
Cc: Smith, Elliot
Subject: RE: Revised FRSA

Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .

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I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.

I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.

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

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

---

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 20, 2011 9:59 AM
To: Carl De Vuono
Subject: Re: Revised FRSA

Can we delay the call to 10:30? Thanks, Rocco

----- Original Message -----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 09:03 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

Would you rather do it later because of the parade?

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 08:55 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>
Subject: RE: Revised FRSA

Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.

Call-in: 416-343-4295
Conference ID: 9215401

Thanks, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Sunday, November 20, 2011 6:38 AM
To: Sebastiano, Rocco
Subject: Re: Revised FRSA

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Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 01:09 AM
To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle (Michael.Lyle@powerauthority.on.ca)' <Michael.Lyle@powerauthority.on.ca>
Subject: RE: Revised FRSA

Carl, can we speak Sunday morning around 9:30 or 10 am?

I have been through your changes and many of them look fine. Obviously, some of the dollars figures will require consideration by my client, but the sooner you can get us the breakdown of the Equity Sunk costs the better. Also, can Greg please provide us with a break down of how he calculated the additional $90 million to get to $150 million? It would be helpful to us to get comfortable that this is a reasonable number.

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Thanks, Rocco

-----Original Message-----
From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
Sent: Saturday, November 19, 2011 11:38 PM
To: Smith, Elliot; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: RE: Revised FRSA

Elliot and Rocco, Thanks for your draft of the FRSA sent earlier today. Attached is a revised draft, together with a blackline showing changes from the draft you sent. GSPC is looking at these changes at the same time and accordingly they are subject to GSPC's comments. I understand that we may should be receiving a form of release with the amount to be received from the OEFC in respect of the OEFC matter and a draft letter from the OPA to provide for the balance of the amount.

Let me know what time you would like to speak tomorrow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

---

From: Smith, Elliot [ESmith@osler.com]
Sent: November 19, 2011 10:46 AM
To: Carl De Vuono; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: Revised FRSA

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

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

Elliot
[cid:image002.gif@01CCA6A8.90605290]

Elliot Smith, P.Eng.
Associate

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

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

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

Please see fully signed agreement attached.

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

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

---

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

Sent: Friday, November 18, 2011 6:06 PM
To: Carl De Vuono
Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
Subject: RE: Agreement in Principle Letter

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

Thanks, Rocco

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

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

Thanks, Rocco

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

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

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

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

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

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

Regards, Rocco

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

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

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

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

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

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

Confidential and Without Prejudice

Carl,

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

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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

[cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>

Aleksandar Kojic

From: Michael Killeavy
Sent: November 22, 2011 10:48 AM
To: 'ESmith@osler.com'; 'RSebastiano@osler.com'; JoAnne Butler; Michael Lyle
Cc: 'PIvanoff@osler.com'
Subject: Re: Revised FRSA

We'll dial in. Any chance we could do it at 11am?

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: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Tuesday, November 22, 2011 10:46 AM
To: Michael Killeavy; Sebastiano, Rocco <RSebastiano@osler.com>; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul <PIvanoff@osler.com>
Subject: RE: Revised FRSA

I have a room booked here (with lunch) that was originally for another meeting at 11:30 that was cancelled. Why don't we use that room, and for those wishing to dial in, details are below:

Local Dial-in number: 416-343-4295
Toll-free Dial-in number: 866-862-7871
Conference ID: 6133636#

Elliot

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:45 AM
To: Sebastiano, Rocco; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

Yes we can. Can you please tee it up.

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

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

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, November 22, 2011 10:43 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: Re: Revised FRSA

Can we have a meeting or call at 11:30 today to discuss Section 4.2 and any other concerns on the FRSA revised draft?

Carl has advised that their debt on the project has been set at a spread above US long term treasury bills which are very low, likely less than 1%. I will call Carl to find out the cost of debt.

Thanks, Rocco

----- Original Message -----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, November 22, 2011 10:25 AM
To: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

I agree. The cost of carbon some twenty years hence might make the plant a net liability.

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)

-----Original Message-----
From: JoAnne Butler
Sent: November 22, 2011 10:08 AM
To: 'Sebastiano, Rocco'; Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Smith, Elliot
Subject: RE: Revised FRSA

To refresh my memory, I went back to my now retired CFO when we were developing our plants in Mexico as he was always adamant that we should not include residual value in our bids (in some cases, it meant the difference between winning and losing, though, the competition was so intense....). He confirmed that we used that approach due to the simplistic assumption that ignoring residual value assuming we ran the plant to its end of life would give us a hedge on clean up costs which were so difficult to predict. He did acknowledge that there is more certainty now so that assumption may no longer be necessary but having said that, by the time you NPV the residual value "there's not likely to be a lot of value in current dollars." (his words) I am having lunch with him tomorrow and will explore further, especially his thoughts around discount rate.

So, we can remain silent for now and MK's analysis clearly shows that we cannot accept a 0 discount rate. In 2034, "dirty coal" might now have moved to "dirty gas"; there might be a huge value on carbon and gas prices might be way up there. It would be interesting to see if they put a major maintenance outage in year 18 (usually every six years and very expensive). If they didn't, then they have no intention of going longer than the twenty years. And there would be clean up costs.

JCB

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

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

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

-----Original Message-----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Lunes, 21 de Noviembre de 2011 10:47 p.m.
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul; Smith, Elliot
Subject: Re: Revised FRSA

I just spoke to Carl as he wanted to gauge my reaction to the redraft. I told him that I had a concern about the no discount on the NPV. He made the point that this was a "concession" on their part to concede the no terminal value, but I pointed out to him that he did not expressly provide that there would be no terminal value, so that he left it open to raise it in any future dispute on the quantification of damages. I advised that the discount rate should as a minimum reflect the reduced time value of money given CPI if all else remained unchanged. I told him that I preferred to remain silent on both the discount rate and terminal value and we'll argue about it when it comes time to negotiate the damages on lost net revenues, but I told him that this requires further discussion with my clients.

The question is this, does taking the terminal value definitively off the table worth a difference between zero discount rate versus, say at least a 5 or 6 percent discount rate on the NPV calculation of net revenues. If it isn't (as I suspect it is not), then I would recommend that we stay silent on both points and we negotiate both points at a later date after we have the FRSA in place.

Let's discuss this further. Regards, Rocco

----- Original Message -----
From: Sebastiano, Rocco
Sent: Monday, November 21, 2011 10:08 PM

To: Michael Lyle (Michael.Lyle@powerauthority.on.ca) <Michael.Lyle@powerauthority.on.ca>; Michael Killeavy (Michael.killeavy@powerauthority.on.ca) <Michael.killeavy@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Cc: Ivanoff, Paul; Smith, Elliot
Subject: FW: Revised FRSA

This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:

- In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
- In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
- In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
- In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me, as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.

Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.

Regards, Rocco

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

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Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.

Call-in: 416-343-4295
Conference ID: 9215401

Thanks, Rocco

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McMillan LLP

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Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle (Michael.Lyle@powerauthority.on.ca)' <Michael.Lyle@powerauthority.on.ca>
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Thanks, Rocco

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Subject: RE: Revised FRSA

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Let me know what time you would like to speak tomorrow.

Carl De Vuono
McMillan LLP
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca

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

---

From: Smith, Elliot [ESmith@osler.com]
Sent: November 19, 2011 10:46 AM
To: Carl De Vuono; Sebastiano, Rocco
Cc: Michael.Lyle@powerauthority.on.ca
Subject: Revised FRSA

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

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

Elliot
[cid:image002.gif@01CCA6A8.90605290]

Elliot Smith, P.Eng.
Associate

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com<mailto:esmith@osler.com>

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

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

Please see fully signed agreement attached.

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

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

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

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

Thanks, Rocco

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

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

Thanks, Rocco

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

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

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

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

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

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

Regards, Rocco

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

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

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

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

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

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

Confidential and Without Prejudice

Carl,

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

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

Regards, Rocco
[cid:image002.gif@01CCA6A8.90605290]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

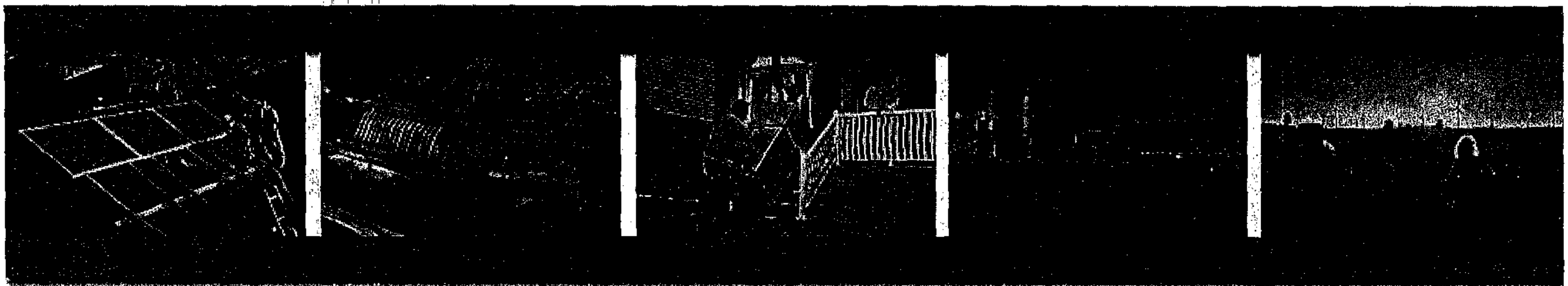
[cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>

Aleksandar Kojic

From: Deborah Langelaan
Sent: November 23, 2011 11:44 AM
To: Michael Killeavy
Cc: Ronak Mozayyan
Subject: Confidential
Attachments: Analysis_of_TCE_Cost_of_Capital_20111123.pptx

Michael...I made a few housekeeping changes and added an additional slide describing case law for residual value. Ronak is working on verifying the cost of delaying the project for one year and once that's done I will update the presentation.

Deb



Analysis of TCE Cost of Capital

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Assumptions

Getting the Effective Tax Rate

TransCanada Tax Rates	
2004	26.70%
2005	28.90%
2006	18.75%
2007	27.70%
2008	27.71%
2009	20.77%
Avg. Effective Tax Rates	**25.09%**

To estimate TransCanada Energy's β (Beta)

Comparable Companies to calculate Beta		
	Weighting of similarities	Beta
Capital Power	6	3.798
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Brookfield Asset	6	1.138
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Atco	6	0.374
Average	**100**	**1.05852**

ONTARIO POWER AUTHORITY

Cost of Capital Using CAPM

Cost of Equity: Based on CAPM Model	
Risk Free Rate (10-year Cdn Govt Bond, 2009)	3.86%
Transcanada beta	1.06
Cost of Equity (CAPM)	7.95%
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Interst on Long-Term Debt (in 2009)	$1,285
Long Term Debt (Market Value)	$19,377
Effective Cost of Debt	6.63%
Effective Tax Rate (Average of 6 years)	25.09%
Cost of Debt (after Taxes)	4.97%
Debt / Capital Ratio	80%
Equity / Capital Ratio	20%
Cost of Capital (Weighted)	**5.56%**

ONTARIO POWER AUTHORITY

Cost of Capital Using TCPL's 2010 Financial Statements

Cost of Equity: Based on Financial Statements	
Return on Equity (Net Income / S. Equity)	9.80%
Dividend Yield	4.80%
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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.

Residual Value of the OGS

- Contingency needs to be factored into residual value to reflect:
  - Possibility that facility does not exist and/or function in 20 years
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- Very little case law on this point
- One case between Air Canada and Ticketnet considered the concept of salvage value
  - Plaintiff omitted loss profits from residual value and judge found that constituted a conservative assumption
  - Inferred that Court considers residual value to be a valid head of damage

ONTARIO POWER AUTHORITY

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.

Reanalysis of OGS Financial Value

- If we conduct the analysis of the free cash flows in TCE's OGS model with the average of the cost of equity we calculated, 11.18% the OGS NPV is about $54 million.
- We believe that an appropriate value for the cost of equity is 7% to 8% based on our discussions with our counsel's expert.
- If we conduct the analysis of the free cash flows with a cost of equity of 7.5%, the OGS NPV is $292 million.

ONTARIO POWER AUTHORITY

Reanalysis of OGS Financial Value

- If we conduct the analysis of the free cash flows with a cost of equity of 7.5% for the contract cash flows, and then discount the residual value at 15% to account for their riskiness, the OGS NPV is $176 million.

- In this analysis the present value of the residual value is $26 million. If we say that this residual value is zero, then we are getting close to the expert's value.

Delays and Construction Cost Overruns

- Any assessment of the OGS NPV also has to take into account the impact that cost overruns and delays have to the completion of the facility.

- A one year delay in completion results in an OGS NPV of $xxx million using a discount rate of 5.25% for contract cash flows and 8% for residual value

- A 10% increase in construction costs results in an OGS NPV of $283 million using a discount rate of 5.25%

TransCanada's Unlevered Cost of Equity

- During our meetings with TCE we found out how TCE arrived at 5.25% "unlevered" cost of equity.
- TCE does not project finance. TCE borrows on its balance sheet and then uses this "blend" of balance sheet debt and equity to fund projects.
- Clearly, the 5.25% "unlevered" cost of equity is more akin to a weighted average cost of equity ("WACC") and not a true reflection of the return its equity holders want. It is not a cost of equity at all.

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- Using TCE before-tax cost of debt of 6.63% and a cost of equity of 7.5%, we can get a WAAC of 5.25% if the project is funded 89% debt and 11% equity. It appears that TCE's "unlevered" cost of equity is its WACC.

- It would make no economic sense to discount residual value at WACC since residual value is a risk that equity takes alone, as debt is repaid by the end of the term.

- TCE has manipulated its financial model to amplify the impact of residual value on project NPV.

Comparison of Settlement Proposals

	[illegible]	[illegible]	[illegible]	[illegible]	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	$37MM to be audited by Ministry of Finance for substantiation and reasonableness
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100MM ± 20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	$475 mm	Unknown but we infer from the reference to a ~$65 mm difference that it is $540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by $75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the *Planning Act*.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

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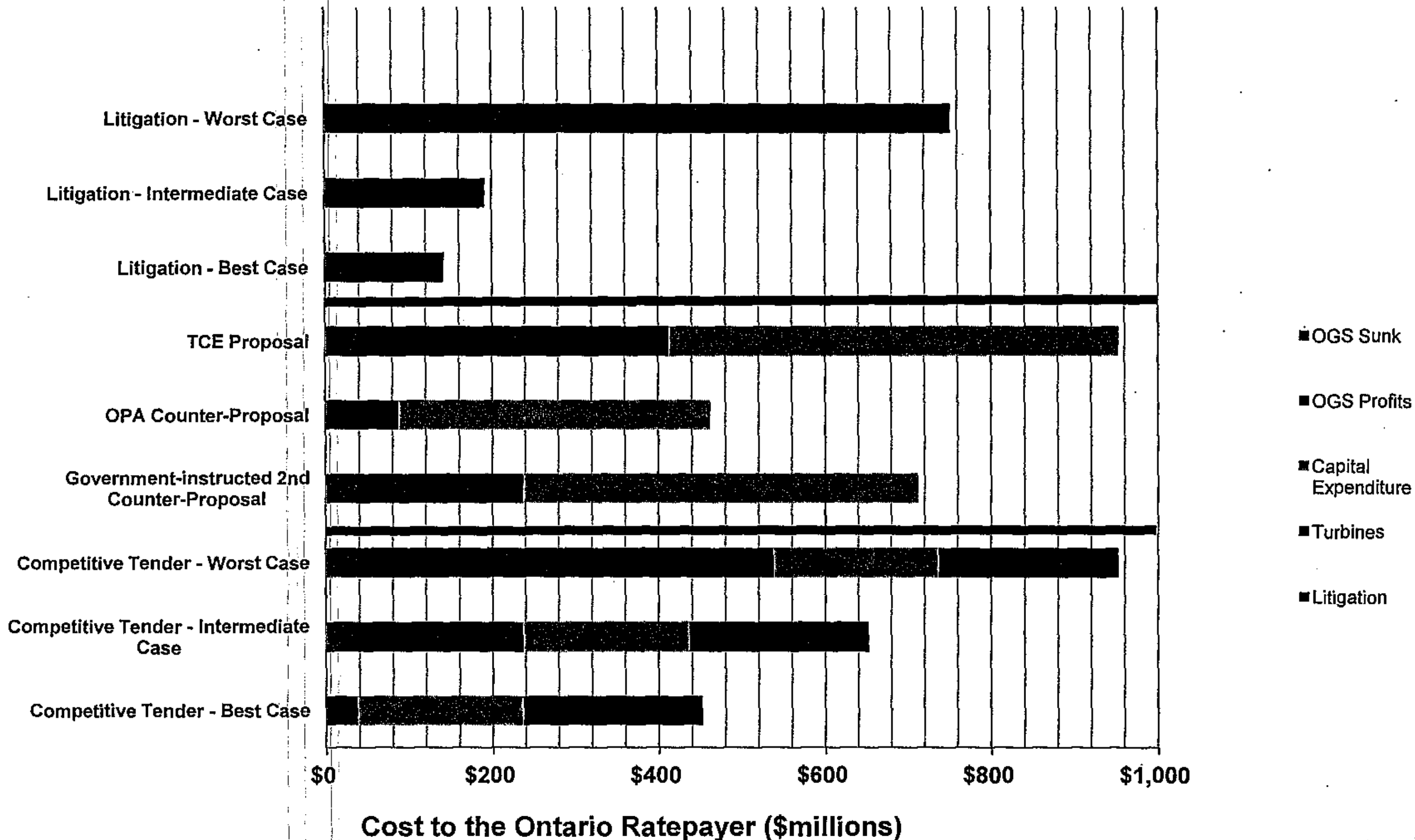
Financial Value of Potential Outcomes

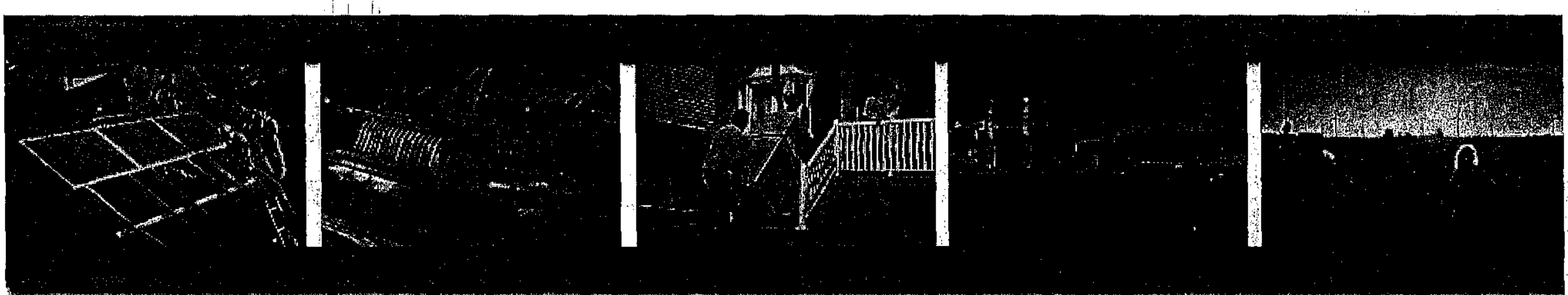


Aleksandar Kojic

From: Ronak Mozayyan
Sent: November 23, 2011 12:43 PM
To: Michael Killeavy; Deborah Langelaan
Subject: one year delay presentation
Attachments: Analysis_of_TCE_Cost_of_Capital_2011rm.pptx

I changed one number and placed another number in your slides – both marked in red. The one year delay results in approximately $22M reduction in OGS NPV and also changes the initial OGS NPV at 5.25% (~ $478M versus the $503M). I'm not sure if this information is to be included in the slides.

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



Analysis of TCE Cost of Capital

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Assumptions

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

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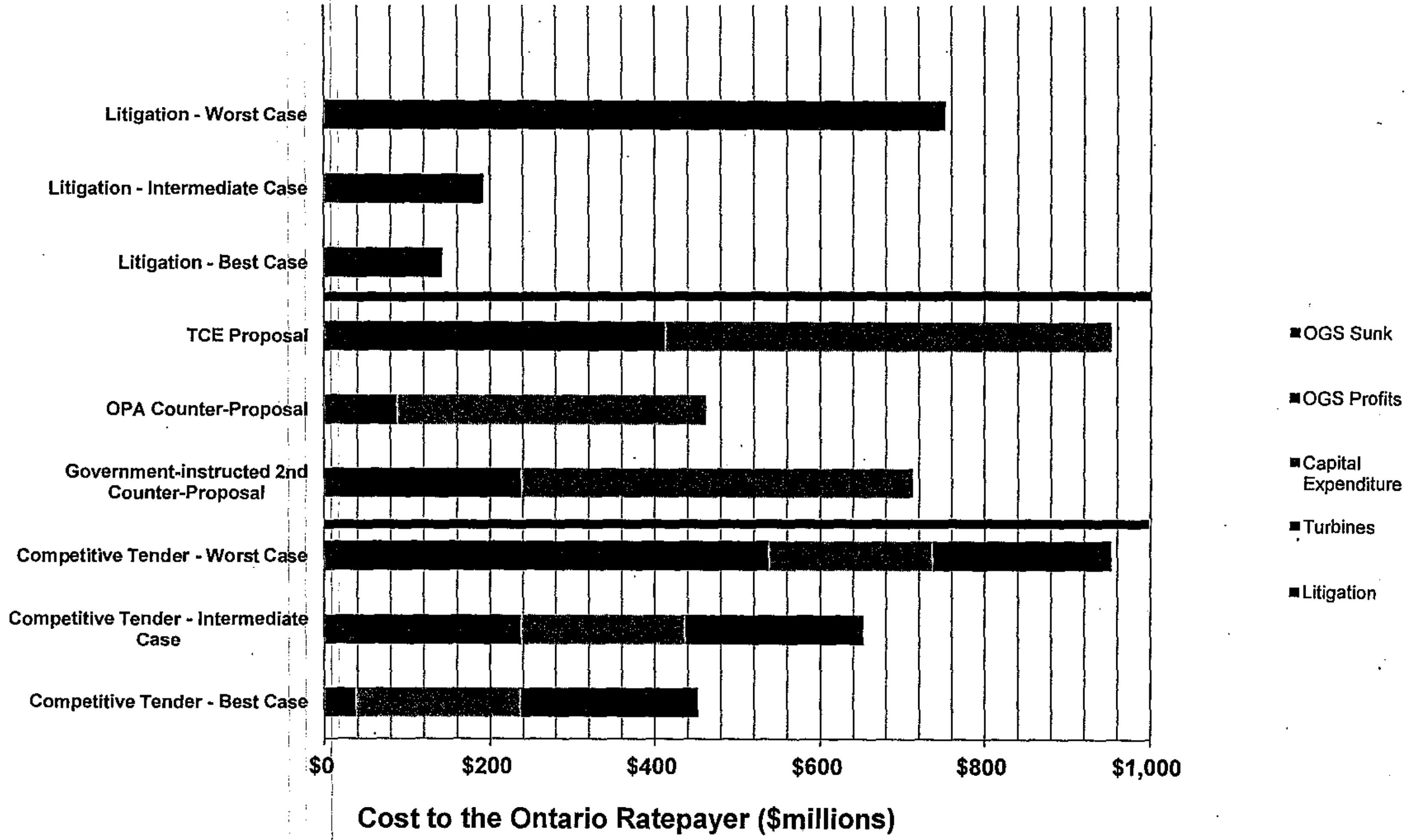


ONTARIO POWER AUTHORITY

Aleksandar Kojic

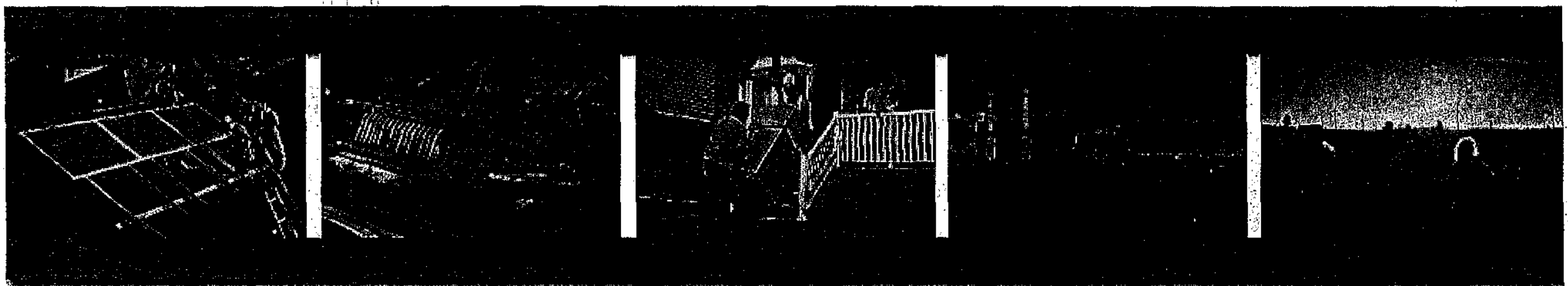
From: Deborah Langelaan
Sent: November 23, 2011 3:31 PM
To: JoAnne Butler; Michael Killeavy
Cc: Ronak Mozayyan
Subject: OGS Presentation for tomorrow's meeting
Attachments: Analysis_of_TCE_Cost_of_Capital_20111123.pptx

Michael and JoAnne;

Attached is the presentation for tomorrow's meeting. Please review and provide me with your comments.

Thanks,
Deb

ONTARIO POWER AUTHORITY



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- TCE has claimed that the financial value of the OGS contract is $500 million.
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ONTARIO POWER AUTHORITY

Residual Value of the OGS

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Reanalysis of OGS Financial Value

- If we conduct the analysis of the free cash flows in TCE's OGS model with the average of the cost of equity we calculated, 11.18% the OGS NPV is about $54 million.

- We believe that an appropriate value for the cost of equity is 7% to 8% based on our discussions with our counsel's expert.

- If we conduct the analysis of the free cash flows with a cost of equity of 7.5%, the OGS NPV is $292 million.

Reanalysis of OGS Financial Value

- If we conduct the analysis of the free cash flows with a cost of equity of 7.5% for the contract cash flows, and then discount the residual value at 15% to account for their riskiness, the OGS NPV is $176 million.

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ONTARIO POWER AUTHORITY

Delays and Construction Cost Overruns

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

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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.
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Contract Capacity (Annual/Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
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ONTARIO POWER AUTHORITY

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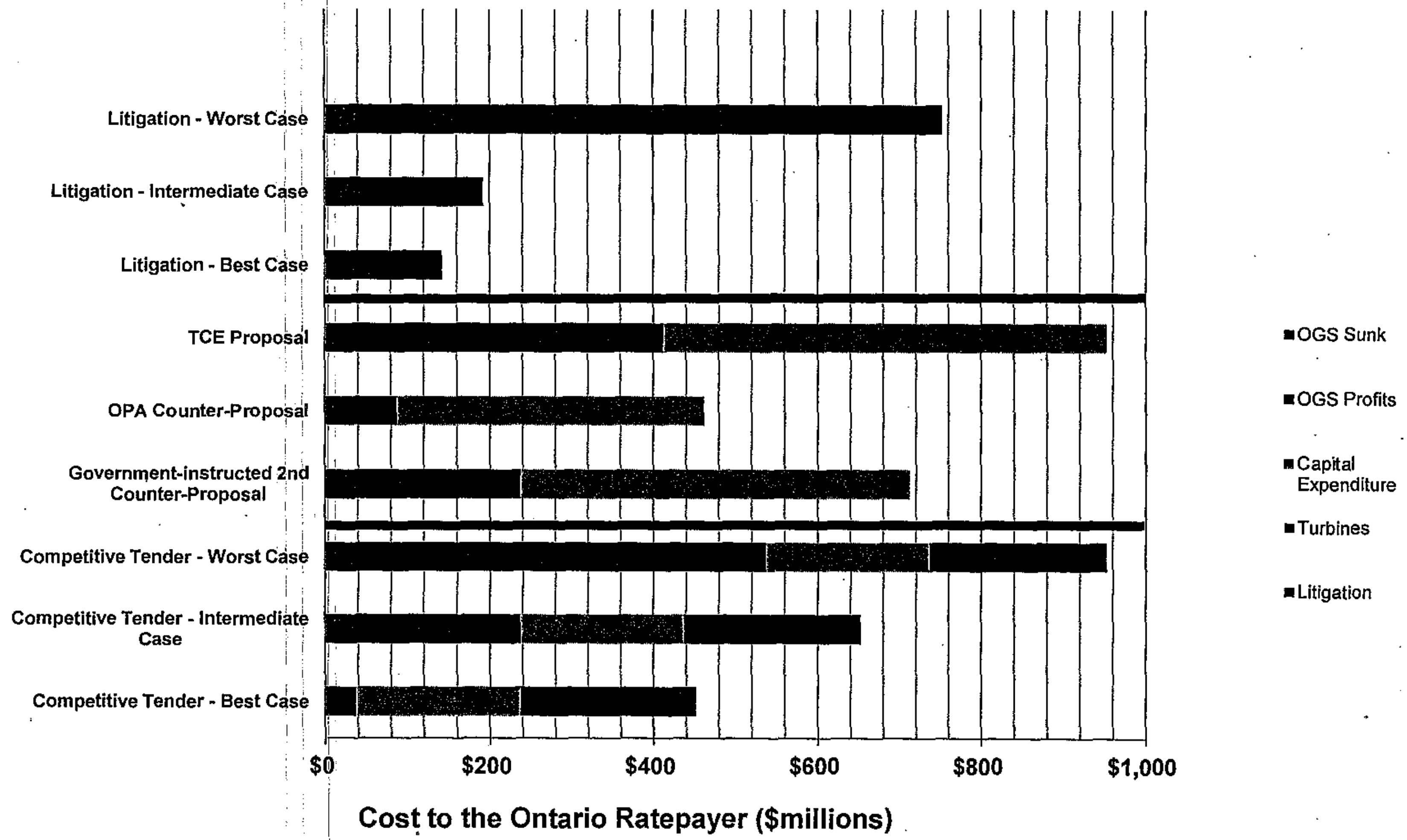

ONTARIO POWER AUTHORITY

Aleksandar Kojic

From:	Michael Killeavy
Sent:	November 24, 2011 12:08 PM
To:	JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject:	TCE Cost of Capital Presentation - FINAL ....
Attachments:	Analysis_of_TCE_Cost_of_Capital_20111123 FINAL.pptx

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
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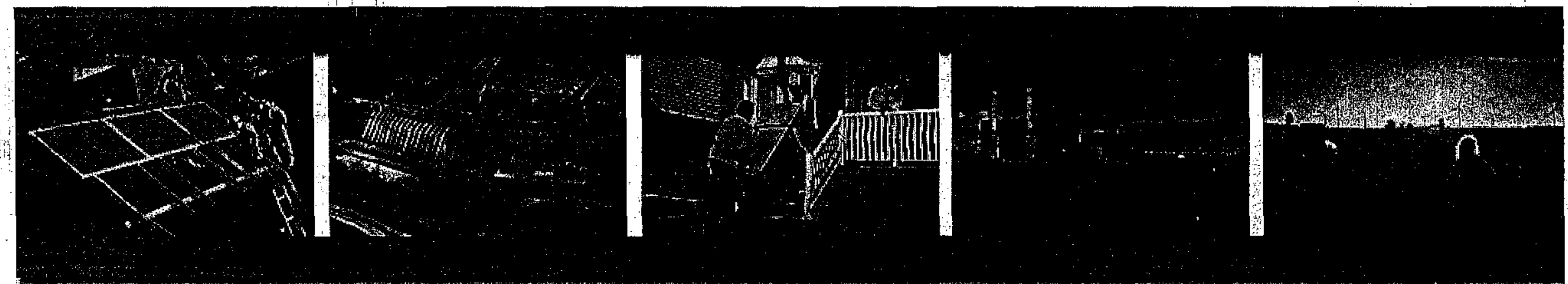
416-967-1947 (FAX)



Analysis of TCE Cost of Capital

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Assumptions

Getting the Effective Tax Rate

TransCanada Tax Rates	
2004	26.70%
2005	28.90%
2006	18.75%
2007	27.70%
2008	27.71%
2009	20.77%
Avg. Effective Tax Rates	**25.09%**

To estimate TransCanada Energy's β (Beta)

Comparable Companies to calculate Beta		
	Weighting of similarities	Beta
Capital Power	6	3.798
Transalta	24	0.792
Enbridge Energy	24	0.785
Duke Energy	16	0.405
Edison International	12	0.607
Brookfield Asset	6	1.138
Ameresco	6	3.73
Atco	6	0.374
Average	**100**	**1.05852**

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Cost of Capital Using CAPM

Cost of Equity: Based on CAPM Model	
Risk Free Rate (10-year Cdn Govt Bond, 2009)	3.86%
Transcanada beta	1.06
Cost of Equity (CAPM)	7.95%
Cost of Debt (Actual Values from Financial Statements)	
Interst on Long-Term Debt (in 2009)	$1,285
Long Term Debt (Market Value)	$19,377
Effective Cost of Debt	6.63%
Effective Tax Rate (Average of 6 years)	25.09%
Cost of Debt (after Taxes)	4.97%
Debt / Capital Ratio	80%
Equity / Capital Ratio	20%
Cost of Capital (Weighted)	**5.56%**

ONTARIO POWER AUTHORITY

Cost of Capital Using TCPL's 2010 Financial Statements

Cost of Equity: Based on Financial Statements	
Return on Equity (Net Income / S. Equity)	9.80%
Dividend Yield	4.80%
Total Shareholder Return	14.40%
Cost of Debt (Actual Values from Financial Statements)	
Interst on Long-Term Debt (in 2009)	$1,285
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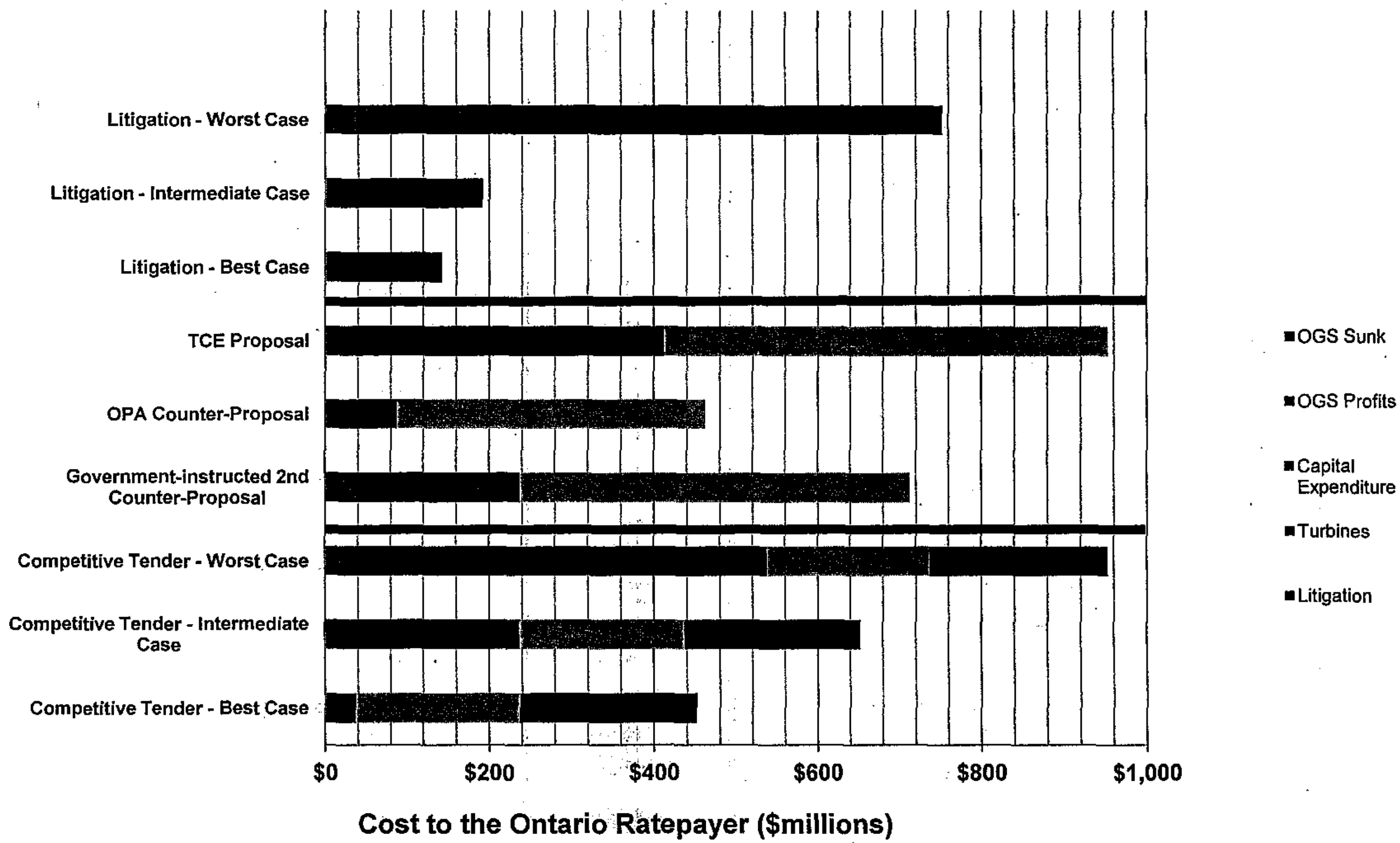

ONTARIO POWER AUTHORITY

Aleksandar Kojic

From: JoAnne Butler
Sent: November 25, 2011 5:09 PM
To: Amir Shalaby; Michael Lyle; Michael Killeavy; Colin Andersen
Subject: RE: Progress discussion on TCE arbitartaion

We will discuss our list, however, understanding the model, as we discussed with IO, Finance and Energy yesterday, would be extremely helpful so that at least we understand how they got their nominal cash flows. If we get to general agreement on that, then the discussion will be around discount factor and terminal value. There was some discussion of trying to get agreement on the discount factor and getting to the contract "number" without arbitration and then having an expedited arbitration only around the terminal value. That is where we left it yesterday.

JCB

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

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

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

From: Amir Shalaby
Sent: Viernes, 25 de Noviembre de 2011 04:20 p.m.
To: Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler
Subject: Progress discussion on TCE arbitartaion

just finished a Conference call with Government/Io folks:

- They are asking JoAnne or Michael K to send the shorter list of parameters that matter
- They met with legal counsel for TCE and agreed to amend the terms of arbitration (to expedite settlement). They will pass the amendments by Michael L when they are ready. The amendments have to do with: compressing the process, document exchange, steps following document exchange
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- They got an estimate of Turbine costs : $ 191 M
- There is optimism that TCE can share the model in a closed session, and I asked that they arrange for this to happen.
- They may skip the step of a mock arbitration if the TCE model is shared early.

This is moving faster than I expected, so wanted to share with you right away

Cheers
amir

Aleksandar Kojic

From: Michael Killeavy
Sent: November 29, 2011 10:09 AM
To: Deborah Langelaan
Subject: FW: Progress discussion on TCE arbitartaion

FYI ...

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

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Toronto, ON
M5J 2J1

416-869-2133 (Office)
416-869-2056 (Fax)
416-432-2231 (Cell)

Aleksandar Kojic

From: Amir Shalaby
Sent: November 29, 2011 2:01 PM
To: Michael Killeavy; JoAnne Butler
Cc: Michael Lyle
Subject: FW: Contact from TCE on the model

There will be a discussion on assumptions with TCE. I am suggesting Killeavy be our contact. Does legal want to be involved (I suggest not)

-----Original Message-----
From: Jonathan Weisstub [mailto:Jonathan.Weisstub@infrastructureontario.ca]
Sent: Tuesday, November 29, 2011 11:42 AM
To: Amir Shalaby
Cc: Andrew Lin
Subject: FW: Contact from TCE on the model

Amir -

As discussed. Please connect with Andrew on the OPA contact to work with him.

Jonathan

-----Original Message-----
From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Tuesday, November 29, 2011 10:21 AM
To: Jonathan Weisstub
Cc: Andrew Lin; Rick Jennings (MEI)
Subject: Re: Contact from TCE on the model

Thanks Jonathan. Andrew, suggest you contact Terry and get some dates/times that work for them.

Serge

On 2011-11-29, at 10:16 AM, "Jonathan Weisstub" <Jonathan.Weisstub@infrastructureontario.ca<mailto:Jonathan.Weisstub@infrastructureontario.ca>> wrote:

Serge/Rick/Andrew -

Terry (see contact information below) is expecting your call around access to the model. Please let me know how it goes with him.

Jonathan

Terry Bennett
Vice President, Power Development
TransCanada Corporation
24th Floor, South Tower

Aleksandar Kojic

From: JoAnne Butler
Sent: November 29, 2011 2:04 PM
To: Amir Shalaby; Michael Killeavy
Cc: Michael Lyle
Subject: RE: Contact from TCE on the model

Let's discuss before you send a name back....

JoAnne C. Butler
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Ontario Power Authority

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-----Original Message-----
From: Amir Shalaby
Sent: Martes, 29 de Noviembre de 2011 02:01 p.m.
To: Michael Killeavy; JoAnne Butler
Cc: Michael Lyle
Subject: FW: Contact from TCE on the model

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From: Amir Shalaby
Sent: November 29, 2011 2:11 PM
To: 'Jonathan.Weisstub@infrastructureontario.ca'
Cc: 'Andrew.Lin@infrastructureontario.ca'; Michael Killeavy; JoAnne Butler
Subject: Change of OPA: Contact for work related to TCE on the model

I take this back. On further discussion with Joanne, she suggested that she be the contact,

Thanks

----- Original Message -----
From: Amir Shalaby
Sent: Tuesday, November 29, 2011 02:03 PM
To: Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>
Cc: Andrew Lin <Andrew.Lin@infrastructureontario.ca>; Michael Killeavy
Subject: RE: Contact from TCE on the model

Michael Killeavy is the OPA contact on modeling assumptions.
His number is 416 969 6288
Cheers
amir

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416-432-2231 (Cell)

Aleksandar Kojic

From: Amir Shalaby
Sent: November 29, 2011 2:03 PM
To: Jonathan Weisstub
Cc: Andrew Lin; Michael Killeavy
Subject: RE: Contact from TCE on the model

Michael Killeavy is the OPA contact on modeling assumptions.
His number is 416 969 6288
Cheers
amir

From: Jonathan Weisstub [mailto:Jonathan.Weisstub@infrastructureontario.ca]
Sent: Tuesday, November 29, 2011 11:42 AM
To: Amir Shalaby
Cc: Andrew Lin
Subject: FW: Contact from TCE on the model

Amir -
-----Original Message-----
As discussed. Please connect with Andrew on the OPA contact to work with him.

Jonathan

-----Original Message-----
From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Tuesday, November 29, 2011 10:21 AM
To: Jonathan Weisstub
Cc: Andrew Lin; Rick Jennings (MEI)
Subject: Re: Contact from TCE on the model

Thanks Jonathan. Andrew, suggest you contact Terry and get some dates/times that work for them.

Serge

On 2011-11-29, at 10:16 AM, "Jonathan Weisstub" <Jonathan.Weisstub@infrastructureontario.ca<mailto:Jonathan.Weisstub@infrastructureontario.ca>> wrote:

Serge/Rick/Andrew -

Terry (see contact information below) is expecting your call around access to the model.
Please let me know how it goes with him.

Jonathan

Terry Bennett
Vice President, Power Development

TransCanada Corporation
24th Floor, South Tower
200 Bay Street
Toronto, ON
M5J 2J1

416-869-2133 (Office)
416-869-2056 (Fax)
416-432-2231 (Cell)

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 29, 2011 4:46 PM
To: Michael Killeavy; Michael Lyle
Cc: Ivanoff, Paul; Smith, Elliot; Carson, Lorne
Subject: Update on Greenfield South

By way of update, I had a few calls today with Carl:

1. Greenfield was supposedly caught by surprise by the labourers who showed up at the gate yesterday hoping that there would be work for them. Carl advised that Greg did not ask the workers to show up on Monday.
2. EIG has retained Stikemans as Cdn litigation counsel and apparently, is in discussions about next steps.
3. Carl has prepared the Schedules and exhibits to the EIG Note Purchase Agreement and will be sending them over to me. I will circulate them as soon as I receive them.
4. Carl is putting together copies of the key equipment supply agreements that we requested. He did advise, however, that as these agreements contain some commercially confidential information, Greenfield is considering whether to redact any portions of these agreements. Recall that TCE also redacted portion of the turbine supply agreement on OGS when they sent it to us.

We have been doing some thinking about the options of dealing with the Secured Lenders prepayment claim. What time did you want to set up a call tomorrow morning to discuss these options?

Thanks, Rocco

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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

Aleksandar Kojic

From: Michael Lyle
Sent: November 30, 2011 1:23 PM
To: JoAnne Butler; Michael Killeavy
Cc: 'Ivanoff, Paul'
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement
Attachments: Sched B_ Blacklined version of Arbitration Agreement.doc

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: November 30, 2011 10:29 AM
To: Michael Lyle
Subject: Sched B_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

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 5
INITIATION OF THE ARBITRATION PROCESS

Section 5.1

The Parties agree that the formal arbitration process described in Article 6 shall commence with the Parties meeting to agree on a limited document exchange as described in Section 6.1 below.

Section 5.2

The meeting referred to in Section 6.1 shall take place no later than December 9, 2011.

Section 5.3

The time periods referred to in Article 6 shall be suspended from December 23, 2011 until January 8, 2012 inclusive.

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 6.1

The Province of Ontario, OPA, and TCE will meet and agree on a limited document exchange in which each party provides the other its most relevant internal assessment of the damages suffered by TCE in respect of the items set out in subsections 4.3(c)(ii)(A) ("**20 Year Net Profit NPV**") and (C) ("**Terminal Value NPV**") to the extent that these documents have not already been exchanged.

Section 6.2

The documents agreed to be exchanged will be forwarded within one (1) week of the meeting referred to in Section 6.1 (no later than December 16, 2011, as a result of the start date set out in Section 5.2).

Section 6.3

Within two (2) weeks of receipt of the documents referred to in Section 6.2 (no later than January 16, 2012, as a result of the suspension of time periods referred to in Section 5.3):

(1) the Parties will provide to each other the amount it is prepared to settle for in respect of 20 Year Net Profit NPV and Terminal Value NPV and the basis for its position including a brief description of its financial calculations and legal arguments; and

(2) TCE will provide a brief description of the amount it is claiming in respect of subsection 4.3(c)(ii)(B) ("**Performance and Termination Costs**") and a breakdown of those amounts by category.

Section 6.4

Within two (2) weeks of the receipt of the documents referred to in Section 6.3 (no later than January 30, 2012), the Parties shall meet for the purpose of attempting to settle all elements of damages.

Section 6.5

If the Parties are unable to settle any element of damages in the meeting referred to in Section 6.4 they shall, within two (2) weeks (no later than February 13, 2012), meet together with their experts to narrow the issues in dispute for presentation to the Arbitrator. At this meeting the Parties shall agree on a formula to be applied by the Arbitrator in an amended final offer arbitration to be conducted in the event they are unable to settle some or all of the issues referred to above.

Section 6.6

Within four (4) weeks of the meeting referred to in Section 6.5 (no later than March 12, 2012), each of the Parties shall exchange initial expert reports setting out the amount of damages they are prepared to settle for in respect of each of the issues. These reports will be provided to the Arbitrator.

Section 6.7

Within two (2) weeks of the delivery of the reports referred to in Section 6.6 (no later than March 26, 2012), the Parties and their experts shall meet to attempt to settle all issues or narrow those that have not been settled.

Section 6.8

Within three (3) weeks of the meeting referred to in Section 6.7 (no later than April 16, 2012), the Parties shall exchange final expert reports and a statement setting out the amount of damages they are prepared to settle for in respect of each of the then outstanding issues. These reports shall be provided to the Arbitrator.

Section 6.9

Within one (1) week of the receipt of the reports referred to in Section 6.8 (no later than April 23, 2011), the Parties shall meet with the Arbitrator and settle the form of evidence which shall be put to the Arbitrator in an arbitration which shall last no longer than one (1) week including opening and closing submission. The Parties shall also confirm with the Arbitrator the form of amended final offer selection which the Parties have chosen to employ.

Section 6.10

As soon as possible after the meeting with the Arbitrator, the arbitration shall be conducted in accordance with the agreed upon procedure.

Section 6.11

In the event that the Parties cannot come to an agreement on any procedural issue during the course of the arbitration, including but not limited to in Sections 6.1, 6.5, 6.7 and 6.9, they will refer the issue to the Arbitrator, who after hearing brief submission shall decide the issue.

Section 6.12 **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 6.13 **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 6.14 **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 6.15 **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 6.16

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 6.17

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~~ sixty (60) days 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: William C. Taylor

Title Senior Vice-President, Eastern Power

By Terry Bennett

Title Vice-President, Eastern Growth

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

By David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By:

Title

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: JoAnne Butler
Sent: November 30, 2011 1:33 PM
To: Michael Lyle; Michael Killeavy
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Mike, this is frightful....as we have discussed in the past, I have a huge issue around overall governance. We hold the contract and the Gov. is making deals around us. Surely, our Board must be starting to get uncomfortable with this. Is it not time to assign the contract to the Gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickle anyway.

JCB

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

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

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

From: Michael Lyle
Sent: Miércoles, 30 de Noviembre de 2011 01:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: 'Ivanoff, Paul'
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: November 30, 2011 10:29 AM
To: Michael Lyle
Subject: Sched B_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: November 30, 2011 1:44 PM
To: JoAnne Butler; Michael Lyle
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Ditto.

A limited scope of discovery impairs our ability to scrutinize the assumptions used in the their modelling used to quantify the alleged damages. I cannot agree with these changes.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: JoAnne Butler
Sent: November 30, 2011 1:33 PM
To: Michael Lyle; Michael Killeavy
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

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JCB

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Ontario Power Authority

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

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Cc: 'Ivanoff, Paul'
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

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416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From: Michael Lyle
Sent: November 30, 2011 2:46 PM
To: Michael Killeavy; JoAnne Butler
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Ok. I think we have a consensus. Will provide feedback from IO.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Michael Killeavy, LL.B., MBA, P.Eng.
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From: JoAnne Butler
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416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Michael Lyle
Sent: Miércoles, 30 de Noviembre de 2011 01:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: 'Ivanoff, Paul'
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Sent: November 30, 2011 10:29 AM
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Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

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1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: November 30, 2011 2:58 PM
To: Michael Lyle
Cc: JoAnne Butler; Michael Killeavy; Sebastiano, Rocco
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Mike,
I completely agree with your concerns. I understood that there was agreement on procedure/conduct for the arbitration and I don't understand why they are resiling.
Let me know if you want to discuss.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Wednesday, November 30, 2011 1:23 PM
To: JoAnne Butler; Michael Killeavy
Cc: Ivanoff, Paul
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

2011 Canada's Greenest Employers

Greater Toronto's Top Employers 2012

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: November 30, 2011 10:29 AM
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Michael:

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Happy to discuss.

Regards

Dermot

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Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From: Kevin Dick
Sent: December 1, 2011 9:53 AM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Consultant

JoAnne,

I have racked my brain trying to come up with an appropriate Developer/Modeller/Negotiator that would fit the description you outlined for assisting us on negotiations regarding GFS/SWGTA. I still keep coming back to Rob Cary as someone that best fits the bill of what you are looking for. However, the alternatives that were mentioned are also viable options.

1. Rob Cary
2. Rohn Crabtree with Jake Drews assisting
3. Jeff Meyers

I had a casual conversation with Elliot on the topic and surprisingly he came up with the same three top choices we had. Elliot also mentioned:

1. Suzanne Morrison (ex-Pristine)
2. Navigant (I have mixed feelings on this)
3. Power Advisory (there isn't any development experience here so I would discount this selection from that perspective)
4. Gene Meehan (similarly, the development experience is limited)

The biggest issue I see is finding someone with a sufficient amount of project development experience. Most people that are good at project development are retained by the companies they work for. That is the best part of using Rob, he is a development hired gun (for Sithe), this is a rare find.

Elliot was going to think about alternatives and see if anything came to mind. I also thought of some people we used at TCE. They would be conflicted in the case of SWGTA but may be useful with respect to GFS.

Regards,
Kevin

Kevin Dick, P. Eng.
Director, Clean Energy Procurement
Electricity Resources

Ontario Power Authority
120 Adelaide St W, Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6292
F: 416.967.1947

Aleksandar Kojic

From: JoAnne Butler
Sent: December 1, 2011 10:53 AM
To: Kevin Dick
Cc: Michael Killeavy
Subject: RE: Consultant

OK, given that we may have to turn on this quickly, if at all the way the arbitration agreement is going, let's just go with Rob. I am sure that we can handle it under a current scope. Can you give him a bit of a heads up?

JCB

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

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

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

From: Kevin Dick
Sent: Jueves, 01 de Diciembre de 2011 09:53 a.m.
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Consultant

JoAnne,

I have racked my brain trying to come up with an appropriate Developer/Modeller/Negotiator that would fit the description you outlined for assisting us on negotiations regarding GFS/SWGTA. I still keep coming back to Rob Cary as someone that best fits the bill of what you are looking for. However, the alternatives that were mentioned are also viable options.

1. Rob Cary
2. Rohn Crabtree with Jake Drews assisting
3. Jeff Meyers

I had a casual conversation with Elliot on the topic and surprisingly he came up with the same three top choices we had. Elliot also mentioned:

1. ~~Suzanne Morrison (ex-Pristine)~~
2. Navigant (I have mixed feelings on this)
3. Power Advisory (there isn't any development experience here so I would discount this selection from that perspective)
4. Gene Meehan (similarly, the development experience is limited)

The biggest issue I see is finding someone with a sufficient amount of project development experience. Most people that are good at project development are retained by the companies they work for. That is the best part of using Rob, he is a development hired gun (for Sithe), this is a rare find.

Elliot was going to think about alternatives and see if anything came to mind. I also thought of some people we used at TCE. They would be conflicted in the case of SWGTA but may be useful with respect to GFS.

Regards,
Kevin

Kevin Dick, P. Eng.
Director, Clean Energy Procurement
Electricity Resources

Ontario Power Authority
120 Adelaide St W, Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6292
F: 416.967.1947

Aleksandar Kojic

From: Michael Lyle
Sent: December 2, 2011 4:43 PM
To: Susan Kennedy; Michael Killeavy
Cc: Nimi Visram
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

FYI. Nimi: please keep an eye on my e-mails while I am away and bring any responses from Dermot Muir to Susan's attention.

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

From: Michael Lyle
Sent: December 2, 2011 4:41 PM
To: 'Dermot Muir'
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

My concern is actually increased by the need to obtain agreement since I assume that TCE will only provide the documents that they agree to provide. I am not really sure what happens if we cannot reach agreement on this but I do not see how it leads to more documentary disclosure. The proposal to address my second comment, while better than the original draft, still has the problem that it leaves it to TCE to bring forward evidence that supports their case but does not allow OPA and the Crown to get access to documents that may not support their case. An obligation to provide all relevant documentation with respect to Performance and Termination Costs with the ability to have examinations for discovery is what is really needed.

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

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: December 2, 2011 3:04 PM
To: Michael Lyle
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Michael:

With regard to your first comment, is your concern mitigated since there has to be agreement on the document exchange? How about the below addition to address your second comment:

(1) TCE will provide a brief description of and documentary evidence to support the amount it is claiming in respect of subsection 4.3(c)(ii)(B) (**"Performance and Termination Costs"**) and a breakdown of those amounts by category .

Regards

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, December 01, 2011 8:02 PM
To: Dermot Muir
Cc: Susan Kennedy; Michael Killeavy
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

See attached comments as per our telephone conversation. I have copied Susan Kennedy our Associate General Counsel on this matter as I will be on vacation for most of next week. Michael Killeavy is our Director of Contract Management.

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

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: November 30, 2011 10:29 AM
To: Michael Lyle
Subject: Sched B_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From:	Michael Killeavy
Sent:	December 5, 2011 10:54 AM
To:	Ivanoff, Paul
Cc:	Michael Lyle; Susan Kennedy; JoAnne Butler
Subject:	TCE Matter - Information Needed ...
Attachments:	Need to Know 16 Nov 2011.docx
Importance:	High

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

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)

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;

2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model[i], inclusive, were arrived at ("residual cash flows");

3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;

4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;

5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;

6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;

7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

[i] Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

Aleksandar Kojic

From: Michael Killeavy
Sent: December 5, 2011 11:01 AM
To: Michael Lyle; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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Aleksandar Kojic

From: Michael Lyle
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Subject: Re: TCE Matter - Information Needed ...

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Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne.Butler
Subject: TCE Matter - Information Needed ...

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416-520-9788 (CELL)
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Aleksandar Kojic

From: Kevin Dick
Sent: December 5, 2011 11:25 AM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: RE: Consultant

A bit of bad news, Rob has a potential conflict regarding what we were contemplating and was unsure if he could handle the additional work load.

He said he would let me know if anything changes.

Regards,
Kevin

Kevin Dick, P. Eng.
Director, Clean Energy Procurement
Electricity Resources

Ontario Power Authority
120 Adelaide St W, Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6292
F: 416.967.1947

From: JoAnne Butler
Sent: December 1, 2011 10:53 AM
To: Kevin Dick
Cc: Michael Killeavy
Subject: RE: Consultant

OK, given that we may have to turn on this quickly, if at all the way the arbitration agreement is going, let's just go with Rob. I am sure that we can handle it under a current scope. Can you give him a bit of a heads up?

JCB

JoAnne C. Butler
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Ontario Power Authority

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

From: Kevin Dick
Sent: Jueves, 01 de Diciembre de 2011 09:53 a.m.
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Consultant

JoAnne,

I have racked my brain trying to come up with an appropriate Developer/Modeller/Negotiator that would fit the description you outlined for assisting us on negotiations regarding GFS/SWGTA. I still keep coming back to Rob Cary as someone that best fits the bill of what you are looking for. However, the alternatives that were mentioned are also viable options.

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I had a casual conversation with Elliot on the topic and surprisingly he came up with the same three top choices we had. Elliot also mentioned:

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 5, 2011 5:21 PM
To: 'Andrew Lin'; Serge Imbrogno; Rick Jennings (MEI)
Cc: Michael Killeavy
Subject: RE: TCE modelling - next steps
Attachments: TCENeed to Know 16 Nov 2011.docx

Privileged and Confidential

FYI. We have to been asked what we would need from TCE. You may already have this list but thought that I would send you an updated one. Thanks...

JCB

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

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

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

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Viernes, 02 de Diciembre de 2011 01:06 p.m.
To: Serge Imbrogno; Rick Jennings (MEI); JoAnne Butler
Subject: TCE modelling - next steps

Hi,

I got a message back from Terry Bennett of TCE yesterday. He had been travelling for a few days and couldn't respond earlier. He's working with his lawyers now on the CA to disclose the model, and will hopefully get a draft to us shortly.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

PRIVILEGED & CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

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[i] Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 5, 2011 5:47 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

Thanks Michael. We'll consider and speak to John Kelly.
Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...
Importance: High

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-Michael

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416-969-6288
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Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 7, 2011 12:49 PM
To: JoAnne Butler; Serge Imbrogno; Rick Jennings (MEI)
Cc: Michael Killeavy
Subject: RE: TCE modelling - next steps

I've received a voicemail back from Terry Bennett this morning. He's proposing a meeting to discuss the info requests on either Monday or Wednesday. Are you (JoAnne, Serge and Rick) available at that time to meet with TCE on this?

Separately, Jonathan has asked to have a pre-meeting or call with us ahead of the TCE meeting. My assistant will arrange.

Andrew

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Monday, December 05, 2011 5:21 PM
To: Andrew Lin; Serge Imbrogno; Rick Jennings (MEI)
Cc: Michael Killeavy
Subject: RE: TCE modelling - next steps

Privileged and Confidential

FYI. We have to been asked what we would need from TCE. You may already have this list but thought that I would send you an updated one. Thanks...

JCB

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

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

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Viernes, 02 de Diciembre de 2011 01:06 p.m.
To: Serge Imbrogno; Rick Jennings (MEI); JoAnne Butler
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Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives

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777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 7, 2011 2:55 PM
To: JoAnne Butler; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements
Attachments: TCENeed to Know 16 Nov 2011.docx; Copy of Base Oakville Generating Station Unlevered Economics_OPA_IO.XLS

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

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[i] Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

TransCanada Oakville GS - Unlevered Economics (July 8, 2009)

TransCanada
In business to deliver

Note: All Values in $M CAD Pricing & Index Assumptions	2022 7/1/2022	2023 7/1/2023	2024 7/1/2024	2025 7/1/2025	2026 7/1/2026	2027 7/1/2027	2028 7/1/2028	2029 7/1/2029	2030 7/1/2030	2031 7/1/2031	2032 7/1/2032	2033 7/1/2033	2034 7/1/2034	2035 7/1/2035	2036 7/1/2036	2037 7/1/2037	2038 7/1/2038	2039 7/1/2039	2040 7/1/2040	2041 7/1/2041	2042 7/1/2042	2043 7/1/2043	2044 7/1/2044
Capital Spending, IDC & LTSA Costs	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
Initial Capital including Land	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Land sale (after tax amount)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (102.2)	
Captial Expenditure	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (102.2)	$ -
IDC Calculation																							
Opening Balance	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
Current Period Spending	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ending Balance	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
LTSA Costs	$ 22.7	$ 19.7	$ 23.2	$ 20.6	$ 21.3	$ 22.1	$ 24.1	$ 24.9	$ 25.4	$ 25.9	$ 26.4	$ 26.9	$ 27.5	$ 28.0	$ 28.6	$ 29.1	$ 29.7	$ 30.3	$ 30.9	$ 31.5	$ -	$ -	$ -
Calculation of Cash Margin	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
Calculated NRR	$ 192.7	$ 193.6	$ 194.4	$ 195.4	$ 196.3	$ 197.2	$ 198.2	$ 199.2	$ 200.2	$ 201.2	$ 202.3	$ 152.6											$ -
Imputed Net Revenue	$ 49.7	$ 35.4	$ 44.5	$ 29.9	$ 37.8	$ 47.3	$ 55.6	$ 66.8	$ 59.4	$ 60.8	$ 57.7	$ 63.2											
Contingency Support Payment	$ 143.0	$ 158.1	$ 149.9	$ 165.5	$ 158.5	$ 149.9	$ 142.6	$ 132.4	$ 140.8	$ 140.5	$ 144.6	$ 89.4											
Revenues																							
Actual Gross Market Revenues	$ 302.5	$ 253.7	$ 312.1	$ 250.8	$ 268.7	$ 305.2	$ 355.6	$ 379.3	$ 358.2	$ 365.7	$ 373.4	$ 381.2	$ 388.8	$ 396.6	$ 404.5	$ 412.6	$ 420.9	$ 429.3	$ 437.9	$ 446.6	$ 455.6	$ 349.4	
Contigency Support Payments (CSP)	$ 143.0	$ 158.1	$ 149.9	$ 165.5	$ 158.5	$ 149.9	$ 142.6	$ 132.4	$ 140.8	$ 140.5	$ 144.6	$ 107.2	$ 112.0	$ 111.8	$ 111.7	$ 111.5	$ 111.4	$ 111.2	$ 111.1	$ 110.9	$ 110.7	$ 83.0	
Revenue Sharing Payment (RSP)																							
Total Revenues	$ 445.5	$ 411.8	$ 462.0	$ 416.3	$ 427.2	$ 455.1	$ 498.3	$ 511.7	$ 499.0	$ 506.2	$ 518.0	$ 488.4	$ 500.8	$ 508.4	$ 516.2	$ 524.1	$ 532.2	$ 540.5	$ 548.9	$ 557.5	$ 566.3	$ 432.4	$ -
Expenses																							
Fuel Costs	$ 240.1	$ 207.0	$ 251.1	$ 207.2	$ 218.8	$ 245.6	$ 283.3	$ 295.9	$ 281.1	$ 287.0	$ 293.0	$ 299.1	$ 305.1	$ 311.2	$ 317.5	$ 323.8	$ 330.3	$ 336.9	$ 343.6	$ 350.5	$ 357.5	$ 273.5	
Variable Energy Costs	$ 6.0	$ 5.1	$ 6.3	$ 5.2	$ 5.4	$ 6.1	$ 7.1	$ 7.4	$ 7.0	$ 7.1	$ 7.3	$ 7.4	$ 7.6	$ 7.7	$ 7.9	$ 8.0	$ 8.2	$ 8.3	$ 8.5	$ 8.7	$ 8.8	$ 6.8	
Fixed Costs	$ 28.7	$ 28.7	$ 29.6	$ 29.5	$ 44.0	$ 30.8	$ 31.7	$ 32.3	$ 32.5	$ 33.1	$ 33.6	$ 32.7	$ 33.3	$ 33.9	$ 34.6	$ 35.3	$ 36.0	$ 36.7	$ 37.5	$ 38.2	$ 39.0	$ 34.1	
Total Expenses	$ 274.7	$ 240.8	$ 287.0	$ 241.9	$ 268.2	$ 282.5	$ 322.1	$ 335.6	$ 320.6	$ 327.2	$ 333.8	$ 339.3	$ 346.0	$ 352.9	$ 359.9	$ 367.1	$ 374.5	$ 382.0	$ 389.6	$ 397.4	$ 405.3	$ 314.4	$ -
EBITDA / Cash Margin	$ 170.7	$ 171.0	$ 175.0	$ 174.4	$ 159.1	$ 172.6	$ 176.2	$ 176.1	$ 178.4	$ 179.0	$ 184.1	$ 149.1	$ 154.8	$ 155.5	$ 156.3	$ 157.0	$ 157.8	$ 158.5	$ 159.3	$ 160.1	$ 161.0	$ 118.1	$ -
Income Tax Calculations	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
Capital Taxes	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income																							
Cash Margin (EBITDA)	$ 170.72	$ 171.01	$ 175.01	$ 174.41	$ 159.05	$ 172.60	$ 176.21	$ 176.07	$ 178.43	$ 179.00	$ 184.13	$ 149.14	$ 154.82	$ 155.53	$ 156.26	$ 157.01	$ 157.77	$ 158.54	$ 159.33	$ 160.13	$ 160.96	$ 118.05	$ -
Ont Capital Taxes	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Capitalized Interest	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CCA Allowance	$ 62.38	$ 54.82	$ 54.30	$ 48.15	$ 45.77	$ 43.88	$ 43.43	$ 42.22	$ 40.79	$ 39.67	$ 38.75	$ 38.01	$ 37.42	$ 36.97	$ 36.64	$ 36.41	$ 36.29	$ 36.25	$ 36.29	$ 36.40	$ 4.41	$ 46.07	
Taxable Income	$ 108.34	$ 116.19	$ 120.71	$ 126.27	$ 113.28	$ 128.72	$ 132.78	$ 133.85	$ 137.64	$ 139.33	$ 145.38	$ 111.13	$ 117.40	$ 118.57	$ 119.63	$ 120.59	$ 121.48	$ 122.29	$ 123.04	$ 123.73	$ 156.55	$ 71.98	$ -
Tax Pooling																							
Opening Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Additions	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loss Realized (Yes)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Closing Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income after Pooling	108.34	116.19	120.71	126.27	113.28	128.72	132.78	133.85	137.64	139.33	145.38	111.13	117.40	118.57	119.63	120.59	121.48	122.29	123.04	123.73	156.55	71.98	0.00
Tax Rate	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Cash Taxes	27.09	29.05	30.18	31.57	28.32	32.18	33.20	33.46	34.41	34.83	36.34	27.78	29.35	29.64	29.91	30.15	30.37	30.57	30.76	30.93	39.14	18.00	0.00
Unlevered Free Cash Flow	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
Cash Margin	$ 170.7	$ 171.0	$ 175.0	$ 174.4	$ 159.1	$ 172.6	$ 176.2	$ 176.1	$ 178.4	$ 179.0	$ 184.1	$ 149.1	$ 154.8	$ 155.5	$ 156.3	$ 157.0	$ 157.8	$ 158.5	$ 159.3	$ 160.1	$ 161.0	$ 118.1	$ -
- Capital Expenditure	$ 22.7	$ 19.7	$ 23.2	$ 20.6	$ 21.3	$ 22.1	$ 24.1	$ 24.9	$ 25.4	$ 25.9	$ 26.4	$ 26.9	$ 27.5	$ 28.0	$ 28.6	$ 29.1	$ 29.7	$ 30.3	$ 30.9	$ 31.5	$ -	$ (102.2)	$ -
- Cash Taxes + Capital Taxes	$ 27.1	$ 29.0	$ 30.2	$ 31.6	$ 28.3	$ 32.2	$ 33.2	$ 33.5	$ 34.4	$ 34.8	$ 36.3	$ 27.8	$ 29.3	$ 29.6	$ 29.9	$ 30.1	$ 30.4	$ 30.6	$ 30.8	$ 30.9	$ 39.1	$ 18.0	$ -
Net Cash Flow After Tax	$ 120.9	$ 122.2	$ 121.6	$ 122.2	$ 109.4	$ 118.3	$ 118.9	$ 117.7	$ 118.7	$ 118.3	$ 121.4	$ 94.4	$ 98.0	$ 97.9	$ 97.8	$ 97.7	$ 97.7	$ 97.7	$ 97.6	$ 97.7	$ 121.8	$ 202.3	$ -

TransCanada Oakville GS - Unlevered Economics (July 8, 2009)

TransCanada
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Note: All Values in $M CAD Pricing & Index Assumptions	2009 7/1/2009	2009 9/30/2009	2009 12/31/2009	2010 4/1/2010	2010 7/1/2010	2010 9/30/2010	2010 12/31/2010	2011 4/1/2011	2011 7/1/2011	2011 9/30/2011	2011 12/31/2011	2012 4/1/2012
Capital Spending; IDC & LTSA Costs	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011	2011	2012
Initial Capital including Land	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.4	$ 88.0	$ 71.0
Land sale (after tax amount)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Captial Expenditure	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.4	$ 88.0	$ 71.0
IDC Calculation												
Opening Balance	$ -	$ 0.0	$ 0.0	$ 0.4	$ 1.2	$ 3.2	$ 6.3	$ 10.4	$ 15.7	$ 21.9	$ 30.4	$ 41.3
Current Period Spending	$ 0.0	$ 0.0	$ 0.4	$ 0.8	$ 2.0	$ 3.1	$ 4.2	$ 5.2	$ 6.3	$ 8.5	$ 10.8	$ 12.1
Ending Balance	$ 0.0	$ 0.0	$ 0.4	$ 1.2	$ 3.2	$ 6.3	$ 10.4	$ 15.7	$ 21.9	$ 30.4	$ 41.3	$ 53.4
LTSA Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Calculation of Cash Margin	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011	2011	2012
Calculated NRR	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Imputed Net Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contingency Support Payment	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Revenues												
Actual Gross Market Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contigency Support Payments (CSP)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Revenue Sharing Payment (RSP)												
Total Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expenses												
Fuel Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Variable Energy Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Fixed Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Expenses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EBITDA / Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Income Tax Calculations	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011	2011	2012
Capital Taxes	$ -	$ -	$ -	$ 0.07	$ -	$ -	$ -	$ 0.25	$ -	$ -	$ -	$ -
Taxable Income												
Cash Margin (EBITDA)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ont Capital Taxes	$ -	$ -	$ -	$ 0.07	$ -	$ -	$ -	$ 0.25	$ -	$ -	$ -	$ -
Capitalized Interest	$ 0.00	$ 0.01	$ 0.41	$ 0.77	$ 2.00	$ 3.06	$ 4.18	$ 5.22	$ 6.25	$ 8.54	$ 10.81	$ 12.10
CCA Allowance	$ -	$ -	$ 0.91	$ -	$ -	$ -	$ 6.22	$ -	$ 16.52	$ -	$ -	$ -
Taxable Income	$ (0.00)	$ (0.01)	$ (1.32)	$ (0.85)	$ (2.00)	$ (3.06)	$ (10.40)	$ (5.47)	$ (22.77)	$ (8.54)	$ (10.81)	$ (12.10)
Tax Pooling												
Opening Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Additions	$ 0.00	$ 0.01	$ 1.32	$ 0.85	$ 2.00	$ 3.06	$ 10.40	$ 5.47	$ 22.77	$ 8.54	$ 10.81	$ 12.10
Loss Realized Yes	$ 0.00	$ 0.01	$ 1.32	$ 0.85	$ 2.00	$ 3.06	$ 10.40	$ 5.47	$ 22.77	$ 8.54	$ 10.81	$ 12.10
Closing Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income after Pooling	(0.00)	(0.01)	(1.32)	(0.85)	(2.00)	(3.06)	(10.40)	(5.47)	(22.77)	(8.54)	(10.81)	(12.10)
Tax Rate	31.0%	31.0%	31.0%	29.0%	29.0%	29.0%	29.0%	26.5%	26.5%	26.5%	26.5%	25.0%
Cash Taxes	(0.00)	(0.00)	(0.41)	(0.25)	(0.58)	(0.89)	(3.02)	(1.45)	(6.03)	(2.26)	(2.86)	(3.03)
Unlevered Free Cash Flow	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011	2011	2012
Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
- Capital Expenditure	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.4	$ 88.0	$ 71.0
- Cash Taxes + Capital Taxes	$ (0.0)	$ (0.0)	$ (0.4)	$ (0.1)	$ (0.3)	$ (0.5)	$ (2.5)	$ (0.6)	$ (5.4)	$ (1.4)	$ (1.7)	$ (1.8)
Net Cash Flow After Tax	$ (0.0)	$ (3.9)	$ (28.8)	$ (25.9)	$ (99.2)	$ (65.1)	$ (67.4)	$ (56.2)	$ (74.6)	$ (189.1)	$ (86.3)	$ (69.2)

Note: All Values in $M CAD Pricing & Index Assumptions	2012 7/1/2012	2012 9/30/2012	2012 12/31/2012	2013 4/1/2013	2013 7/1/2013	2013 9/30/2013	2013 11/15/2013	2014 7/1/2014	2015 7/1/2015	2016 7/1/2016	2017 7/1/2017	2018 7/1/2018	2019 7/1/2019	2020 7/1/2020	2021 7/1/2021
Capital Spending; IDC & LTSA Costs	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
Initial Capital including Land	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 22.4	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Land sale (after tax amount)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Captial Expenditure	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 22.4	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
IDC Calculation															
Opening Balance	$ 53.4	$ 66.6	$ 81.0	$ 96.6	$ 113.1	$ 130.5	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
Current Period Spending	$ 13.3	$ 14.4	$ 15.5	$ 16.6	$ 17.4	$ 18.5	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ending Balance	$ 66.6	$ 81.0	$ 96.6	$ 113.1	$ 130.5	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
LTSA Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ 3.5	$ 14.7	$ 16.1	$ 19.9	$ 20.7	$ 20.6	$ 21.4	$ 22.5	$ 22.0
Calculation of Cash Margin	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
Calculated NRR	$ -	$ -	$ -	$ -	$ -	$ -	$ 46.5	$ 186.3	$ 187.0	$ 187.8	$ 188.5	$ 189.3	$ 190.2	$ 191.0	$ 191.8
Imputed Net Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ 1.5	$ 13.5	$ 22.8	$ 45.5	$ 45.3	$ 44.4	$ 51.9	$ 54.4	$ 38.6
Contingency Support Payment	$ -	$ -	$ -	$ -	$ -	$ -	$ 45.0	$ 172.7	$ 164.2	$ 142.3	$ 143.2	$ 145.0	$ 138.3	$ 136.6	$ 153.2
Revenues															
Actual Gross Market Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ 17.9	$ 101.0	$ 171.9	$ 271.0	$ 281.6	$ 268.2	$ 296.1	$ 332.9	$ 290.9
Contigency Support Payments (CSP)	$ -	$ -	$ -	$ -	$ -	$ -	$ 45.0	$ 172.7	$ 164.2	$ 142.3	$ 143.2	$ 145.0	$ 138.3	$ 136.6	$ 153.2
Revenue Sharing Payment (RSP)															
Total Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ 63.0	$ 273.7	$ 336.2	$ 413.3	$ 424.9	$ 413.2	$ 434.4	$ 469.5	$ 444.1
Expenses															
Fuel Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ 13.8	$ 80.3	$ 139.8	$ 213.1	$ 223.1	$ 213.0	$ 233.8	$ 264.3	$ 236.2
Variable Energy Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ 0.4	$ 2.0	$ 3.5	$ 5.4	$ 5.6	$ 5.3	$ 5.8	$ 6.7	$ 5.9
Fixed Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ 7.7	$ 23.9	$ 25.0	$ 26.2	$ 26.8	$ 27.1	$ 27.6	$ 28.3	$ 28.4
Total Expenses	$ -	$ -	$ -	$ -	$ -	$ -	$ 21.8	$ 106.2	$ 168.3	$ 244.7	$ 255.5	$ 245.4	$ 267.3	$ 299.3	$ 270.5
EBITDA / Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.2	$ 167.5	$ 167.8	$ 168.6	$ 169.4	$ 167.8	$ 167.1	$ 170.3	$ 173.5
Income Tax Calculations	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
Capital Taxes	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income															
Cash Margin (EBITDA)	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.18	$ 167.51	$ 167.83	$ 168.60	$ 169.39	$ 167.81	$ 167.13	$ 170.26	$ 173.51
Ont Capital Taxes	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Capitalized Interest	$ 13.26	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CCA Allowance	$ 42.48	$ -	$ -	$ -	$ -	$ -	$ 107.09	$ 127.44	$ 114.47	$ 105.95	$ 96.09	$ 86.72	$ 79.49	$ 73.60	$ 66.95
Taxable Income	$ (55.74)	$ (14.42)	$ (15.53)	$ (16.55)	$ (17.41)	$ (18.48)	$ (65.91)	$ 40.07	$ 53.36	$ 62.65	$ 73.30	$ 81.08	$ 87.64	$ 96.67	$ 106.55
Tax Pooling															
Opening Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Additions	$ 55.74	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ 65.91	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Loss Realized Yes	$ 55.74	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ 65.91	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Closing Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income after Pooling	(55.74)	(14.42)	(15.53)	(16.55)	(17.41)	(18.48)	(65.91)	40.07	53.36	62.65	73.30	81.08	87.64	96.67	106.55
Tax Rate	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Cash Taxes	(13.93)	(3.61)	(3.88)	(4.14)	(4.35)	(4.62)	(16.48)	10.02	13.34	15.66	18.33	20.27	21.91	24.17	26.64
Unlevered Free Cash Flow	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.2	$ 167.5	$ 167.8	$ 168.6	$ 169.4	$ 167.8	$ 167.1	$ 170.3	$ 173.5
- Capital Expenditure	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 25.9	$ 14.7	$ 16.1	$ 19.9	$ 20.7	$ 20.6	$ 21.4	$ 22.5	$ 22.0
- Cash Taxes + Capital Taxes	$ (12.6)	$ (2.2)	$ (2.3)	$ (2.5)	$ (2.6)	$ (2.8)	$ (16.5)	$ 10.0	$ 13.3	$ 15.7	$ 18.3	$ 20.3	$ 21.9	$ 24.2	$ 26.6
Net Cash Flow After Tax	$ (60.5)	$ (67.3)	$ (62.9)	$ (53.7)	$ (60.0)	$ (62.9)	$ 31.7	$ 142.7	$ 138.4	$ 133.0	$ 130.3	$ 126.9	$ 123.8	$ 123.6	$ 124.9

Aleksandar Kojic

From: Michael Killeavy
Sent: December 7, 2011 2:59 PM
To: Deborah Langelaan
Subject: Fw: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements
Attachments: TCENeed to Know 16 Nov 2011.docx; Copy of Base Oakville Generating Station Unlevered Economics_OPA_IO.XLS

FYI ...

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

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Wednesday, December 07, 2011 02:54 PM
To: JoAnne Butler; Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>
Cc: Michael Killeavy; Peggy Delaney <Peggy.Delaney@infrastructureontario.ca>
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province ~~to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely~~ on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;

2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model[i], inclusive, were arrived at ("residual cash flows");

3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;

4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;

5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;

6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;

7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

[i] Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

11	2012 4/1/2012	2012 7/1/2012	2012 9/30/2012	2012 12/31/2012	2013 4/1/2013	2013 7/1/2013	2013 9/30/2013	2013 11/15/2013	2014 7/1/2014	2015 7/1/2015	2016 7/1/2016	2017 7/1/2017	2018 7/1/2018	2019 7/1/2019	2020 7/1/2020	2021 7/1/2021
	2012	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
8.0	$ 71.0	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 22.4	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
8.0	$ 71.0	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 22.4	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
0.4	$ 41.3	$ 53.4	$ 66.6	$ 81.0	$ 96.6	$ 113.1	$ 130.5	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
0.8	$ 12.1	$ 13.3	$ 14.4	$ 15.5	$ 16.6	$ 17.4	$ 18.5	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
1.3	$ 53.4	$ 66.6	$ 81.0	$ 96.6	$ 113.1	$ 130.5	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0	$ 149.0
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 3.5	$ 14.7	$ 16.1	$ 19.9	$ 20.7	$ 20.6	$ 21.4	$ 22.5	$ 22.0
	2012	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 46.5	$ 186.3	$ 187.0	$ 187.8	$ 188.5	$ 189.3	$ 190.2	$ 191.0	$ 191.8
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 1.5	$ 13.5	$ 22.8	$ 45.5	$ 45.3	$ 44.4	$ 51.9	$ 54.4	$ 38.6
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 45.0	$ 172.7	$ 164.2	$ 142.3	$ 143.2	$ 145.0	$ 138.3	$ 136.6	$ 153.2
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 17.9	$ 101.0	$ 171.9	$ 271.0	$ 281.6	$ 268.2	$ 296.1	$ 332.9	$ 290.9
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 45.0	$ 172.7	$ 164.2	$ 142.3	$ 143.2	$ 145.0	$ 138.3	$ 136.6	$ 153.2
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 63.0	$ 273.7	$ 336.2	$ 413.3	$ 424.9	$ 413.2	$ 434.4	$ 469.5	$ 444.1
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 13.8	$ 80.3	$ 139.8	$ 213.1	$ 223.1	$ 213.0	$ 233.8	$ 264.3	$ 236.2
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 0.4	$ 2.0	$ 3.5	$ 5.4	$ 5.6	$ 5.3	$ 5.8	$ 6.7	$ 5.9
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 7.7	$ 23.9	$ 25.0	$ 26.2	$ 26.8	$ 27.1	$ 27.6	$ 28.3	$ 28.4
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 21.8	$ 106.2	$ 168.3	$ 244.7	$ 255.5	$ 245.4	$ 267.3	$ 299.3	$ 270.5
	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.2	$ 167.5	$ 167.8	$ 168.6	$ 169.4	$ 167.8	$ 167.1	$ 170.3	$ 173.5
	2012	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.18	$ 167.51	$ 167.83	$ 168.60	$ 169.39	$ 167.81	$ 167.13	$ 170.26	$ 173.51
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
.81	$ 12.10	$ 13.26	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
-	$ -	$ 42.48	$ -	$ -	$ -	$ -	$ -	$ 107.09	$ 127.44	$ 114.47	$ 105.95	$ 96.09	$ 86.72	$ 79.49	$ 73.60	$ 66.95
.81)	$ (12.10)	$ (55.74)	$ (14.42)	$ (15.53)	$ (16.55)	$ (17.41)	$ (18.48)	$ (65.91)	$ 40.07	$ 53.36	$ 62.65	$ 73.30	$ 81.08	$ 87.64	$ 96.67	$ 106.55
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
.81	$ 12.10	$ 55.74	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ 65.91	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
.81	$ 12.10	$ 55.74	$ 14.42	$ 15.53	$ 16.55	$ 17.41	$ 18.48	$ 65.91	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
.81)	(12.10)	(55.74)	(14.42)	(15.53)	(16.55)	(17.41)	(18.48)	(65.91)	40.07	53.36	62.65	73.30	81.08	87.64	96.67	106.55
.5%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
.86)	(3.03)	(13.93)	(3.61)	(3.88)	(4.14)	(4.35)	(4.62)	(16.48)	10.02	13.34	15.66	18.33	20.27	21.91	24.17	26.64
	2012	2012	2012	2012	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 41.2	$ 167.5	$ 167.8	$ 168.6	$ 169.4	$ 167.8	$ 167.1	$ 170.3	$ 173.5
38.0	$ 71.0	$ 73.1	$ 69.4	$ 65.3	$ 56.1	$ 62.6	$ 65.7	$ 25.9	$ 14.7	$ 16.1	$ 19.9	$ 20.7	$ 20.6	$ 21.4	$ 22.5	$ 22.0
(1.7)	$ (1.8)	$ (12.6)	$ (2.2)	$ (2.3)	$ (2.5)	$ (2.6)	$ (2.8)	$ (16.5)	$ 10.0	$ 13.3	$ 15.7	$ 18.3	$ 20.3	$ 21.9	$ 24.2	$ 26.6
36.3)	$ (69.2)	$ (60.5)	$ (67.3)	$ (62.9)	$ (53.7)	$ (60.0)	$ (62.9)	$ 31.7	$ 142.7	$ 138.4	$ 133.0	$ 130.3	$ 126.9	$ 123.8	$ 123.6	$ 124.9

TransCanada Oakville GS - Unlevered Economics (July 8, 2009)

TransCanada
In business to deliver

Note: All Values in $M CAD Pricing & Index Assumptions	2009 7/1/2009	2009 9/30/2009	2009 12/31/2009	2010 4/1/2010	2010 7/1/2010	2010 9/30/2010	2010 12/31/2010	2011 4/1/2011	2011 7/1/2011	2011 9/30/2011
Capital Spending, IDC & LTSA Costs	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011
Initial Capital Including Land	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.4
Land sale (after tax amount)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Captial Expenditure	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.4
IDC Calculation										
Opening Balance	$ -	$ 0.0	$ 0.0	$ 0.4	$ 1.2	$ 3.2	$ 6.3	$ 10.4	$ 15.7	$ 21.9
Current Period Spending	$ 0.0	$ 0.0	$ 0.4	$ 0.8	$ 2.0	$ 3.1	$ 4.2	$ 5.2	$ 6.3	$ 8.5
Ending Balance	$ 0.0	$ 0.0	$ 0.4	$ 1.2	$ 3.2	$ 6.3	$ 10.4	$ 15.7	$ 21.9	$ 30.4
LTSA Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Calculation of Cash Margin	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011
Calculated NRR	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Imputed Net Revenue	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contingency Support Payment	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Revenues										
Actual Gross Market Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Contigency Support Payments (CSP)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Revenue Sharing Payment (RSP)										
Total Revenues	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Expenses										
Fuel Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Variable Energy Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Fixed Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Total Expenses	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
EBITDA / Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Income Tax Calculations	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011
Capital Taxes	$ -	$ -	$ -	$ 0.07	$ -	$ -	$ -	$ 0.25	$ -	$ -
Taxable Income										
Cash Margin (EBITDA)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Ont Capital Taxes	$ -	$ -	$ -	$ 0.07	$ -	$ -	$ -	$ 0.25	$ -	$ -
Capitalized Interest	$ 0.00	$ 0.01	$ 0.41	$ 0.77	$ 2.00	$ 3.06	$ 4.18	$ 5.22	$ 6.25	$ 8.5
CCA Allowance	$ -	$ -	$ 0.91	$ -	$ -	$ -	$ 6.22	$ -	$ 16.52	$ -
Taxable Income	$ (0.00)	$ (0.01)	$ (1.32)	$ (0.85)	$ (2.00)	$ (3.06)	$ (10.40)	$ (5.47)	$ (22.77)	$ (8.5
Tax Pooling										
Opening Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Additions	$ 0.00	$ 0.01	$ 1.32	$ 0.85	$ 2.00	$ 3.06	$ 10.40	$ 5.47	$ 22.77	$ 8.5
Loss Realized Yes	$ 0.00	$ 0.01	$ 1.32	$ 0.85	$ 2.00	$ 3.06	$ 10.40	$ 5.47	$ 22.77	$ 8.5
Closing Balance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Taxable Income after Pooling	(0.00)	(0.01)	(1.32)	(0.85)	(2.00)	(3.06)	(10.40)	(5.47)	(22.77)	(8.5
Tax Rate	31.0%	31.0%	31.0%	29.0%	29.0%	29.0%	29.0%	26.5%	26.5%	26.5
Cash Taxes	(0.00)	(0.00)	(0.41)	(0.25)	(0.58)	(0.89)	(3.02)	(1.45)	(6.03)	(2.2
Unlevered Free Cash Flow	2009	2009	2009	2010	2010	2010	2010	2011	2011	2011
Cash Margin	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
- Capital Expenditure	$ 0.0	$ 3.9	$ 29.2	$ 26.0	$ 99.5	$ 65.6	$ 70.0	$ 56.9	$ 80.0	$ 190.
- Cash Taxes + Capital Taxes	$ (0.0)	$ (0.0)	$ (0.4)	$ (0.1)	$ (0.3)	$ (0.5)	$ (2.5)	$ (0.6)	$ (5.4)	$ (1.
Net Cash Flow After Tax	$ (0.0)	$ (3.9)	$ (28.8)	$ (25.9)	$ (99.2)	$ (65.1)	$ (67.4)	$ (56.2)	$ (74.6)	$ (189.

CON

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 7, 2011 6:01 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list.
We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request.
Please let me know your thoughts on this front.
Regards,
Paul

Paul Ivanoff
Partner

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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120 Adelaide Street West, Suite 1600
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M5H 1T1
416-969-6288
416-520-9788 (CELL)

416-967-1947 (FAX)

From: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.

- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");

2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;

3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;

7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith;

11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;

12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;

13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.

14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;

15. All project development schedules and construction schedules for the OGS;

16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;

17. The Long Term Service Agreement;

18. Operating and Maintenance ("O&M") Agreements for the OGS; and

19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].

Aleksandar Kojic

From: Michael Killeavy
Sent: December 7, 2011 6:03 PM
To: 'PIvanoff@osler.com'
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Information Needed ...

Will do. Thank you.

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Wednesday, December 07, 2011 06:00 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Information Needed ...

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Please let me know your thoughts on this front.
Regards,
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Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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

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Sent: December 5, 2011 11:00 AM
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Aleksandar Kojic

From: Michael Killeavy
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To: Deborah Langelaan; Ronak Mozayyan
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Attachments: v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

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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

Scope of Documentary Production

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- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

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2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;

3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;

7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 8, 2011 9:15 AM
To: 'Ivanoff, Paul'; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
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"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

So, I am not sure if asking them for the model again will add any value or move anything forward. Perhaps we can word our request (thinking future audit) something like the following:

"After repeated requests to be able to view the TCE model, they refuse to do so because of purported commercial sensitivity and the multiple, large and complex formulas and models that feed into it. Therefore, OPA has no choice but to recreate a shadow model. In order to that, we need the following information: ....". This is more or less what MK has indicated in his one pager of asks but maybe we need to expand it.

Thoughts??

JCB

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

120 Adelaide Street West, Suite 1600
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416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

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Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
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Attachments: v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

Revised blackline document incorporating changes discussed this morning.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
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Draft & Privileged

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20. Strategy for offering energy into IESO Administered Market

~~19.~~21. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

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Aleksandar Kojic

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Sent:	December 8, 2011 9:34 AM
To:	JoAnne Butler; 'Ivanoff, Paul'
Cc:	Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject:	RE: TCE Matter - Information Needed ...
Attachments:	OPA_v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

We have reviewed the document and made a few suggested changes. The changes are in blackline in the attached version of the document.

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Subject: RE: TCE Matter - Information Needed ...

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Please let me know your thoughts on this front.
Regards,
Paul

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

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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

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.

- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");

2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;

3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;

7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);

11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;

12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;

13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.

14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;

15. All project development schedules and construction schedules for the OGS;

16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;

17. The Long Term Service Agreement with MPS Canada Ltd.;

18. Operating and Maintenance ("O&M") Agreements for the OGS; and

19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].

20. Strategy for offering energy into IESO Administered Market

~~19.~~21. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: December 8, 2011 9:40 AM
To: JoAnne Butler; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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Thanks, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Thursday, December 08, 2011 9:15 AM
To: Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

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Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
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Aleksandar Kojic

From: Michael Killeavy
Sent: December 8, 2011 9:43 AM
To: 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Information Needed ...

Agreed.

So, we don't want a letter from their CFO stating the profits they were expecting ;-)

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: Thursday, December 08, 2011 09:39 AM
To: JoAnne Butler; Ivanoff, Paul <PIvanoff@osler.com>; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
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To: Michael Lyle; Ivanoff, Paul
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 8, 2011 9:50 AM
To: 'Sebastiano, Rocco'; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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> **From:** JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
> **Sent:** Thursday, December 08, 2011 9:15 AM
> **To:** Ivanoff, Paul; Michael Killeavy
> **Cc:** Michael Lyle; Susan Kennedy; Sebastiano, Rocco
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Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 8, 2011 11:57 AM
To: JoAnne Butler; Sebastiano, Rocco; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

I'll send the document (as revised by Michael) over to John Kelly.
Paul

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Partner

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To: Sebastiano, Rocco; Ivanoff, Paul; Michael Killeavy
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So, I am not sure if asking them for the model again will add any value or move anything forward. Perhaps we can word our request (thinking future audit) something like the following:

"After repeated requests to be able to view the TCE model, they refuse to do so because of purported commercial sensitivity and the multiple, large and complex formulas and models that feed into it. Therefore, OPA has no choice but to recreate a shadow model. In order to that, we need the following information: ...." . This is more or less what MK has indicated in his one pager of asks but maybe we need to expand it.

Thoughts??

JCB

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

120 Adelaide Street West, Suite 1600
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416-969-6071 Fax.

joanne.butler@powerauthority.on.ca

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list.
We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request.
Please let me know your thoughts on this front.
Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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

****

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 8, 2011 12:08 PM
To: john.kelly@ontario.com
Cc: Michael Killeavy; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: Privileged and Confidential - OPA/TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4.doc

John,
Please see the attached draft Scope of Documentary Production for the arbitration with TCE. We understand that you would like the list to include only essential items and we believe that the attached draft is a reasonable and appropriate request which takes into account, at a minimum, what would need to be considered by the OPA in order to evaluate the claims of TCE including those claims for loss of profits and sunk costs.
Regards,
Paul

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

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

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.

- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");

2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;

3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;

7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);

11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;

12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;

13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.

14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;

15. All project development schedules and construction schedules for the OGS;

16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;

17. The Long Term Service Agreement with MPS Canada Ltd.;

18. Operating and Maintenance ("O&M") Agreements for the OGS;

19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present];

20. Strategy for offering energy into IESO Administered Market; and

21. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

From: JoAnne Butler
Sent: December 9, 2011 2:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx
Attachments: Southwest GTA Update_Dec6-2011v2.docx

Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

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Vice President, Electricity Resources
Ontario Power Authority

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From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Viernes, 09 de Diciembre de 2011 02:26 p.m.
To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
Subject: Southwest GTA Update_Dec6-2011v2.docx

Hi,

Attached are our initial comments on the TCE model.

Serge

SOUTHWEST GTA GAS-FIRED PROCUREMENT

On December 2, 2011, TransCanada Energy (TCE) provided a spreadsheet which was claimed to be as presented to the TCE board to outline the base economics for the Oakville Generating Station (OGS).

CONTEXT

- TCE has been seeking recovery of its out-of-pocket expenses ($37 million), the cost of turbines for the project ($210 million) if they cannot be redeployed and its estimated financial value of OGS.
- TCE estimated the financial value of OGS at 503 million using a discount rate of 5.25 percent and issued a subsequent estimate of $385 million using an 8 percent discount rate.

TCE SPREADSHEET OVERVIEW

- The spreadsheet provided summarizes the key revenues and expenses of the Oakville project, but does not provide key underlying calculations or assumptions.
- The spreadsheet assumes $1,195.1 million CAPEX during the initial construction period to build the project and a $680.5 M long-term service agreement during its operation to cover maintenance and refurbishment costs.
- $102.2 million is the assumed inflow from a land sale at the end of project life.
- Interest during construction is $149 million and is listed as capitalized interest.
    - However, the interest does not appear to be capitalized for tax purposes (see issues / questions section below).
- The net revenue requirement begins from a base of $185.5 million (approximately $17,000 / MW / month assuming 900 MW) and appears to grow based on a calculation of 20 percent of base rate escalated at CPI of 2 percent over the 20 year OPA contract.
- On average, imputed net revenues as assumed to be calculated under the OPA contract are $8 million lower than actual margin over variable costs on an annual basis.
    - The source(s) of these revenues over and above those on the OPA contract are not provided and could be due to a variety of reasons (e.g., excess capacity not under contract, participation in IESO ancillary services or cost guarantee programs, etc.)
- Post-OPA contract EBITDA is about $15 M less on average per year than under the 20 year OPA contract.
    - The facility is assumed to operate for 10 years following the initial OPA contract under a similar contract.
- Negative taxable income (i.e. negative taxes owed) that occur during construction are assumed to be realized in the year they are incurred, meaning that cash outflows during the construction phase of the project are reduced.

- The spreadsheet also provides the option to pool negative taxable income amounts and apply against positive taxable income upon contract start. Given declining corporate tax rates and time value of money considerations, this option reduces the NPV of the project by about $12 million.

- Bottom line cash flows provided are unlevered after tax free cash flows. This represents all cash flows to the firm before any financing considerations (i.e. capital structure, debt) are taken into account.

CONSISTENCY WITH PREVIOUS ESTIMATES

- While very preliminary analysis, the $503 million and $385 million valuations provided by TCE can be reasonably approximated using the net after tax cash flow values in the spreadsheet.
  - The NPV as at July 1, 2009 is $504 million using a discount rate of 5.25 percent ROE.
  - The NPV as at July 1, 2009 is $376 million using a discount rate of 5.25 percent ROE up to 2033 and a discount rate of 8 percent ROE for the remaining 10 years.

- Further due diligence can be completed to refine the estimates.

PRIMARY ISSUES / QUESTIONS ON TCE CALCULATIONS

- **Capitalized Interest:** While interest during the construction period is listed as capitalized interest, it is in fact treated as an expense in the year incurred when calculating cash taxes. Discussion is needed surrounding whether the interest incurred is or is not capitalized and what must be assumed for tax purposes.

- **Long-Term Service Agreement:** It is unclear what parameters surround the assumed long-term service agreement and whether the maintenance performed under such an agreement would enable plant operation for the 10 years following the initial 20 year contract term.

- **Imputed Net Revenues:** Given the apparent $8 million annual margin over and above OPA contract imputed revenues, the province must consider its position with respect to covering any amounts over and above those earned under the OPA contract.

- **Net After Tax Cash Flows:** The cash flows in the model are unlevered free cash flows, which represent the free cash flows before borrowing costs are taken into account. The province must continue to discuss what discount rate would be appropriate for this analysis given the uncertainties surrounding TCE project financing, decisions on appropriate risk premiums to be included, differences between the discount rate during and post OPA contract, etc.

- **Net After Tax Cash Flow Calculation:** Clarification is required on why a factor of 0.4 is multiplied against the tax shield when calculating net after tax cash flows and how this factor is established.
  - Without this factor the NPV valuation is reduced by about $20 million.

Electricity Finance Branch
Corporate and Electricity Finance Division
December 6, 2011

Aleksandar Kojic

From: Deborah Langelaan
Sent: December 7, 2011 4:09 PM
To: Michael Killeavy
Subject: RE: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

Yes, it's exactly the same.

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

From: Michael Killeavy
Sent: December 7, 2011 3:12 PM
To: Deborah Langelaan
Subject: Re: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

I don't know. The spreadsheet's the same one we got a year ago, right?

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: Deborah Langelaan
Sent: Wednesday, December 07, 2011 03:09 PM
To: Michael Killeavy
Subject: Re: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

It's somewhat comforting to know that TCE's story is consistent. Do you think this will be acceptable to IO and OEFC?

Deb

From: Michael Killeavy
Sent: Wednesday, December 07, 2011 02:59 PM
To: Deborah Langelaan
Subject: Fw: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

FYI ...

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: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Wednesday, December 07, 2011 02:54 PM
To: JoAnne Butler; Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>
Cc: Michael Killeavy; Peggy Delaney <Peggy.Delaney@infrastructureontario.ca>
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

Aleksandar Kojic

From: Peggy Delaney [Peggy.Delaney@infrastructureontario.ca]
Sent: December 8, 2011 11:08 AM
To: Andrew Lin; JoAnne Butler; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Meghan Swinkels
Subject: RE: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

All,

Looking at the calendar and talking to a few, and the best time for all ... I propose a conference call for a Pre-Brief for the TCE meeting arranged for Dec. 14th at 3:30.

Pre-Brief Phone call on Monday @ Dec. 12th at 9:15 – 10:00

TCE Meeting 3:30 Wednesday Dec. 14th

I will send out the calendar invite with all information shortly.

Peggy Delaney
Executive Assistant to
Infrastructure Ontario
777 Bay Street, 9th fl
Toronto, ON M5G 2C8
PH: 416 327-5546
margaret.delaney@infrastructureontario.ca

From: Andrew Lin
Sent: Wednesday, December 07, 2011 2:55 PM
To: 'JoAnne Butler'; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

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Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

Aleksandar Kojic

From: JoAnne Butler
Sent: December 7, 2011 5:05 PM
To: 'Andrew Lin'; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: RE: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

Andrew,

It is disappointing that we are not going to be allowed to see their model but they are certainly consistent as to why we can't see it. The Xcel spreadsheet we have had for over a year. Nonetheless, if they can give us the information that we have requested then we will just build up our own model.

We can make ourselves available for the meetings.

Thanks...

JCB

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

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

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

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Miércoles, 07 de Diciembre de 2011 02:55 p.m.
To: JoAnne Butler; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

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Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

Aleksandar Kojic

From: Michael Killeavy
Sent: December 9, 2011 3:43 PM
To: JoAnne Butler
Subject: Re: Vapour Pre-Meeting

I know. We're going around in circles.

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

From: JoAnne Butler
Sent: Friday, December 09, 2011 03:42 PM
To: Michael Killeavy
Subject: RE: Vapour Pre-Meeting

I send that paragraph to you yesterday when I responded to Rocco...told you...Ground Hog Day....

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

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

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

From: Michael Killeavy
Sent: Viernes, 09 de Diciembre de 2011 03:13 p.m.
To: JoAnne Butler
Subject: Fw: Vapour Pre-Meeting

WTF?

"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

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Toronto, Ontario, M5H 1T1
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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Jonathan Weisstub [mailto:Jonathan.Weisstub@infrastructureontario.ca]
Sent: Friday, December 09, 2011 03:07 PM
To: Vas Georgiou <Vas.Georgiou@infrastructureontario.ca>; Mona Pio <Mona.Pio@infrastructureontario.ca>; Peggy Delaney <Peggy.Delaney@infrastructureontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>; Nadine Brammer <Nadine.Brammer@infrastructureontario.ca>; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Andrew Lin <Andrew.Lin@infrastructureontario.ca>; Yvonne Cuellar; Manuela Moellenkamp; Michael Killeavy; JoAnne Butler
Subject: Vapour Pre-Meeting

When: Monday, December 12, 2011 8:30 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Boardroom 1807, 120 Adelaide St W * Check in with reception on 16th floor

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

*** Please note time/location change: This is the same meeting as was sent out by Andrew Lin. It now begins at 8:30 am and will be held in person at the OPA offices at 120 Adelaide Street West, though the dial option will still be available. / Conference Call: 416 212-8011 Passcode: 9583454#

Original Invite

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

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Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
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Tel: (416) 325-3299

Aleksandar Kojic

From: Michael Killeavy
Sent: December 9, 2011 6:46 PM
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

OEFC has spotted the things we noted - discount rate assumption, difference in ANR and INR, etc.

I had noted the fact that IDC wasn't capitalized for tax purposes, too, but I didn't see it being a $12M hit to NPV. I'd need to see their calculation before I can comment on this. By capitalizing IDC the interest expense will be smaller and as such less EBITDA is shielded from tax. I'd need to check with CRA to see how long it would be capitalized for.

Still, the most important issue are the assumptions underlying the post-term 10 year contract revenues.

It's encouraging to see that they've spotted the same things we spotted when we did our review.

Michael

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Michael.killeavy@powerauthority.on.ca

From: JoAnne Butler
Sent: Friday, December 09, 2011 02:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx

Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

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

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

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

From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Viernes, 09 de Diciembre de 2011 02:26 p.m.
To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
Subject: Southwest GTA Update_Dec6-2011v2.docx

Hi,

Attached are our initial comments on the TCE model.

Serge

Aleksandar Kojic

From: JoAnne Butler
Sent: December 9, 2011 7:59 PM
To: Michael Killeavy; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

Yes, it looked to me to be a fair bit of alignment.

JCB

From: Michael Killeavy
Sent: Friday, December 09, 2011 06:46 PM
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

OEFC has spotted the things we noted - discount rate assumption, difference in ANR and INR, etc.

I had noted the fact that IDC wasn't capitalized for tax purposes, too, but I didn't see it being a $12M hit to NPV. I'd need to see their calculation before I can comment on this. By capitalizing IDC the interest expense will be smaller and as such less EBITDA is shielded from tax. I'd need to check with CRA to see how long it would be capitalized for.

Still, the most important issue are the assumptions underlying the post-term 10 year contract revenues.

It's encouraging to see that they've spotted the same things we spotted when we did our review.

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: JoAnne Butler
Sent: Friday, December 09, 2011 02:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx

Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

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

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

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

From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Viernes, 09 de Diciembre de 2011 02:26 p.m.
To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
Subject: Southwest GTA Update_Dec6-2011v2.docx

Hi,

Attached are our initial comments on the TCE model.

Serge

Aleksandar Kojic

From: Michael Killeavy
Sent: December 11, 2011 2:47 PM
To: 'abirchenough@cogeco.ca'
Subject: Re: Revised FRSA

It's Osler's retainer letter with us. I will follow up tomorrow. I'm sorry about all this. Call me tomorrow around lunch time. Thanks. Michael

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

----- Original Message -----
From: abirchenough [mailto:abirchenough@cogeco.ca]
Sent: Sunday, December 11, 2011 02:32 PM
To: Michael Killeavy
Subject: Re: Revised FRSA

Hi Michael,
Yvonne mentioned that my payment from Oslers was held up because a retainer was not in place. I don't know if this refers to my retainer with Oslers or the OPA' s retainer with Oslers as my payments are tied to the OPA's payments to Oslers. Can you advise whether there is anything I need to do to move this along. My beer fridge needs replenishing for Christmas!
Regards,
Art

Sent from my iPhone
Art Birchenough

On 2011-11-22, at 10:29 AM, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca> wrote:

> Here's the latest.
>
>
>
> 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)
>
>

>
> -----Original Message-----
> From: Michael Lyle
> Sent: November 21, 2011 10:17 PM
> To: Colin Andersen
> Cc: JoAnne Butler; Michael Killeavy
> Subject: Fw: Revised FRSA
>
> Update on where we are. Remains only one key issue in my view - focus of discussion on lost profit calculation has moved from residual value to appropriate discount rate.
>
>
>
>
>
> ----- Original Message -----
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Monday, November 21, 2011 10:08 PM
> To: Michael Lyle; Michael Killeavy; JoAnne Butler
> Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot
> <ESmith@osler.com>
> Subject: FW: Revised FRSA
>
> This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:
>
> - In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
> - In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
> - In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
> - In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me, as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.
>
> Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.
>
> Regards, Rocco
>
> -----Original Message-----
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Monday, November 21, 2011 9:39 PM
> To: Smith, Elliot

> Cc: Sebastiano, Rocco
> Subject: RE: Revised FRSA
>
> Rocco and Elliot,
>
> Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.
>
> Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.
>
> Carl De Vuono
> McMillan LLP
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
>
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>
>
> ________________________________
> From: Smith, Elliot [ESmith@osler.com]
> Sent: November 20, 2011 8:58 PM
> To: Carl De Vuono
> Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
> Subject: RE: Revised FRSA
>
> Carl,
> Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.
>
> Elliot
>
> -----Original Message-----
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Sunday, November 20, 2011 2:20 PM
> To: Sebastiano, Rocco
> Cc: Smith, Elliot
> Subject: RE: Revised FRSA
>
> Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .
>
> Regarding the proposed payment of the $5.23 million over time under the NUG contract, we are ok with the idea but were hoping we could reduce the period to 12 months rather than remning term of the contrcat. Based on the current payments under that contract, the increased monthly payment on the 12 month schedule should not be an issue for the OPA.
>
> North Green Limited is a sister of Greenfield Holdco, both owned by the same corporation. As mentioned, Greenfield Holdco owns Greenfield.

>
> I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.
>
> I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.
>
> Carl De Vuono
> McMillan LLP
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
>
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>
>
> ____
> From: Sebastiano, Rocco [RSebastiano@osler.com]
> Sent: November 20, 2011 9:59 AM
> To: Carl De Vuono
> Subject: Re: Revised FRSA
>
> Can we delay the call to 10:30? Thanks, Rocco
>
> ----- Original Message -----
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Sunday, November 20, 2011 09:03 AM
> To: Sebastiano, Rocco
> Subject: Re: Revised FRSA
>
> Would you rather do it later because of the parade?
>
> ____________________________
> Carl De Vuono
> McMillan LLP
>
> direct - 416.307.4055
> mobile - 416.918.1046
> ____________________________
>
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>
>
>
> ----- Original Message -----
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Sunday, November 20, 2011 08:55 AM
> To: Carl De Vuono

> Cc: Smith, Elliot <ESmith@osler.com>
> Subject: RE: Revised FRSA
>
> Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.
>
>
> Call-in: 416-343-4295
> Conference ID: 9215401
>
> Thanks, Rocco
>
> -----Original Message-----
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Sunday, November 20, 2011 6:38 AM
> To: Sebastiano, Rocco
> Subject: Re: Revised FRSA
>
> I'll follow up on your comments below and let's speak at 9:30 or 10.
>
> ______________________________
> Carl De Vuono
> McMillan LLP
>
> direct - 416.307.4055
> mobile - 416.918.1046
> ______________________________
>
> CONFIDENTIALITY NOTICE: This email, including any attachments, may contain information that is confidential and privileged. Any unauthorized disclosure, copying or use of this email is prohibited. If you are not the intended recipient, please notify us by reply email or telephone call and permanently delete this email and any copies immediately.
>
>
>
> ----- Original Message -----
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Sunday, November 20, 2011 01:09 AM
> To: Carl De Vuono
> Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle
> (Michael.Lyle@powerauthority.on.ca)'
> <Michael.Lyle@powerauthority.on.ca>
> Subject: RE: Revised FRSA
>
> Carl, can we speak Sunday morning around 9:30 or 10 am?
>
> I have been through your changes and many of them look fine. Obviously, some of the dollars figures will require consideration by my client, but the sooner you can get us the breakdown of the Equity Sunk costs the better. Also, can Greg please provide us with a break down of how he calculated the additional $90 million to get to $150 million? It would be helpful to us to get comfortable that this is a reasonable number.
>
> Regarding the Relocated Equipment, does Greg has a Schedule 2.1(a) that we can look at? I don't understand why he is pushing so hard on these items, as we have already listed the key large ticket items in the list. The rest of the equipment he should be able to tell the Suppliers to suspend because even if we find a replacement site, it is going to take time to

get it approved and permitted and then we'd simply be paying to have this other equipment stored in a warehouse somewhere. To suspend these other items for 60 or so days is not an unreasonable request on our part.
>
> I am quite troubled by your change to Section 4.2 to add a dollar amount for the "deemed terminal value of the Facility". This concept is not part of the "Discriminatory Action Compensation" language in the ARCES that we discussed on Friday and furthermore, is completely outside of the ARCES Contract. Once the end of the Term of ARCES Contract would have been reached, this Facility would have become a merchant power plant as there is no obligation on the part of the OPA to provide any extension or replacement contract. Therefore, the terminal value is completely speculative and in fact, could be zero or a negative amount depending upon assumptions of future market conditions or system needs at the end of the Term. This ask needs to come off the table if we are to come to an agreement by Monday.
>
> Thanks, Rocco
>
> -----Original Message-----
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Saturday, November 19, 2011 11:38 PM
> To: Smith, Elliot; Sebastiano, Rocco
> Cc: Michael.Lyle@powerauthority.on.ca
> Subject: RE: Revised FRSA
>
> Elliot and Rocco, Thanks for your draft of the FRSA sent earlier today. Attached is a revised draft, together with a blackline showing changes from the draft you sent. GSPC is looking at these changes at the same time and accordingly they are subject to GSPC's comments. I understand that we may should be receiving a form of release with the amount to be received from the OEFC in respect of the OEFC matter and a draft letter from the OPA to provide for the balance of the amount.
>
> Let me know what time you would like to speak tomorrow.
>
> Carl De Vuono
> McMillan LLP
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
>
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>
>
> ________________________________
> From: Smith, Elliot [ESmith@osler.com]
> Sent: November 19, 2011 10:46 AM
> To: Carl De Vuono; Sebastiano, Rocco
> Cc: Michael.Lyle@powerauthority.on.ca
> Subject: Revised FRSA
>
> Carl,
> Please find attached a revised draft of the Facility Relocation and Settlement Agreement, along with a blackline referencing the version you sent on November 17. If you have any questions, let us know.

>
> In the interest of time I am sending this to the OPA simultaneously and as such it remains subject to further comment by the OPA.
>
> Elliot
> [cid:image002.gif@01CCA6A8.90605290]
>
> Elliot Smith, P.Eng.
> Associate
>
>
>
> 416.862.6435
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> esmith@osler.com<mailto:esmith@osler.com>
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
>
>
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Friday, November 18, 2011 6:22 PM
> To: Sebastiano, Rocco
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> Please see fully signed agreement attached.
>
>
>
>
> Carl De Vuono
> Partner
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
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>
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Friday, November 18, 2011 6:06 PM
> To: Carl De Vuono
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> Carl, I have just been advised that the letter was being sent lawyer to lawyer. So, would you please send it to Greg for his execution.
>
> Thanks, Rocco
>
> From: Sebastiano, Rocco
> Sent: Friday, November 18, 2011 6:04 PM
> To: 'Carl De Vuono'
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> The letter has been signed and enclosed is a copy. I believe that it has been sent to GSPC also. Perhaps you can confirm that Greg has received it.
>
> Thanks, Rocco
>
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Friday, November 18, 2011 6:00 PM
> To: Sebastiano, Rocco
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> Ok. Is the OPA sending the letter to GSPC for signature?
>
>
>
> Carl De Vuono
> Partner
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
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>
>
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Friday, November 18, 2011 5:57 PM

> To: Carl De Vuono
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> Yes, the media statement is the one that I sent you. It is my understanding that the media statement may be issued on Monday as opposed to today.
>
> Regards, Rocco
>
> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
> Sent: Friday, November 18, 2011 5:36 PM
> To: Sebastiano, Rocco
> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
> Subject: RE: Agreement in Principle Letter
>
> The letter is ok. I assume the media statement is the one you sent me a couple of minutes ago.
>
> Please have the OPA sign and send the letter GSPC and GSPC will sign and send it back.
>
>
>
> Carl De Vuono
> Partner
> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>
> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
> nadia.malleye@mcmillan.ca
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>
> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
> Sent: Friday, November 18, 2011 5:29 PM
> To: Carl De Vuono
> Cc: Michael Lyle (Michael.Lyle@powerauthority.on.ca); Smith, Elliot
> Subject: Agreement in Principle Letter
>
> Confidential and Without Prejudice
>
> Carl,
>
> We are ok with your changes to the letter with one minor change. We have also added a positive statement that the OPA will be issuing a media statement in connection with the letter.
>
> If you are ok with the letter then we will proceed to have the OPA sign it and send it over to Greenfield.

>
> Regards, Rocco
> [cid:image002.gif@01CCA6A8.90605290]
>
> Rocco Sebastiano
> Partner
>
>
>
> 416.862.5859
>
> DIRECT
>
> 416.862.6666
>
> FACSIMILE
>
> rsebastiano@osler.com
>
>
>
>
> Osler, Hoskin & Harcourt LLP
> Box 50, 1 First Canadian Place
> Toronto, Ontario, Canada M5X 1B8
>
> [cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>
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>
> <Blackline Facility Relocation and Settlement Agreement (McMillan
> Draft November 21 2011).pdf> <Facility Relocation and Settlement Agreement (McMillan draft November 21 2011).doc>

Aleksandar Kojic

From: abirchenough [abirchenough@cogeco.ca]
Sent: December 11, 2011 2:55 PM
To: Michael Killeavy
Subject: Re: Revised FRSA

Thanks Michael,
You'll get the first beer from the case!
Regards,
Art

Sent from my iPhone
Art Birchenough

On 2011-12-11, at 2:47 PM, Michael Killeavy <Michael.Killeavy@powerauthority.on.ca> wrote:

> It's Osler's retainer letter with us. I will follow up tomorrow. I'm
> sorry about all this. Call me tomorrow around lunch time. Thanks.
> Michael
>
> Michael Killeavy, LL.B., MBA, P.Eng.
> Director, Contract Management
> Ontario Power Authority
> 120 Adelaide St. West, Suite 1600
> Toronto, Ontario, M5H 1T1
> 416-969-6288 (office)
> 416-969-6071 (fax)
> 416-520-9788 (cell)
> Michael.killeavy@powerauthority.on.ca
>
>
>
> ----- Original Message -----
> From: abirchenough [mailto:abirchenough@cogeco.ca]
> Sent: Sunday, December 11, 2011 02:32 PM
> To: Michael Killeavy
> Subject: Re: Revised FRSA
>
> Hi Michael,
> Yvonne mentioned that my payment from Oslers was held up because a retainer was not in place. I don't know if this refers to my retainer with Oslers or the OPA' s retainer with Oslers as my payments are tied to the OPA's payments to Oslers. Can you advise whether there is anything I need to do to move this along. My beer fridge needs replenishing for Christmas!
> Regards,
> Art
>
> Sent from my iPhone
> Art Birchenough
>
> On 2011-11-22, at 10:29 AM, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca> wrote:
>
>> Here's the latest.
>>
>>

>>
>> 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)
>>
>>
>>
>> -----Original Message-----
>> From: Michael Lyle
>> Sent: November 21, 2011 10:17 PM
>> To: Colin Andersen
>> Cc: JoAnne Butler; Michael Killeavy
>> Subject: Fw: Revised FRSA
>>
>> Update on where we are. Remains only one key issue in my view - focus of discussion on lost profit calculation has moved from residual value to appropriate discount rate.
>>
>>
>>
>>
>>
>> ----- Original Message -----
>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
>> Sent: Monday, November 21, 2011 10:08 PM
>> To: Michael Lyle; Michael Killeavy; JoAnne Butler
>> Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot
>> <ESmith@osler.com>
>> Subject: FW: Revised FRSA
>>
>> This just arrived from Carl. We are certainly getting closer, but we still a few outstanding issues to resolve, principally as they relate to the quantification of damages:
>>
>> -   In Section 2.1(e), they want to restrict the period to which the OPA can have a say on the sale of the Facility Equipment.
>> -   In Section 2.5, they have added a laundry list of items which would need to be reflected in a revised NRR if there were a Relocated Facility and an Amended ARCES. Frankly, they are simply doing themselves a disservice by doing this as it simply makes it harder to agree on a Relocated Facility.
>> -   In Section 2.4(b), Carl is raising the point that the Secured Lenders have provided several LCs for the project (in addition to the LC to the OPA, including an LC to Union Gas and the City of Mississauga) and therefore, until such time as those LCs are cancelled, the Secured Lender would like cash collateral or a replacement LC. I would propose that the OPA return its Completion and Performance LC for cancellation upon execution of this agreement. It may take a bit of time to get the other LCs cancelled. We'll need to give a bit more thought on this wording as it should only relate to any outstanding LC.
>> -   In Section 4.2, they will agree to no terminal value of the Facility, but they want the NPV of the net revenues to be at a zero discount rate. This does not make sense to me, as the net revenues should at least be discounted at CPI and more likely at a higher number (at least comparable to TCE's 5.25%), but certainly not at zero discount. I think that this will likely be the last issue on the table to resolve and may require escalation

between Colin and Greg, as I discussed this point at length with Carl on Sunday morning and I don't think that the message has sunk in.
>>
>> Carl has made an issue about legal fees and consultant's fees on this and future agreements and arbitrations, but those costs pale by comparison to the other amounts payable to for the cancellation, but we should give this point a bit more thought.
>>
>> Regards, Rocco
>>
>> -----Original Message-----
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Monday, November 21, 2011 9:39 PM
>> To: Smith, Elliot
>> Cc: Sebastiano, Rocco
>> Subject: RE: Revised FRSA
>>
>> Rocco and Elliot,
>>
>> Attached is a revised draft of the FRSA which is being reviewed by GSPC at the same time and accordingly subject to the comments of GSPC. I also attach a list showing details of the $150 million L/C.
>>
>> Schedule 2.2(a) containing details of the of the Equity Sunk Costs consisting of the Eastern Power services and materials will follow.
>>
>> Carl De Vuono
>> McMillan LLP
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca
>>
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>>
>>
>> ____
>> From: Smith, Elliot [ESmith@osler.com]
>> Sent: November 20, 2011 8:58 PM
>> To: Carl De Vuono
>> Cc: Sebastiano, Rocco; 'michael.lyle@powerauthority.on.ca'
>> Subject: RE: Revised FRSA
>>
>> Carl,
>> Attached please find the revised FRSA. As with before, in the interest of time I am sending this to you and the OPA simultaneously and as such it remains subject to comment by the OPA.
>>
>> Elliot
>>
>> -----Original Message-----
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Sunday, November 20, 2011 2:20 PM
>> To: Sebastiano, Rocco
>> Cc: Smith, Elliot

>> Subject: RE: Revised FRSA
>>
>> Based on the discussion today, and the clear example you gave regarding "hammers", GSPC is cutting down its proposed list of Relocated Equipment significantly. We will send that over when it is completed, together with the schedule of the Equity Sunk Costs relating to the services and work provided by Eastern Power .
>>
>> Regarding the proposed payment of the $5.23 million over time under the NUG contract, we are ok with the idea but were hoping we could reduce the period to 12 months rather than remning term of the contrcat. Based on the current payments under that contract, the increased monthly payment on the 12 month schedule should not be an issue for the OPA.
>>
>> North Green Limited is a sister of Greenfield Holdco, both owned by the same corporation. As mentioned, Greenfield Holdco owns Greenfield.
>>
>> I think we should all see the revisions to sections 2.4(c) and 2.4(d) and 4.2 before commenting further on the issues regarding those sections we talked about on the call earlier.
>>
>> I am also wondering if we should move 2.4(c) and (d) to another section (perhaps 2.1) because they don't really involve the Secured Lenders and I think it would be better if Section 2.4 was limited to issues involving the Secured Lenders.
>>
>> Carl De Vuono
>> McMillan LLP
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca
>>
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>> ________________________________
>> From: Sebastiano, Rocco [RSebastiano@osler.com]
>> Sent: November 20, 2011 9:59 AM
>> To: Carl De Vuono
>> Subject: Re: Revised FRSA
>>
>> Can we delay the call to 10:30? Thanks, Rocco
>>
>> ----- Original Message -----
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Sunday, November 20, 2011 09:03 AM
>> To: Sebastiano, Rocco
>> Subject: Re: Revised FRSA
>>
>> Would you rather do it later because of the parade?
>>
>> ________________________
>> Carl De Vuono
>> McMillan LLP
>>
>> direct - 416.307.4055

>> mobile - 416.918.1046
>> ____________________________
>>
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>> ----- Original Message -----
>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
>> Sent: Sunday, November 20, 2011 08:55 AM
>> To: Carl De Vuono
>> Cc: Smith, Elliot <ESmith@osler.com>
>> Subject: RE: Revised FRSA
>>
>> Let's use the following call-in number (as I would like Elliot to participate on the call also) and let's go with 10 am, as I need to first drive my kids down to the parade drop-off point as they are in the Santa Clause parade today.
>>
>>
>> Call-in: 416-343-4295
>> Conference ID: 9215401
>>
>> Thanks, Rocco
>>
>> -----Original Message-----
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Sunday, November 20, 2011 6:38 AM
>> To: Sebastiano, Rocco
>> Subject: Re: Revised FRSA
>>
>> I'll follow up on your comments below and let's speak at 9:30 or 10.
>>
>> ____________________________
>> Carl De Vuono
>> McMillan LLP
>>
>> direct - 416.307.4055
>> mobile - 416.918.1046
>> ____________________________
>>
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>> ----- Original Message -----
>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
>> Sent: Sunday, November 20, 2011 01:09 AM
>> To: Carl De Vuono
>> Cc: Smith, Elliot <ESmith@osler.com>; 'Michael Lyle
>> (Michael.Lyle@powerauthority.on.ca)'
>> <Michael.Lyle@powerauthority.on.ca>

>> Subject: RE: Revised FRSA
>>
>> Carl, can we speak Sunday morning around 9:30 or 10 am?
>>
>> I have been through your changes and many of them look fine. Obviously, some of the dollars figures will require consideration by my client, but the sooner you can get us the breakdown of the Equity Sunk costs the better. Also, can Greg please provide us with a break down of how he calculated the additional $90 million to get to $150 million? It would be helpful to us to get comfortable that this is a reasonable number.
>>
>> Regarding the Relocated Equipment, does Greg has a Schedule 2.1(a) that we can look at? I don't understand why he is pushing so hard on these items, as we have already listed the key large ticket items in the list. The rest of the equipment he should be able to tell the Suppliers to suspend because even if we find a replacement site, it is going to take time to get it approved and permitted and then we'd simply be paying to have this other equipment stored in a warehouse somewhere. To suspend these other items for 60 or so days is not an unreasonable request on our part.
>>
>> I am quite troubled by your change to Section 4.2 to add a dollar amount for the "deemed terminal value of the Facility". This concept is not part of the "Discriminatory Action Compensation" language in the ARCES that we discussed on Friday and furthermore, is completely outside of the ARCES Contract. Once the end of the Term of ARCES Contract would have been reached, this Facility would have become a merchant power plant as there is no obligation on the part of the OPA to provide any extension or replacement contract. Therefore, the terminal value is completely speculative and in fact, could be zero or a negative amount depending upon assumptions of future market conditions or system needs at the end of the Term. This ask needs to come off the table if we are to come to an agreement by Monday.
>>
>> Thanks, Rocco
>>
>> -----Original Message-----
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Saturday, November 19, 2011 11:38 PM
>> To: Smith, Elliot; Sebastiano, Rocco
>> Cc: Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Revised FRSA
>>
>> Elliot and Rocco, Thanks for your draft of the FRSA sent earlier today. Attached is a revised draft, together with a blackline showing changes from the draft you sent. GSPC is looking at these changes at the same time and accordingly they are subject to GSPC's comments. I understand that we may should be receiving a form of release with the amount to be received from the OEFC in respect of the OEFC matter and a draft letter from the OPA to provide for the balance of the amount.
>>
>> Let me know what time you would like to speak tomorrow.
>>
>> Carl De Vuono
>> McMillan LLP
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca
>>
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>> ____
>> From: Smith, Elliot [ESmith@osler.com]
>> Sent: November 19, 2011 10:46 AM
>> To: Carl De Vuono; Sebastiano, Rocco
>> Cc: Michael.Lyle@powerauthority.on.ca
>> Subject: Revised FRSA
>>
>> Carl,
>> Please find attached a revised draft of the Facility Relocation and Settlement Agreement, along with a blackline referencing the version you sent on November 17. If you have any questions, let us know.
>>
>> In the interest of time I am sending this to the OPA simultaneously and as such it remains subject to further comment by the OPA.
>>
>> Elliot
>> [cid:image002.gif@01CCA6A8.90605290]
>>
>> Elliot Smith, P.Eng.
>> Associate
>>
>>
>>
>> 416.862.6435
>>
>> DIRECT
>>
>> 416.862.6666
>>
>> FACSIMILE
>>
>> esmith@osler.com<mailto:esmith@osler.com>
>>
>>
>>
>>
>> Osler, Hoskin & Harcourt LLP
>> Box 50, 1 First Canadian Place
>> Toronto, Ontario, Canada M5X 1B8
>>
>>
>>
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Friday, November 18, 2011 6:22 PM
>> To: Sebastiano, Rocco
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> Please see fully signed agreement attached.
>>
>>
>>
>>

>> Carl De Vuono
>> Partner
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca
>>
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>>
>> Please consider the environment before printing this e-mail.
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>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
>> Sent: Friday, November 18, 2011 6:06 PM
>> To: Carl De Vuono
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> Carl, I have just been advised that the letter was being sent lawyer to lawyer. So, would you please send it to Greg for his execution.
>>
>> Thanks, Rocco
>>
>> From: Sebastiano, Rocco
>> Sent: Friday, November 18, 2011 6:04 PM
>> To: 'Carl De Vuono'
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> The letter has been signed and enclosed is a copy. I believe that it has been sent to GSPC also. Perhaps you can confirm that Greg has received it.
>>
>> Thanks, Rocco
>>
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Friday, November 18, 2011 6:00 PM
>> To: Sebastiano, Rocco
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> Ok. Is the OPA sending the letter to GSPC for signature?
>>
>>
>>
>> Carl De Vuono
>> Partner
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca

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>>
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>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
>> Sent: Friday, November 18, 2011 5:57 PM
>> To: Carl De Vuono
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> Yes, the media statement is the one that I sent you. It is my understanding that the media statement may be issued on Monday as opposed to today.
>>
>> Regards, Rocco
>>
>> From: Carl De Vuono [mailto:Carl.DeVuono@mcmillan.ca]
>> Sent: Friday, November 18, 2011 5:36 PM
>> To: Sebastiano, Rocco
>> Cc: Smith, Elliot; Michael.Lyle@powerauthority.on.ca
>> Subject: RE: Agreement in Principle Letter
>>
>> The letter is ok. I assume the media statement is the one you sent me a couple of minutes ago.
>>
>> Please have the OPA sign and send the letter GSPC and GSPC will sign and send it back.
>>
>>
>>
>> Carl De Vuono
>> Partner
>> direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
>>
>> Assistant: Nadia Malleye | 416.865.7000 ext.2311 |
>> nadia.malleye@mcmillan.ca
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>>
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>>
>> From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]

>> Sent: Friday, November 18, 2011 5:29 PM
>> To: Carl De Vuono
>> Cc: Michael Lyle (Michael.Lyle@powerauthority.on.ca); Smith, Elliot
>> Subject: Agreement in Principle Letter
>>
>> Confidential and Without Prejudice
>>
>> Carl,
>>
>> We are ok with your changes to the letter with one minor change. We have also added a positive statement that the OPA will be issuing a media statement in connection with the letter.
>>
>> If you are ok with the letter then we will proceed to have the OPA sign it and send it over to Greenfield.
>>
>> Regards, Rocco
>> [cid:image002.gif@01CCA6A8.90605290]
>>
>> Rocco Sebastiano
>> Partner
>>
>>
>>
>> 416.862.5859
>>
>> DIRECT
>>
>> 416.862.6666
>>
>> FACSIMILE
>>
>> rsebastiano@osler.com
>>
>>
>>
>>
>> Osler, Hoskin & Harcourt LLP
>> Box 50, 1 First Canadian Place
>> Toronto, Ontario, Canada M5X 1B8
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>> [cid:image003.gif@01CCA6A8.90605290]<http://www.osler.com/>
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>>
>> <Blackline Facility Relocation and Settlement Agreement (McMillan
>> Draft November 21 2011).pdf> <Facility Relocation and Settlement Agreement (McMillan draft November 21 2011).doc>

Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 8:54 AM
To: Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4 - al blacklines.doc

Please find attached the revised draft of the info request to be discussed at our 9am call.

Andrew

-----Original Appointment-----
From: Peggy Delaney
Sent: Thursday, December 08, 2011 4:49 PM
To: Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'
Subject: Call #2 Pre-Discussions for Meeting with TCE
When: Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Dial in 416 212-8011 Passcode: 9583454# Moderator 4290#

<u>This second meeting will go ahead</u> ! On Monday it was determined that further discussion was necessary.
Note: This time is being held in case further discussions are necessary after Monday and will be determined on Monday's call

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

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.

- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

~~1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");~~

~~2.~~1. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;

~~3.~~2. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

~~4.~~3. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

~~5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~

~~6.~~4. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;

~~7.~~5. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

~~8.~~6. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

~~9.~~7. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

~~10.~~8. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);

~~11.~~9. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;

~~12.~~10. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;

~~13.~~11. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.

~~14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;~~

~~15. All project development schedules and construction schedules for the OGS;~~

~~16.~~12. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;

~~17.~~13. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;

~~18.~~ Separated revenue and expense line items in the financial projections ~~Operating and Maintenance ("O&M") Agreements for the OGS;~~

~~19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present];~~

~~20.~~14. ~~Strategy~~ for ~~offering~~ the production of energy into IESO Administered Market versus revenue and expenses for contracted energy; and

~~21.~~15. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 9:03 AM
To: Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4 - al blacklines.doc

revised

From: Andrew Lin
Sent: Tuesday, December 13, 2011 8:54 AM
To: Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE

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From: Peggy Delaney
Sent: Thursday, December 08, 2011 4:49 PM
To: Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'
Subject: Call #2 Pre-Discussions for Meeting with TCE
When: Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).
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BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

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Respondents

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- Relevant Time Frame: October 2, 2008 - Present

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~~2.~~1. Progress of development on the OGS project, including without limitation project status ~~reports, and budget and schedule updates;~~

~~3.~~2. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;

~~4.~~3. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;

~~5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~

~~6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;~~

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~~20. Strategy for offering the production of energy into IESO-Administered Market versus revenue and expenses for contracted energy; and~~

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 13, 2011 9:09 AM
To: Michael Lyle
Subject: Fw: Call #2 Pre-Discussions for Meeting with TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4 - al blacklines.doc

I have reiterated to IO that this cannot be a list of documents to limit the scope of documentary discovery for any arbitration. It needs to be a simple list of documents for the settlement discussions only.

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: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Tuesday, December 13, 2011 09:02 AM
To: Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE

revised

From: Andrew Lin
Sent: Tuesday, December 13, 2011 8:54 AM
To: Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'
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To: Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'

Subject: Call #2 Pre-Discussions for Meeting with TCE
When: Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Dial in 416 212-8011 Passcode: 9583454# Moderator 4290#

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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

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.

- Relevant Time Frame: October 2, 2008 - Present

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Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 9:29 AM
To: Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE
Attachments: v5 Scope of Documentary Discovery OPA re TCE.doc

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revised << File: v4 Scope of Documentary Discovery OPA re TCE 22287002_4 - al blacklines.doc >>

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Draft & Privileged

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10.

Aleksandar Kojic

From: Serge Imbrogno [Serge.Imbrogno@ofina.on.ca]
Sent: December 13, 2011 9:31 AM
To: 'Andrew Lin'; 'Jonathan Weisstub'; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE

Hi,

I'd change the preamble to say something about without prejudice and this doesn't limit our ask.

Serge

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Tuesday, December 13, 2011 9:29 AM
To: Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
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Aleksandar Kojic

From: Jonathan Weisstub [Jonathan.Weisstub@infrastructureontario.ca]
Sent: December 13, 2011 9:33 AM
To: Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE

Dermot –

Do you mind suggesting some appropriate language for the preamble?

Jonathan

From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Tuesday, December 13, 2011 9:31 AM
To: Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI)
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Sent: December 13, 2011 9:48 AM
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Cc: Michael Lyle
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Attachments: v5 Scope of Documentary Discovery OPA re TCE.doc

I have inserted a new clause in the preamble. Let me now what you think.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

~~IN THE MATTER OF AN ARBITRATION~~

~~BETWEEN:~~

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~~Claimant~~

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

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- ~~Relevant Time Frame: October 2, 2008 - Present~~

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10.

Aleksandar Kojic

From: Michael Killeavy
Sent: December 13, 2011 10:01 AM
To: Dermot Muir; Serge Imbrogno; Andrew Lin; JoAnne Butler; Rick Jennings (MEI)
Cc: Michael Lyle
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

This generally looks fine to me. I think there is a typographical error in the last sentence of the preamble – it ought to say "... amongst the Parties."

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

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From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 2:35 PM
To: Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub
Cc: Michael Lyle
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If there are no further comments, I will make a clean copy of Dermot's last blackline and send to TCE this afternoon.

Andrew

From: Dermot Muir
Sent: Tuesday, December 13, 2011 9:48 AM
To: Serge Imbrogno; Andrew Lin; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI)
Cc: 'Michael.Lyle@powerauthority.on.ca'
Subject: v5 Scope of Documentary Discovery OPA re TCE

I have inserted a new clause in the preamble. Let me now what you think.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: December 13, 2011 2:39 PM
To: 'Andrew.Lin@infrastructureontario.ca'
Subject: Re: v5 Scope of Documentary Discovery OPA re TCE

Did you see my comments.

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: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Tuesday, December 13, 2011 02:34 PM
To: Dermot Muir <Dermot.Muir@infrastructureontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>
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Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 2:41 PM
To: Michael Killeavy
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

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Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 2:57 PM
To: Michael Killeavy
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

Fyi. Dermot says it's the British spelling. But I'll change it, anyway.

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, December 13, 2011 2:41 PM
To: Andrew Lin
Subject: Re: v5 Scope of Documentary Discovery OPA re TCE

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Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 3:00 PM
To: Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub
Cc: Michael Lyle
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE
Attachments: Scope of Documentary Information re TCE.doc

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From: Andrew Lin
Sent: Tuesday, December 13, 2011 2:35 PM
To: Dermot Muir; Serge Imbrogno; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Jonathan Weisstub
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List of Proposed Settlement Information

Without prejudice to the rights of any of TCE, the Province of Ontario or the Ontario Power Authority (the "Parties") to require full documentary disclosure in the context of any arbitration or other legal process undertaken between or amongst the Parties.

1. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";

2. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);

3. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;

4. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;

5. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.

6. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine including invoices and proof of payments;

7. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;

8. The "replacement contract" that TCE anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");

9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;

~~10. The assumptions made with respect to the forecasted price of carbon.~~

Aleksandar Kojic

From: JoAnne Butler
Sent: December 13, 2011 3:16 PM
To: 'Andrew Lin'; Dermot Muir; Serge Imbrogno; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub
Cc: Michael Lyle
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

This matches with the notes that I took...thanks...

JCB

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

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

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

From: Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]
Sent: Martes, 13 de Diciembre de 2011 03:00 p.m.
To: Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub
Cc: Michael Lyle
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

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SOLICITOR/CLIENT PRIVILEGE

Aleksandar Kojic

From: Michael Killeavy
Sent: December 14, 2011 5:56 PM
To: 'PIvanoff@osler.com'
Cc: 'RSebastiano@osler.com'; Michael Lyle; JoAnne Butler
Subject: Fw: OGS Financial Model ....

Paul,

There was a settlement meeting at TCE today and it didn't go well. I didn't attend, but our requests for information were rebuffed again and again.

We've been tasked with developing a financial model for OGS (see below). Could we use NERA to shadow model for testing purposes?

Thank you,
Michael

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Michael.killeavy@powerauthority.on.ca

----- Original Message -----
From: Michael Killeavy
Sent: Wednesday, December 14, 2011 05:51 PM
To: Ronak Mozayyan; Deborah Langelaan
Cc: JoAnne Butler; Catherine Forster; Michael Lyle
Subject: OGS Financial Model ....

Deb and Ronak,

We need to regroup on this tomorrow. Evidently, development of the model needs to be accelerated. We have a week basically to build a model for the OGS.

I know this isn't what I told you earlier, but sadly we've been overcome by events.

I think it's quite possible if we work together and chunk out the work. We can use a lot of the generic model you have done already and then link it to the deemed dispatch models we already have for SWGTA.

What we don't know, we will assume. We may need to ask Corinna to use Thermoflow to get us a physical heat rate for OGS, but this can be done in parallel with development of the financial model.

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Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 14, 2011 7:36 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco; Michael Lyle; JoAnne Butler; Smith, Elliot
Subject: Re: OGS Financial Model ....

Michael,
As there is an arbitration agreement in place with TCE that contemplates production of documents, we could proceed to get the arbitrator appointed and then make the request to the arbitrator that the information that we have asked for be produced by TCE. We could then get a ruling compelling them to produce.
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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Wednesday, December 14, 2011 05:55 PM
To: Ivanoff, Paul
Cc: Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 14, 2011 9:39 PM
To: Michael Killeavy
Subject: Fw: OGS Financial Model ....

I don't think that we are ready to go the arbitration route yet, however, your idea of using NERA as a check on the model is a good one. Let's chat tomorrow...

JCB

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****

Aleksandar Kojic

From: Michael Killeavy
Sent: December 15, 2011 1:10 PM
To: JoAnne Butler; 'Jonathan Weisstub'; 'Andrew Lin'; 'McKeever, Garry (MEI)'; 'Serge Imbrogno'; 'Dermot Muir'
Cc: Deborah Langelaan
Subject: RE: TCE Status Update....

Correct. We have reverse engineered the calculations in the past and it just gives us dollar values and not what assumptions were used to arrive at the dollar values, which is what we need.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: JoAnne Butler
Sent: December 15, 2011 1:06 PM
To: Jonathan Weisstub; 'Andrew Lin'; 'McKeever, Garry (MEI)'; Serge Imbrogno; Dermot Muir
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Status Update....

Gentlemen,

I spoke with my team last night and again this morning. We had just started to model the OGS plant and we will put a priority on it. We will back calculate from the spreadsheet to the extent that we can and the rest will be assumptions. However, we had both a highly regarded technical consultant and contract expert working with us on this file and validating our model when we did the peaking model in the spring, and we will use these same parties as necessary, as validation of the work that we do.

We will endeavour to turn something around mid next week, and if TCE comes back with any cost data (which I think that they agreed that they might give us, ie. routine O&M and Major Maintenance) then we can populate with actual data.

FYI, as probably the case with many of you, I will be out of the office starting Thursday next week until after the first week in January; however, we can continue to fine tune the model.

Thanks....

JCB

JoAnne C. Butler
Vice President, Electricity Resources

Ontario Power Authority

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

Aleksandar Kojic

From: Deborah Langelaan
Sent: December 15, 2011 1:29 PM
To: Ronak Mozayyan
Cc: Michael Killeavy; Keith Sandor; Catherine Forster
Subject: OGS Modelling
Attachments: First Client Presentation - Nov_27_2010_Rev2.pdf

Importance: High

Ronak;

Michael, Catherine, Keith and I met this morning to discuss the modelling for OGS. Right now Keith is working of the deemed dispatch model for OGS. We need to be able to determine the Imputed Net Revenues for the term of the contract (20 years) assuming a Term Commencement Date of Jan. 1/14. We will also need to determine the Actual Market Revenues for the 20 year term just like we did for YEC and IESO has confirmed that the closest node to OGS is Richview. JoAnne, and reps from OEFC and IO met with TCE yesterday and, as before, TCE was extrememly reluctant to provide any further information. They did indicate that they may be able to provide us with their O&M and major maintenance costs. After yesterday's meeting JoAnne advised OEFC and IO that we will develop our own model for OGS and have something for them by next Thursday. When Michael and I spoke with JoAnne today we decided to have NERA review our model so we will have an independent 3rd party validation of our results.

We will need to make assumptions along the way so be sure to note everything in detail. For the time being use the Heat Rate from the contract when calculating Actual Market Revenues. You may recall that TCE assumed $0 for O&M Costs and Start-up Mainenance Costs in Exhibit B. I've attached a presentation that SMS prepared during our negotiations with TCE and you will see that a Nameplate Capacity of 980.1 MW was used.

I'm not in tomorrow but Keith is so don't hesitate to touch base with him, or Michael, if necessary.

Deb

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

From: Michael Killeavy
Sent: December 15, 2011 12:34 PM
To: Deborah Langelaan; Keith Sandor; Catherine Forster
Subject: SWGTA Evaluation Model and Associated Files ....
Importance: High

As requested.

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

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: December 16, 2011 4:00 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: RE: OGS - CAPEX ...

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Attachments: 25th Jan 2011 - Capex and Construction Strategy Review R1- One Page.ppt

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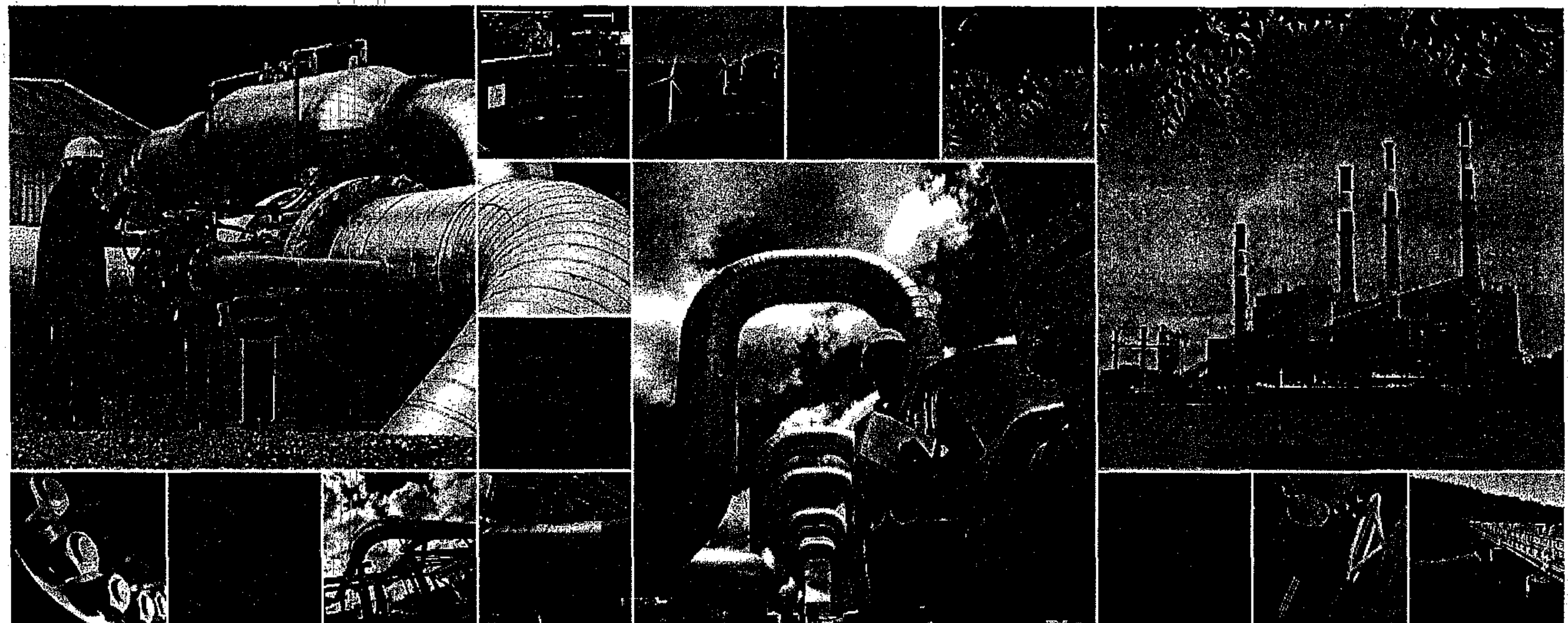

Proposed Ontario SCGT Project

Execution and Preliminary Capital Cost Review

Jan 25th 2011

TransCanada
In business to deliver

Boxwood Phase Start Capital vs OGS Capital
(Based Upon Full Phase Start by 1st February 2011)

Item	Boxwood Cdn$	Boxwood %	540 MW @ ISO $ / kW	OGS Cdn$	OGS %	932 MW @ ISO $ / kW
IBL						
Equipment						
Main Equipment						
CTG	$210,168,881	30%		$187,337,402	16%	
Others	$10,163,353	1%		$199,982,955	17%	
S/T	$220,332,234	32%		$387,320,357	32%	
BOP Equipment	$14,185,781	2%		$58,667,395	5%	
Equipment S/T	**$234,518,014**	34%		**$445,987,752**	37%	
Execution						
Engineering	$18,315,554	3%				
Construction	$106,333,140	15%				
Execution S/T	**$124,648,694**	18%		**$447,416,420**	37%	
Other IBL						
CTG Change Order (2% - 2%)	$4,098,732	1%		$3,746,748	0%	
EPC Change Order (5% - 3%)	$7,078,387	1%		$21,681,290	2%	
Landscaping	$2,000,000	0%		$1,500,000	0%	
Other IBL S/T	**$13,177,119**	2%		**$26,928,038**	2%	
IBL Total	$372,343,827	54%	[illegible]	$920,332,210	77%	$987/kW
OBL						
Fuel Gas	$62,490,000	9%			0%	
Electrical	$36,070,000	5%		$8,595,000	1%	
Other Utilities	$700,000	0%		$1,875,000	0%	
Storm Water Pond	$4,394,750	1%			0%	
OBL Total	$103,654,750	15%	$192/kW	$10,470,000	1%	$11/kW
OWNER'S COST						
Development Cost	*$4,900,000	1%				
PM & CM	$13,807,794	2%				
O&M Mobilization	$4,797,287	1%				
Net Start-Up Energy	$9,234,172	1%		*Breakdown*		
Capital Maint.	$17,230,028	2%		*confidential*		
Site Purchase	$31,679,274	5%				
Insurance & Misc.	$6,780,987	1%				
Community Benefits	$20,000,000	3%				
Owners Total	$108,429,540	16%	$201/kW	$152,234,467	13%	$163/kW
TAXES						
Taxes, Duties & Fees	$4,304,725	1%		$7,121,407	1%	
Taxes Total	$4,304,725	1%	$8/kW	$7,121,407	1%	$8/kW
PROJECT UNCERTAINTIES						
Escalation	$16,667,323	2%		$46,801,234	4%	
Risk & Contingency	$26,173,183	4%		$63,626,830	5%	
Development Allow.	$24,752,309	4%			0%	
Project Margins Total	$67,592,815	10%	$125/kW	$110,428,064	9%	$118/kW
Project Total	$656,325,658	95%	$1,215/kW	$1,200,586,148	100%	$1,288/kW
OGS Sunk Cost	$33,561,710	5%			0%	

* *Not including $ 4m of external engineering costs - these are included in the "Execution Engineering" line item*

Aleksandar Kojic

From: Michael Killeavy
Sent: December 16, 2011 4:14 PM
To: 'safouh@smsenergy-engineering.com'
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: Re: OGS - CAPEX ...

Thanks Safouh.

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Michael:

CAPEX for OGS is presented to the far right, even though the main title of the slide doesn't say OGS.

I will look at the OGS figures and get back to you.

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Sent: Friday, December 16, 2011 03:59 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: RE: OGS - CAPEX ...

Hello Michael:

We used a figure of $1.2B which, according to my notes, was given by TCE to the OPA earlier on in the process. The idea was that TCE will later on provide this information and be transparent so that we can do a due diligence. TCE later provided, what they may call, a breakdown as part of a presentation at their offices. This breakdown, however, is not useful for a due diligence.

What do you need the breakdown for? Depending on your answer, I may have some suggestions for you.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: December 16, 2011 1:31 PM
To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: RE: OGS - CAPEX ...

Ok. Thank you.

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

Ontario Power Authority
120 Adelaide Street West, Suite 1600
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M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: December 16, 2011 1:30 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: Re: OGS - CAPEX ...

Michael:

I don't recall doing one for Oakville. But I will confirm when I get back in the office at 3:00.

When do you need it for?
Thanks,
Safouh

From: Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>
Date: Fri, 16 Dec 2011 18:24:44 +0000
To: Safouh Soufi<safouh@smsenergy-engineering.com>
Cc: Deborah Langelaan<Deborah.Langelaan@powerauthority.on.ca>; Ronak Mozayyan<Ronak.Mozayyan@powerauthority.on.ca>
Subject: OGS - CAPEX ...

Safouh,

I'm not sure if you have done this already, but if you haven't, could you please put together an estimate of what you think the CAPEX for OGS ought to have been using reasonable assumptions for the various inputs. If you have already done this, could you please send me what you've prepared?

Thank you,
Michael

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 18, 2011 3:35 PM
To: Ronak Mozayyan
Cc: Deborah Langelaan
Subject: OGS Merchant Capacity ...
Attachments: Quick OGS Merchant Capacity Calculator 18 Dec 2011.xls

Importance: High

Attached are some rough calculations on the value of the merchant capacity for OGS. The value depends a lot on the price of natural gas. In addition, TCE would realize the savings in energy costs for the contracted capacity. This may be helpful as a check against the modelling results.

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

Quick OGS Merchant Capacity Value Calculator

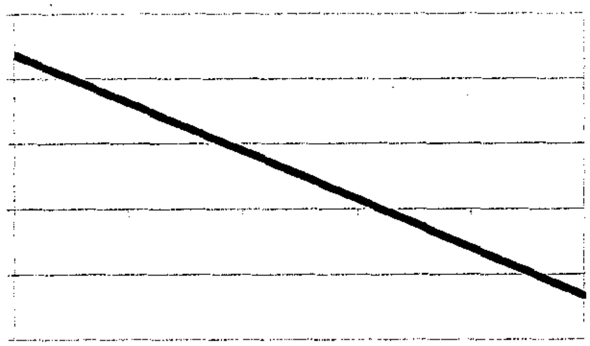
HOEP	$35 /Mwh	
Merchant Capacity	100 MW	
Heat Rate	5763 BTU/kWh or	5.76 MMBTU/MWh
Gas Price	$3.00 /MMBTU	
Variable O&M Cost	$5.00 /Mwh	
Capacity Factor	60%	
Merchant Generation	525,600 Mwh/year	
Gross Energy Market Revenue	$18,396,000 /year	
Energy Cost	$9,087,098 /year	
Net Energy Market Revenues	$6,680,902 /year	

Discount Rate	5.25%
Contract Term	20 years
PV of Net Energy Mkt Revenue	$81,521,848

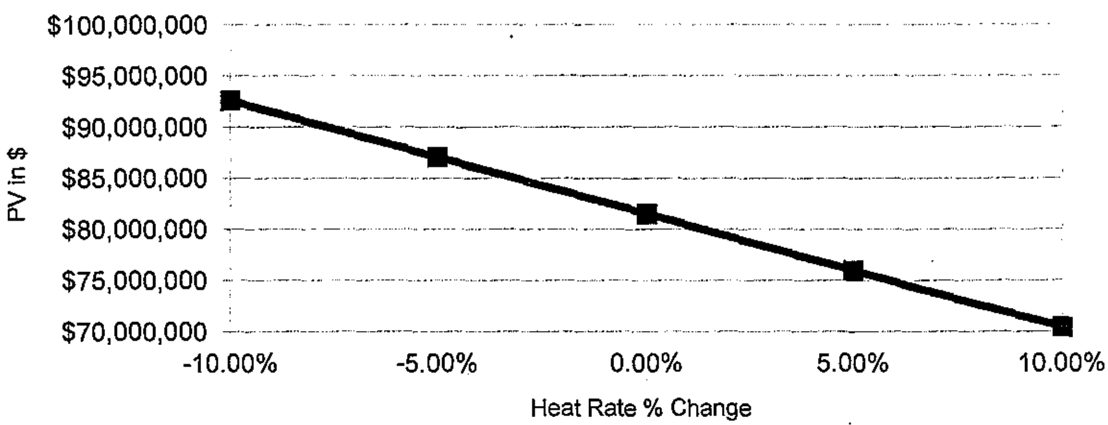
Sensitivity Analysis:

Gas Price	PV
$2.00	$118,482,781
$3.00	$81,521,848
$4.00	$44,560,916
$5.00	$7,599,984
$6.00	-$29,360,949
$7.00	-$66,321,881

Heat Rate	PV
-10.00%	$92,610,128
-5.00%	$87,065,988
0.00%	$81,521,848
5.00%	$75,977,708
10.00%	$70,433,569



Net Energy Market Revenues vs Heat Rate
Proposed OGS



Aleksandar Kojic

From: Michael Killeavy
Sent: December 19, 2011 1:32 PM
To: Keith Sandor; Ronak Mozayyan; Deborah Langelaan; Catherine Forster
Subject: RE: OGS - Update

The TCE proposal for SWGTA was submitted in 2009. Is there any way that once we're done we could look at whether the profiles would be all that different if we profiled with 2009 data?

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416-967-1947 (FAX)

From: Keith Sandor
Sent: December 19, 2011 11:54 AM
To: Ronak Mozayyan; Deborah Langelaan; Michael Killeavy; Catherine Forster
Subject: OGS - Update

Hi All,

I would like to circulate an update as to where we stand with the Southwest GTA model (OGS).

Our goal is ultimately back into the NPV calculation provided by TransCanada – using internal assumptions, preferably sourced from public data. As initial steps, both Ronak and I will be compiling revenue projections for a) the Contingency Support Payment and b) the Actual Gross Market Revenue.

These revenue projections are heavily dependent on forecasts for prevailing market conditions – specifically IESO HOEP, Nodal HOEP, Dawn Gas Prices, and Foreign Exchange. The attached file is used to drive forward curves for each specific input.

N:\File Sharing\Keith Sandor\OGS\CES Inputs - OGS.xlsx

Included below is a brief explanation to support underlying assumptions:

IESO / Nodal HOEP
(see tab: "Hourly Inputs", Column J)
This column communicates the hourly market price from Jan 2010 through end of Dec 2033. The column can be toggled between IESO and Nodal (Richview) through cell J3. Both the IESO and Nodal pricing forecasts are driven from Peak and Off-Peak OTC forward strips – as tracked on NGX. Peak & Off-Peak forward strips are communicated as monthly averages and are quoted as nominal rates. In order to bring these to real-time hourly prices, the monthly averages were combined to a weighted average and discounted by the yield on BoC 5-yr bond (see tab "FUTURES", columns N – R). The

resulting monthly averages were profiled against a shape sourced from 2010 historical data. It is worth noting that 1-hr, 2-hr, and 3-hr pre-dispatch prices have been assumed equal to the hourly spot price in all forecast hours.

Foreign Exchange

(see tab: "Daily Inputs", Column E)

This column communicates the noon exchange rate from Jan 2010 through end of Dec 2033. The forecast is sourced from a BMO economic report which extends to Q2 of 2013. Beyond this point, it has been assumed that rates will remain constant and unchanged from the Q2-2013 forecast.

Dawn Gas Prices

(see tab: "Daily Inputs", Column F)

This column communicates daily Vector-Dawn prices from Jan 2010 through end of Dec 2033. Much like the IESO / Nodal HOEP forecast, this was sourced from the futures market – as tracked on the Chicago Mercantile Exchange (CME). CME tracks natural gas prices at the Henry Hub. A basis swap – which historically trends at $0.38/mmBTU – was used to convert the Henry Hub Futures to Vector-Dawn prices. These rates were discounted by the yield on a 20 yr US bond to convert the nominal quote to real-time dollars (see tab "FUTURES", columns F – L).

Another update will follow shortly with links to the 20 year forecast of Contingency Support Payment & Actual Gross Market Revenue. This should have been made available this morning, however the models became too large in size – and unmanageable.

Please let me know if you have any questions.

Best,

Keith

Aleksandar Kojic

From: Keith Sandor
Sent: December 19, 2011 1:46 PM
To: Michael Killeavy; Ronak Mozayyan; Deborah Langelaan; Catherine Forster
Subject: RE: OGS - Update

Yes – good point.

This is something that we can examine once we've completed our initial assessment.

Keith

From: Michael Killeavy
Sent: December 19, 2011 1:32 PM
To: Keith Sandor; Ronak Mozayyan; Deborah Langelaan; Catherine Forster
Subject: RE: OGS - Update

The TCE proposal for SWGTA was submitted in 2009. Is there any way that once we're done we could look at whether the profiles would be all that different if we profiled with 2009 data?

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From: Keith Sandor
Sent: December 19, 2011 11:54 AM
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These revenue projections are heavily dependent on forecasts for prevailing market conditions – specifically IESO HOEP, Nodal HOEP, Dawn Gas Prices, and Foreign Exchange. The attached file is used to drive forward curves for each specific input.

N:\File Sharing\Keith Sandor\OGS\CES Inputs - OGS.xlsx

Included below is a brief explanation to support underlying assumptions:

IESO / Nodal HOEP
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(see tab: "Daily Inputs", Column E)
This column communicates the noon exchange rate from Jan 2010 through end of Dec 2033. The forecast is sourced from a BMO economic report which extends to Q2 of 2013. Beyond this point, it has been assumed that rates will remain constant and unchanged from the Q2-2013 forecast.

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Another update will follow shortly with links to the 20 year forecast of Contingency Support Payment & Actual Gross Market Revenue. This should have been made available this morning, however the models became too large in size – and unmanageable.

Please let me know if you have any questions.

Best,

Keith

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: December 21, 2011 12:13 PM
To: Keith Sandor
Cc: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Catherine Forster
Subject: RE: Southwest GTA -- OGS
Attachments: TCE Imputed Hours per TCE Model.xls

Keith et al:

I found our estimated of TCE capacity factors which I have pasted in the attached.

Thanks,
Safouh

From: Keith Sandor [mailto:Keith.Sandor@powerauthority.on.ca]
Sent: December 20, 2011 4:05 PM
To: safouh@smsenergy-engineering.com
Cc: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Catherine Forster
Subject: Southwest GTA -- OGS

Hi Safouh,

The attached spreadsheet communicates deemed operational stats (start-ups, shut-downs, hours) supporting our analysis of the Southwest GTA facility. Over the 20-yr term, the capacity factor averages 83.7% -- steadily increasing from 52.6% (Year 1) to 92.7% (Year 20).

Please note these results are highly dependent on projected HOEP & gas prices and are subject to change as we continue to review the data.

Please let me know if you have any questions.

Best,

Keith Sandor
Senior Analyst, Contract Management
Ontario Power Authority
120 Adelaide St. West | Suite 1600 | Toronto, ON M5H 1T1 | T: 416-969-6081 | 416-969-1947
keith.sandor@powerauthority.on.ca

TCE Estimated Imputed Hours

Note: All Values in $M CAD **Pricing & Index Assumptions**	**2009** **7/1/2009**	**2009** **9/30/2009**	**2009** **12/31/2009**
Calculated NRR	$ -	$ -	$ -
Imputed Net Revenue	$ -	$ -	$ -
Contingency Support Payment	**$ -**	**$ -**	**$ -**

SMS Estimated: TCE Imputed Hours
SMS Estimated: Capacity Factor Based on Imputed Hours

Estimated 20-Year Average Capacity Factor:

2010 4/1/2010	2010 7/1/2010	2010 9/30/2010	2010 12/31/2010	2011 4/1/2011	2011 7/1/2011	2011 9/30/2011	2011 12/31/2011	2012 4/1/2012
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

2012 7/1/2012	2012 9/30/2012	2012 12/31/2012	2013 4/1/2013	2013 7/1/2013	2013 9/30/2013	2013 11/15/2013	1 2014 7/1/2014	2 2015 7/1/2015
$ -	$ -	$ -	$ -	$ -	$ -	$ 46.5	$ 186.3	$ 187.0
$ -	$ -	$ -	$ -	$ -	$ -	$ 1.5	$ 13.5	$ 22.8
$ -	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 45.0**	**$ 172.7**	**$ 164.2**
						68	635	1,068
						3.15%	7.25%	12.19%
						30.72%		

3	4	5	6	7	8	9	10	11
2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
7/1/2016	**7/1/2017**	**7/1/2018**	**7/1/2019**	**7/1/2020**	**7/1/2021**	**7/1/2022**	**7/1/2023**	**7/1/2024**
$ 187.8	$ 188.5	$ 189.3	$ 190.2	$ 191.0	$ 191.8	$ 192.7	$ 193.6	$ 194.4
$ 45.5	$ 45.3	$ 44.4	$ 51.9	$ 54.4	$ 38.6	$ 49.7	$ 35.4	$ 44.5
$ 142.3	**$ 143.2**	**$ 145.0**	**$ 138.3**	**$ 136.6**	**$ 153.2**	**$ 143.0**	**$ 158.1**	**$ 149.9**
2,670	2,658	2,606	3,046	3,192	2,265	2,917	2,077	2,611
30.48%	30.35%	29.74%	34.77%	36.44%	25.86%	33.29%	23.71%	29.81%

12	13	14	15	16	17	18	19	20
2025	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**
7/1/2025	**7/1/2026**	**7/1/2027**	**7/1/2028**	**7/1/2029**	**7/1/2030**	**7/1/2031**	**7/1/2032**	**7/1/2033**
$ 195.4	$ 196.3	$ 197.2	$ 198.2	$ 199.2	$ 200.2	$ 201.2	$ 202.3	$ 152.6
$ 29.9	$ 37.8	$ 47.3	$ 55.6	$ 66.8	$ 59.4	$ 60.8	$ 57.7	$ 63.2
$ 165.5	**$ 158.5**	**$ 149.9**	**$ 142.6**	**$ 132.4**	**$ 140.8**	**$ 140.5**	**$ 144.6**	**$ 89.4**
1,755	2,218	2,776	3,263	3,920	3,486	3,568	3,386	3,709
20.03%	25.32%	31.69%	37.25%	44.75%	39.79%	40.73%	38.65%	42.34%

Aleksandar Kojic

From: Michael Killeavy
Sent: December 21, 2011 12:33 PM
To: 'Safouh Soufi'; Keith Sandor
Cc: Deborah Langelaan; Ronak Mozayyan; Catherine Forster
Subject: RE: Southwest GTA -- OGS

This makes sense. Thanks.

Michael Killeavy, LL.B., MBA, P.Eng.
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Keith et al:

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Please note these results are highly dependent on projected HOEP & gas prices and are subject to change as we continue to review the data.

Please let me know if you have any questions.

Best,

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keith.sandor@powerauthority.on.ca

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: December 21, 2011 6:36 PM
To: Deborah Langelaan; Michael Killeavy; Ronak Mozayyan
Subject: RE: Southwest GTA -- UPDATE

Hello Deborah et al:

Below is the information you requested earlier. Please review it and let me know if you have any questions.

Nameplate Capacity
To the best of our knowledge, TCE had not selected the steam turbine prior to contract cancellation. We therefore cannot confirm a nameplate capacity but based on the information provided by TCE and others, we have assumed it to be 980 MW.

Actual Heat Rate
The actual as-fired heat rate cannot be properly determined until a steam turbine has been selected and its performance is known. For the purpose of OPA analysis we suggest that an average annual heat rate in the order of 6,800 Btu/kWh is reasonable. This heat rate includes a small allowance for heat rate degradation.

Start-up Maintenance Cost
Start-up maintenance cost is a "commercial" parameter used, or in this case not used, by project proponents. This cost is usually an integral part of O&M cost which is provided below.

LTSA Cost
The initial LTSA cost which in this case is the cost of recommended initial spares is an item that should be added separately to the fixed and variable LTSA costs. Fixed and variable LTSA costs are included in the fixed O&M cost below. The initial LTSA cost, according to TCE and supported in LTSA agreement, is $14,422,050 in 2008 dollars.

O&M Costs
We have estimated O&M costs based on imputed hours calculated by OPA and information received by email from Keith Sandor. The gas turbines proposed for Oakville have maintenance intervals that depend on the number of operating hours as well as the number of starts/stops in addition to several other factors not mentioned here. If we were to consider that the number of imputed starts is equal to actual starts then the Facility's O&M life cycle cost may increase as a result of increased gas turbine inspection intervals.

Based on the number of imputed hours, we estimated that two combustors, two Class A, two Class B and two Class C gas turbine inspections will be required during contract term. Based on the foregoing we have estimated the cost of these inspections using in-house data and where available vendor information. For the steam turbine plant, we used a generic O&M cost since the steam turbine and boilers have not been selected by TCE, to the best of our knowledge, prior to contract cancellation.

Year	$Million
2014	27.81
2015	27.26
2016	27.56
2017	28.10
2018	28.46
2019	28.95
2020	29.15
2021	29.35

2022	30.16
2023	31.02
2024	31.12
2025	31.59
2026	32.37
2027	45.32
2028	33.27
2029	33.93
2030	34.14
2031	36.07
2032	34.92
2033	34.38

From: Keith Sandor [mailto:Keith.Sandor@powerauthority.on.ca]
Sent: December 21, 2011 3:55 PM
To: Safouh Soufi; Catherine Forster; Deborah Langelaan; Michael Killeavy; Ronak Mozayyan
Subject: Southwest GTA -- UPDATE

Hi All,

The models have been updated with the HOEP & Gas forward curves from PSP.

Under the revised inputs, the capacity factor drops from an average of 83.7% to 62.7%.

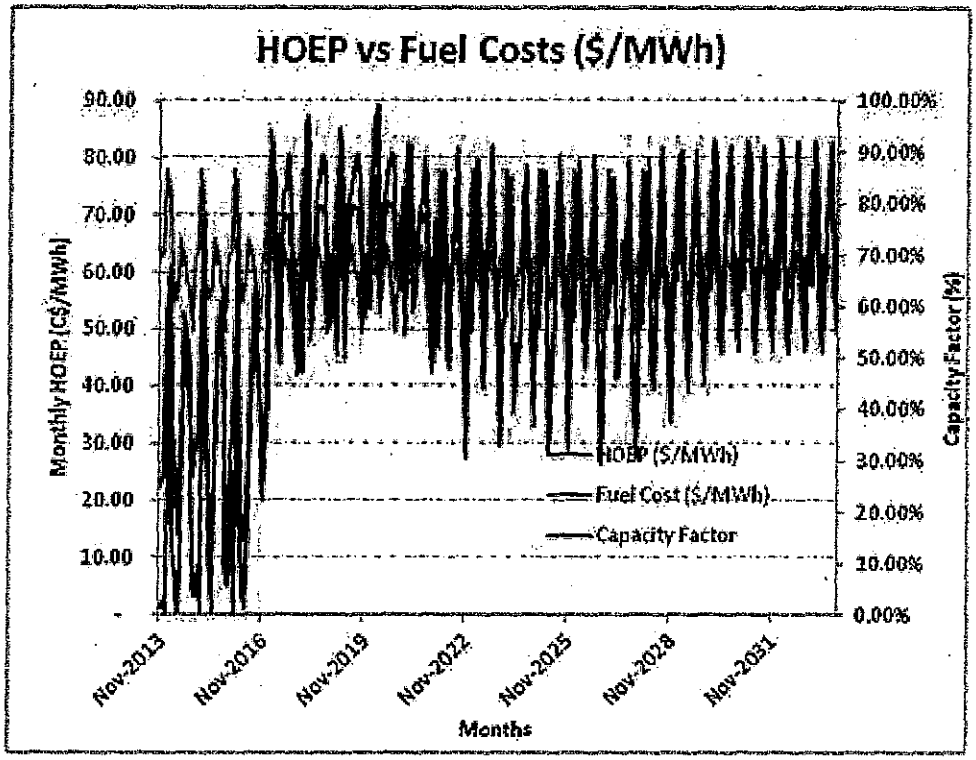
The PSP forecast for Gas follows a seasonal profile, averaging $8.55/mmBtu per year and remains static throughout the 20-yr period. HOEP averages $56/MWh over the 20-yr term, steadily increasing from the $36.24/MWh (2014) to $61.67/MWh (2033).

Included in the attachment are deemed operational statistics along with projected INR and CSP.

Please let me know if you have any questions.

Best,

Keith



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Aleksandar Kojic

From: Michael Killeavy
Sent: December 21, 2011 7:28 PM
To: 'safouh@smsenergy-engineering.com'; Deborah Langelaan; Ronak Mozayyan
Subject: Re: Southwest GTA -- UPDATE

Thanks, Safouh.

I agree with you about the Start-up Maintenance Cost. I don't know why it was itemized separately.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Wednesday, December 21, 2011 06:35 PM
To: Deborah Langelaan; Michael Killeavy; Ronak Mozayyan
Subject: RE: Southwest GTA -- UPDATE

Hello Deborah et al:

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2028	33.27
2029	33.93
2030	34.14
2031	36.07
2032	34.92
2033	34.38

From: Keith Sandor [mailto:Keith.Sandor@powerauthority.on.ca]
Sent: December 21, 2011 3:55 PM
To: Safouh Soufi; Catherine Forster; Deborah Langelaan; Michael Killeavy; Ronak Mozayyan
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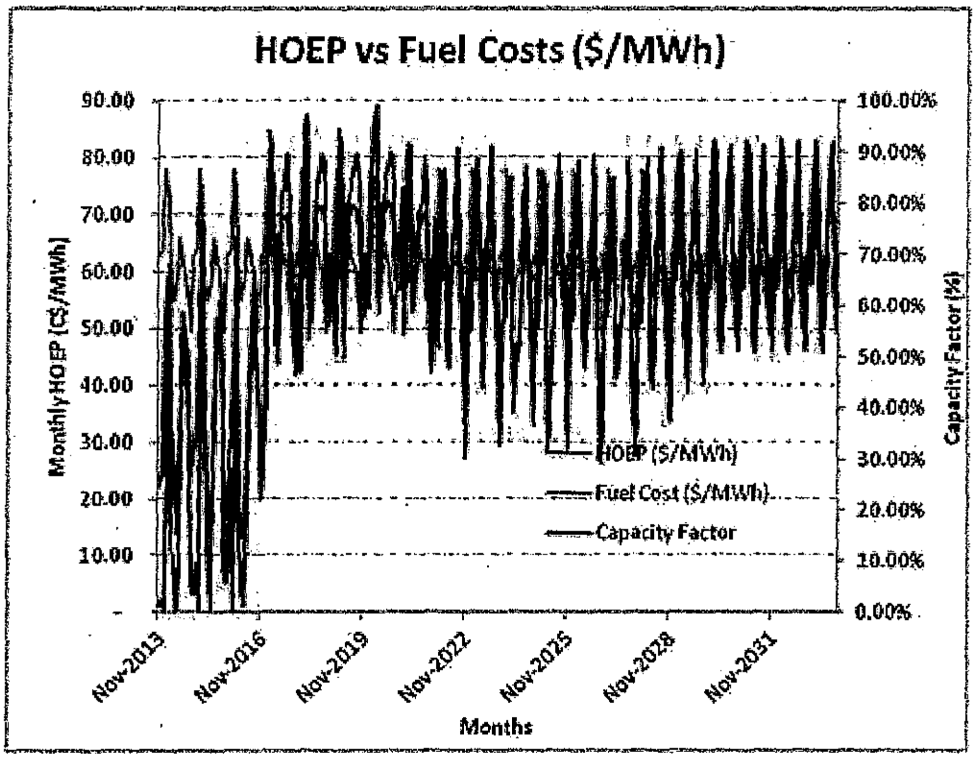

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120 Adelaide St. West | Suite 1600 | Toronto, ON M5H 1T1 | T: 416-969-6081 | 416-969-1947
keith.sandor@powerauthority.on.ca

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: December 21, 2011 7:34 PM
To: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan
Subject: RE: Southwest GTA -- UPDATE

Thanks Michael.

Let me know if there is anything else required.

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: December 21, 2011 7:28 PM
To: 'safouh@smsenergy-engineering.com'; Deborah Langelaan; Ronak Mozayyan
Subject: Re: Southwest GTA -- UPDATE

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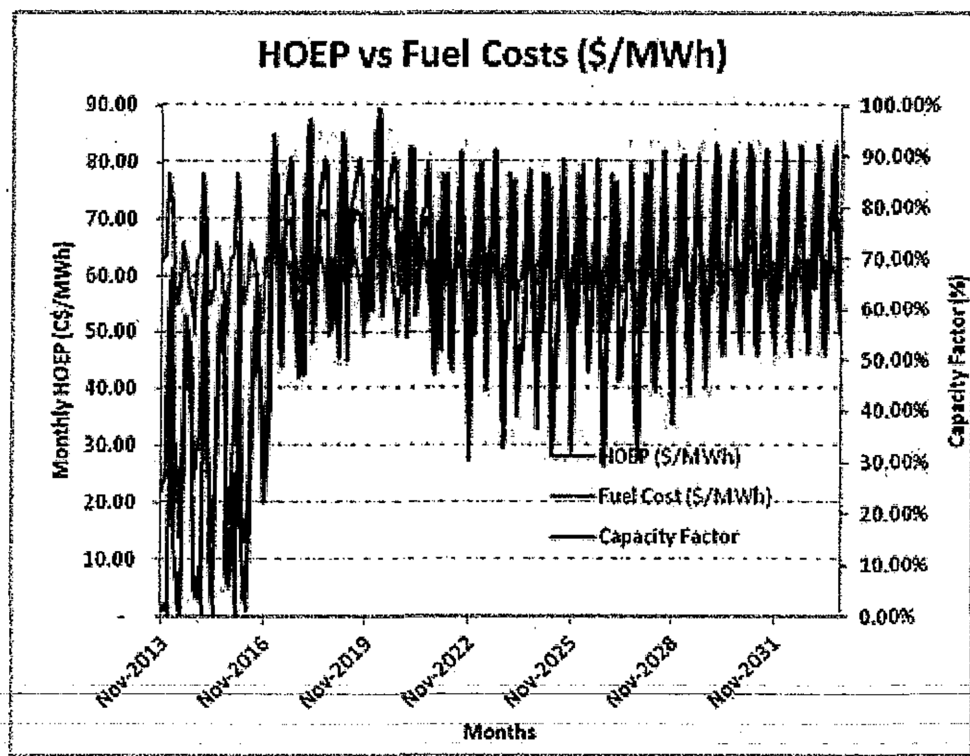

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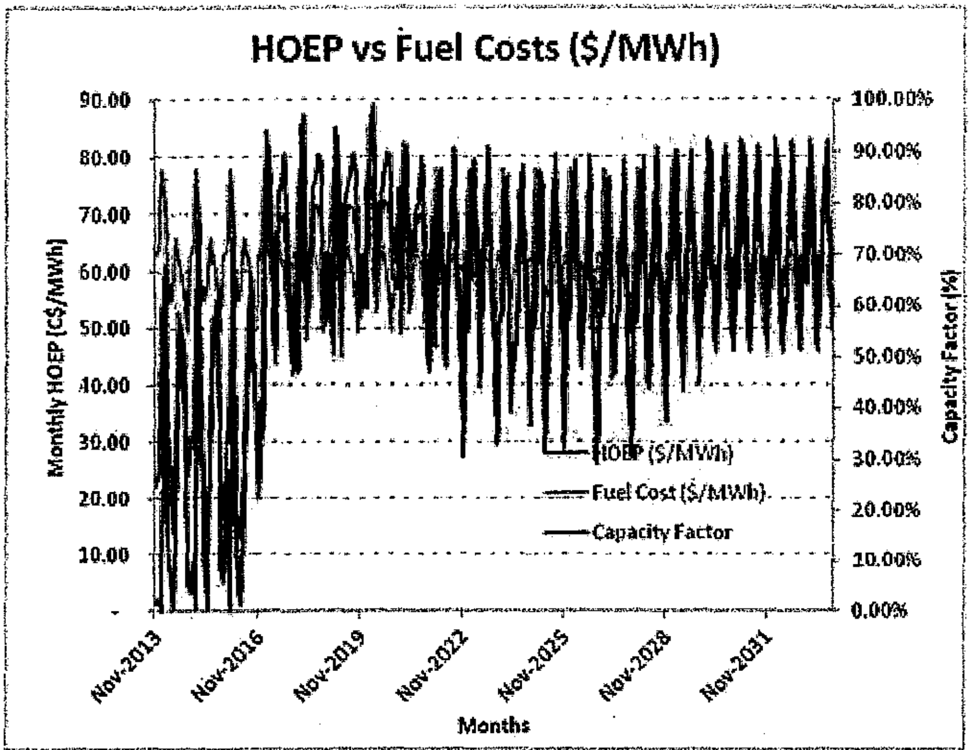

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Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: December 21, 2011 8:47 PM
To: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan
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From: Keith Sandor [mailto:Keith.Sandor@powerauthority.on.ca]
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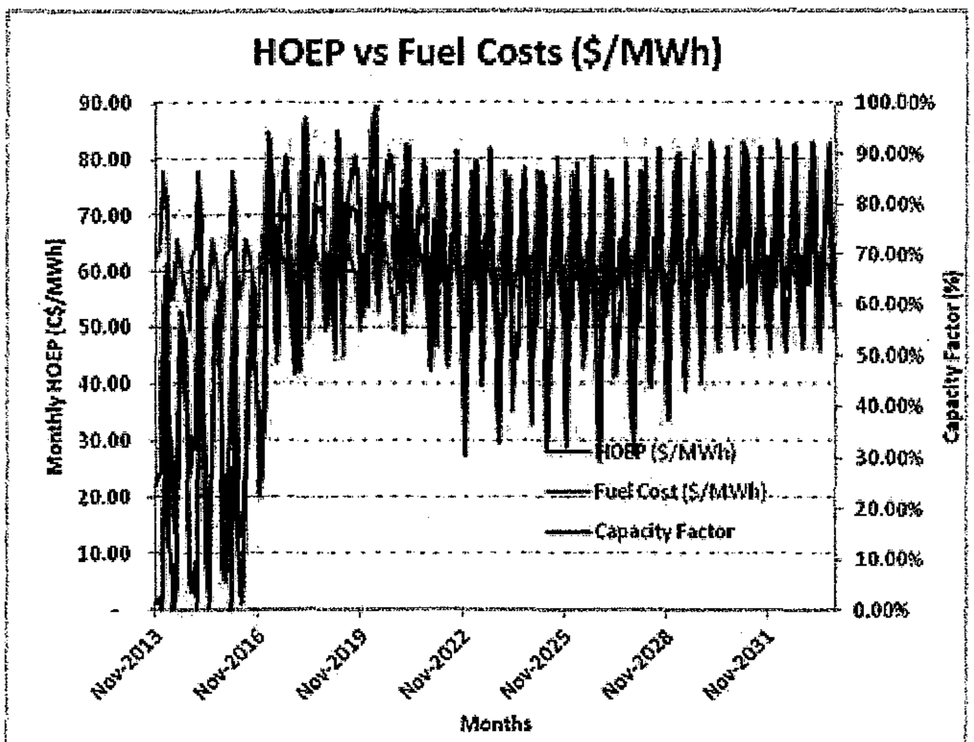

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From: Michael Killeavy
Sent: December 21, 2011 8:48 PM
To: 'safouh@smsenergy-engineering.com'; Deborah Langelaan; Ronak Mozayyan
Subject: Re: Southwest GTA -- UPDATE

Okay. I hadn't thought of this approach. Thank you.

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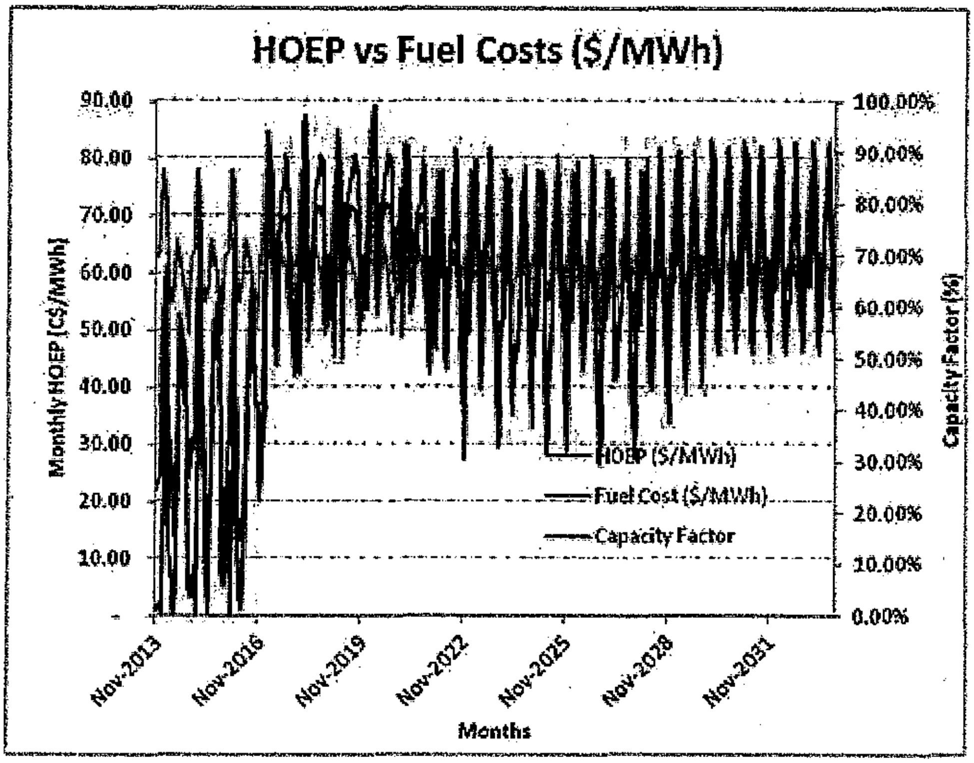

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 22, 2011 1:04 PM
To: Keith Sandor; Deborah Langelaan
Cc: Ronak Mozayyan
Subject: RE: OGS -- Cash-flow UPDATE

Thank you for this Keith. How does the model work exactly – presumably, the nodal price is the signal to offer energy into the market, but TCE is paid HOEP, right?

Michael Killeavy, LL.B., MBA, P.Eng.
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From: Keith Sandor
Sent: December 22, 2011 11:43 AM
To: Deborah Langelaan; Michael Killeavy
Cc: Ronak Mozayyan
Subject: OGS -- Cash-flow UPDATE

We have plugged in our estimates of INR and ANR into the cash-flow model provided by TransCanada – please see attached.

The NPV results are significantly higher than what was initially presented by TransCanada. Included below is a summary of the findings:

	TransCanada	**OPA**
CSP	\$1,510mm	\$1,529mm
Actual Gross Revenue	\$2,795mm	\$2,994mm
Total Expenses	\$2,578mm	\$2,100mm
NPV Cash-flow	**\$262.3mm**	**\$785.1mm**

** All figures in millions and expressed on an NPV basis over a 20-yr term.

We can attribute a difference in Actual Gross Revenue to the spread between Nodal Prices and HOEP. Over 2010 and 2011, Nodal prices have trended approx. \$7/MWh higher than HOEP.

We are currently looking into the variance in Total Expenses and will provide an update as soon as possible.

Aleksandar Kojic

From: Michael Killeavy
Sent: December 27, 2011 3:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...
Attachments: OGS Shadow Valuation Model - 27 Dec 2011 r5.xls

Importance: High

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make INR=ANR, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if ANR=INR, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I ignore the terminal value in its entirety. If I use the same HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives and NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at $8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at $35/MWh and gas at $4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let ANR=INR, so that the actual forward curves for HOEP and gas are irrelevant.

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Gas-fired Combined Cycle GS Financial Model With ANR ≠ INR (Merchant Revenues Earned) - PROJECT ANALYSIS Using OPA Data

CAPEX Spend:	$1,195	million in 2009 $	
Capital Cost Allowance:			
		CCA Rate	
CAPEX to Class 1	33%	4%	
CAPEX to Class 17	38%	8%	
CAPEX to Class 48	29%	15%	
Pooled CCA Rate	8.7%		
ANR = INR?	NO		
Inflation Factor	(IFy)	2%	
NRR Index Factor	(NRRIF)	20%	
Statutory Tax Rate		25%	
Contract Capacity (MW)		900	MW
Nameplate Capacity (MW)		950	MW
Specific Cost (CAPEX/MW)		$1,258,000	/MW
NRR	$17,277	/MW-month	
Fixed O&M	Per schedule provided by SMS Energy Engineering		
Contract Variable O&M	$0.00	/MWh	
Contract Heat Rate	7200	BTU/kWh	
Actual Heat Rate	6800	BTU/kWh	
Actual O&M Cost	$1.00	/MWh	
Start-up Cost	2450	MMBTU/start	
Minimum Block Run Time (h)	3	h	
Capacity Factor	40%		
Cost of Capital	5.25%		

Development | Commercial Operation

							1	2	3	4	5	6	7	8	9	10
		01/Jul/09	01/Jul/10	01/Jul/11	01/Jul/12	01/Jul/13	01/Jul/14	01/Jul/15	01/Jul/16	01/Jul/17	01/Jul/18	01/Jul/19	01/Jul/20	01/Jul/21	01/Jul/22	01/Jul/23
% CAPEX Allocation to year		2.8%	21.9%	34.8%	23.3%	17.3%										
Yearly CAPEX Spend		$33.1	$261.1	$415.3	$278.7	$206.9										
Book Value of Capital		$33.1	$294.2	$709.5	$988.2	$1,195.1	$1,096	$1,005	$922	$846	$777	$714	$656	$603	$555	$532
Interest During Construction @	12.47%	$4.1	$36.7	$88.5	$123.2	$149.0										
Market Heat Rate (BTU/kWh)							4,241	4,471	4,082	6,688	7,358	7,519	7,778	7,514	6,835	6,790
AVERAGE HOEP ($/MWh)							$36.24	$38.21	$34.87	$57.16	$62.88	$64.26	$66.45	$64.22	$58.41	$58.03
AVERAGE GAS PRICE ($/MMBTU)							$8.55	$8.55	$8.54	$8.55	$8.55	$8.55	$8.54	$8.55	$8.55	$8.55
Spark Spread							($21.87)	($19.90)	($23.23)	($0.95)	$4.77	$6.15	$8.35	$6.10	$0.29	($0.08)
Capacity Factor							40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Run Hours/Year							3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504
GENRATION (TWh)							3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33
Actual Energy Market Costs (Fuel Cost)							$193.5	$193.5	$193.4	$193.5	$193.5	$193.5	$193.4	$193.5	$193.5	$193.5
Actual Variable O&M Costs							$3.33	$3.40	$3.46	$3.53	$3.60	$3.68	$3.75	$3.82	$3.90	$3.98
Actual Gross Energy Market Revenues							$121	$127	$116	$150	$209	$214	$221	$214	$194	$193
Actual Net Market Revenues (ANR)							*($76)*	*($70)*	*($81)*	*($7)*	*$12*	*$17*	*$24*	*$16*	*($3)*	*($4)*
Non-Indexed NRR							$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822
Indexed NRR							$3,455	$3,525	$3,595	$3,667	$3,740	$3,815	$3,891	$3,969	$4,049	$4,130
Total NRR							$17,277	$17,346	$17,417	$17,488	$17,562	$17,637	$17,713	$17,791	$17,870	$17,951
Fixed Capacity Payment							$187	$187	$188	$189	$190	$190	$191	$192	$193	$194
Contract Generation							3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15
Contract Energy Market Costs							$194.1	$194.1	$194.0	$194.1	$194.1	$194.1	$194.0	$194.1	$194.1	$194.1
Contract Variable O&M Costs							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Imputed Market Revenues (IGEMR)							$114	$121	$110	$180	$198	$203	$210	$203	$184	$183
Imputed Net Market Revenues (INR)							*($80)*	*($74)*	*($84)*	*($14)*	*$4*	*$9*	*$16*	*$8*	*($10)*	*($11)*
CONTINGENT SUPPORT PAYMENT							$266	$261	$272	$203	$185	$182	$176	$184	$203	$205
TOTAL REVENUES							*$190*	*$191*	*$191*	*$196*	*$198*	*$199*	*$200*	*$200*	*$200*	*$201*
OPEX – FIXED (Including LTSA)							*$27.8*	*$27.3*	*$27.6*	*$28.1*	*$28.5*	*$29.0*	*$29.2*	*$29.4*	*$30.2*	*$31.0*
EBITDA							*$162*	*$164*	*$164*	*$168*	*$169*	*$170*	*$171*	*$171*	*$170*	*$170*
Opening UCC							$1,195	$1,143	$1,043	$953	$870	$794	$725	$662	$604	$551
Depreciation (Capital Cost Allowance)							$52	$100	$91	$83	$76	$69	$63	$58	$53	$48
Closing UCC							$1,143	$1,043	$953	$870	$794	$725	$662	$604	$551	$503
Capitalized Interest							$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income							$102.9	$57.0	$65.4	$77.4	$86.0	$93.1	$100.1	$105.7	$109.7	$114.2
Taxes Payable							$26	$14	$16	$19	$22	$23	$25	$26	$27	$29
Free Cash Flow		*($33)*	*($261)*	*($415)*	*($279)*	*($207)*	*$137*	*$150*	*$147*	*$148*	*$148*	*$146*	*$146*	*$144*	*$142*	*$141*
XNPV – Project	*$267* million in 2009 $															
XIRR – Project	*8.27%*															
ANR-INR	*($0.0)*	$0	$0	$0	$0	$0	$4	$4	$3	$7	$8	$8	$8	$8	$7	$7
	-1.80%															

	11	12	13	14	15	16	17	18	19	20
	01/Jul/24	01/Jul/25	01/Jul/26	01/Jul/27	01/Jul/28	01/Jul/29	01/Jul/30	01/Jul/31	01/Jul/32	01/Jul/33
Book Value of Capital	$472	$435	$402	$371	$343	$318	$295	$274	$254	$254
Market Heat Rate (BTU/kWh)	6,455	6,432	6,466	6,337	6,567	6,928	7,141	7,216	7,216	7,216
AVERAGE HOEP ($/MWh)	$55.15	$54.97	$55.26	$54.15	$56.30	$59.21	$61.03	$61.67	$61.67	$61.67
AVERAGE GAS PRICE ($/MMBTU)	$8.54	$8.55	$8.55	$8.55	$8.54	$8.55	$8.55	$8.55	$8.55	$8.55
Spark Spread	($2.55)	($3.15)	($2.86)	($3.96)	($1.99)	$1.10	$2.91	$3.55	$3.55	$3.55
Capacity Factor	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Run Hours/Year	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504
GENRATION (TWh)	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33
Actual Energy Market Costs (Fuel Cost)	$193.4	$193.5	$193.5	$193.5	$193.4	$193.5	$193.5	$193.5	$193.5	$193.5
Actual Variable O&M Costs	$4.06	$4.14	$4.22	$4.31	$4.39	$4.48	$4.57	$4.66	$4.75	$4.85
Actual Gross Energy Market Revenues	$184	$183	$184	$180	$187	$197	$203	$205	$205	$205
Actual Net Market Revenues (ANR)	*($14)*	*($15)*	*($14)*	*($17)*	*($11)*	*($1)*	*$5*	*$7*	*$7*	*$7*
Non-Indexed NRR	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822
Indexed NRR	$4,212	$4,296	$4,382	$4,470	$4,559	$4,651	$4,744	$4,838	$4,935	$5,034
Total NRR	$18,034	$18,118	$18,204	$18,292	$18,381	$18,472	$18,565	$18,660	$18,757	$18,855
Fixed Capacity Payment	$195	$196	$197	$198	$199	$199	$201	$202	$203	$204
Contract Generation	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15
Contract Energy Market Costs	$194.0	$194.1	$194.1	$194.1	$194.0	$194.1	$194.1	$194.1	$194.1	$194.1
Contract Variable O&M Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Imputed Market Revenues (IGEMR)	$174	$173	$174	$171	$177	$187	$192	$194	$194	$194
Imputed Net Market Revenues (INR)	*($20)*	*($21)*	*($20)*	*($23)*	*($17)*	*($7)*	*($2)*	*$0*	*$0*	*$0*
CONTINGENT SUPPORT PAYMENT	$215	$216	$216	$221	$216	$207	$202	$201	$202	$203
TOTAL REVENUES	*$201*	*$202*	*$203*	*$203*	*$205*	*$206*	*$207*	*$208*	*$209*	*$210*
OPEX – FIXED (Including LTSA)	*$31.1*	*$31.6*	*$32.4*	*$45.3*	*$33.3*	*$33.9*	*$34.1*	*$36.1*	*$34.9*	*$34.4*
EBITDA	*$170*	*$170*	*$170*	*$158*	*$171*	*$172*	*$173*	*$172*	*$174*	*$176*
Opening UCC	$503	$460	$419	$383	$350	$319	$291	$266	$243	$222
Depreciation (Capital Cost Allowance)	$44	$40	$37	$33	$30	$28	$25	$23	$21	$19
Closing UCC	$460	$419	$383	$350	$319	$291	$266	$243	$222	$202
Capitalized Interest	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income	$118.6	$122.7	$126.3	$117.2	$133.4	$136.8	$140.3	$141.6	$145.7	$149.1
Taxes Payable	$30	$31	$32	$29	$33	$34	$35	$35	$36	$37
Free Cash Flow	*$140*	*$139*	*$139*	*$129*	*$138*	*$138*	*$138*	*$137*	*$138*	*$139*
ANR-INR	$6	$6	$6	$6	$6	$6	$7	$7	$7	$7

Gas-Fired Combined Cycle GS Financial Model With ANR ≠ INR (Merchant Revenues Earned) – SENSITIVITY ANALYSIS

CAPEX Spend:	$1,133	million in 2009 $
Capital Cost Allowance:		CCA Rate
CAPEX to Class 1	33%	4%
CAPEX to Class 17	18%	8%
CAPEX to Class 48	29%	15%
Pooled CCA Rate	8.7%	

Inflation Factor	CPI	2%
ANR Index Factor	(NNUP)	30%
Statutory Tax Rate		25%
Contract Capacity (MW)		900 MW
Nameplate Capacity (MW)		850 MW
Specific Cost (CAPEX/MW)		$1,258,000 /MW
INR	$17,277 /MW-month	
Fixed O&M	Per schedule provided by SNS Energy Engineering	
Contract Variable O&M	$0.00 /MWh	
Contract Heat Rate	7100 BTU/kWh	
Actual Heat Rate	6800 BTU/kWh	
Actual O&M Cost	$1.00 /MWh	
Start-up Cost	2450 MMBTU/start	
Minimum Block Run Time (h)	3 h	
Capacity Factor	40%	
Cost of Capital	5.35%	

Development

Commercial Operation

		01/Jul/09	01/Jul/10	01/Jul/11	01/Jul/12	01/Jul/13
% CAPEX Allocation to year		2.8%	21.9%	34.8%	23.8%	17.3%
Yearly CAPEX Spend		$33.1	$261.1	$415.3	$378.7	$206.3
Book Value of Capital		$33.1	$294.2	$709.5	$948.2	$1,195.1
Interest During Construction @	12.47%	$4.1	$16.7	$88.5	$123.2	$148.0

	1	2	3	4	5	6	7	8	9	10
	01/Jul/14	01/Jul/15	01/Jul/16	01/Jul/17	01/Jul/18	01/Jul/19	01/Jul/20	01/Jul/21	01/Jul/22	01/Jul/23
Book Value of Capital	$1,096	$1,005	$922	$846	$777	$714	$636	$605	$555	$512

	11	12	13	14	15	16	17	18	19	20
	01/Jul/24	01/Jul/25	01/Jul/26	01/Jul/27	01/Jul/28	01/Jul/29	01/Jul/30	01/Jul/31	01/Jul/32	01/Jul/33
Book Value of Capital	$472	$435	$402	$371	$343	$318	$295	$274	$254	$234

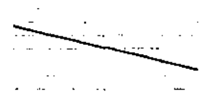
[redacted]

	01/Jul/09	01/Jul/10	01/Jul/11	01/Jul/12	01/Jul/13	1	2	3	4	5	6	7	8	9	10
TOTAL REVENUES						$190	$190	$191	$192	$193	$194	$195	$196	$197	$197
OPEX – Fixed (excluding LTSA)						$27.8	$27.3	$27.8	$28.3	$28.8	$28.9	$29.2	$29.4	$29.2	$31.8
EBITDA						$162	$163	$164	$164	$165	$165	$166	$166	$166	$167
Opening UCC						$1,335	$1,243	$1,043	$953	$878	$794	$725	$662	$604	$551
Depreciation (Capital Cost Allowance)						$57	$100	$91	$83	$76	$68	$63	$58	$53	$48
Closing UCC						$1,243	$1,043	$953	$870	$794	$725	$662	$604	$551	$503
Capitalized Interest						$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income						$102.4	$56.2	$65.4	$73.8	$81.3	$81.5	$95.8	$101.3	$106.4	$111.1
Taxes Payable						$26	$14	$16	$18	$20	$22	$24	$23	$27	$28
Free Cash Flow	($33)	($262)	($415)	($279)	($207)	$136	$149	$147	$145	$144	$142	$142	$141	$140	$137
ANR-INR	$0	$0	$0	$0	$0	$3	$3	$3	$3	$3	$3	$3	$4	$4	$4

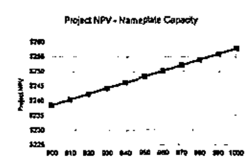
	11	12	13	14	15	16	17	18	19	20
TOTAL REVENUES	$199	$200	$201	$202	$203	$204	$205	$206	$207	$209
OPEX – Fixed (excluding LTSA)	$31.2	$31.6	$32.4	$32.3	$32.7	$33.3	$34.2	$36.1	$34.9	$34.4
EBITDA	$167	$168	$168	$168	$169	$170	$171	$170	$172	$174
Opening UCC	$503	$460	$419	$383	$350	$319	$291	$266	$243	$222
Depreciation (Capital Cost Allowance)	$44	$40	$37	$33	$31	$28	$25	$23	$21	$19
Closing UCC	$460	$419	$383	$350	$319	$291	$266	$243	$222	$202
Capitalized Interest	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income	$116.1	$120.4	$124.2	$115.4	$131.4	$134.5	$137.0	$139.3	$140.5	$147.0
Taxes Payable	$29	$30	$31	$29	$33	$34	$34	$35	$36	$37
Free Cash Flow	$138	$138	$137	$137	$136	$136	$136	$135	$136	$137
ANR-INR	$4	$4	$4	$4	$4	$4	$4	$4	$4	$4

NPV – Project	$248	million in 2009 $
IRR – Project	8.27%	
ANR-INR	($0.01)	

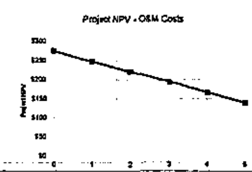
Heat Rate	$248
6000	$331
6250	$304
6500	$281
6750	$254
7000	$227
7250	$200
7500	$173



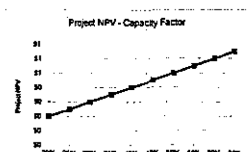
Nameplate Capacity	$244
800	$239
810	$240
820	$242
830	$244
840	$246
850	$248
860	$250
870	$252
880	$254
890	$256
1000	$258



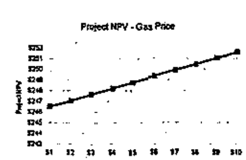
O&M Cost	$248
0	$275
1	$248
2	$221
3	$194
4	$167
5	$140



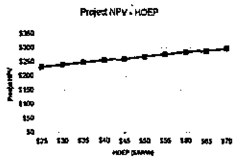
Capacity Fact	$248
20%	$0
25%	$0
30%	$0
35%	$0
40%	$0
45%	$0
50%	$1
55%	$1
60%	$1
65%	$1



Gas Price	$248
$1	$246
$2	$247
$3	$248
$4	$248
$5	$249
$6	$249
$7	$250
$8	$250
$9	$251
$10	$252



HOEP	$248
$25	$234
$30	$241
$35	$248
$40	$255
$45	$262
$50	$270
$55	$277
$60	$284
$65	$291
$70	$298



Heat Rate	244.28464
6000	334.357154
6250	307.582642
6500	280.598096
6750	253.608549
7000	226.609005
7250	199.614457
7500	172.61399

Aleksandar Kojic

From: Michael Killeavy
Sent: December 27, 2011 3:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...
Attachments: OGS Shadow Valuation Model - 27 Dec 2011 r5.xls

Importance: High

Sorry, I forgot to copy you on this.

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From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make INR=ANR, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if ANR=INR, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I ignore the terminal value in its entirety. If I use the same HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives and NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at $8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at $35/MWh and gas at $4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let ANR=INR, so that the actual forward curves for HOEP and gas are irrelevant.

Michael

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Gas-fired Combined Cycle GS Financial Model With ANR ≠ INR (Merchant Revenues Earned) - PROJECT ANALYSIS Using OPA Data

CAPEX Spend:	$1,185	million in 2009 $
Capital Cost Allowance:		
		CCA Rate
CAPEX to Class 1	33%	4%
CAPEX to Class 17	38%	8%
CAPEX to Class 48	29%	15%
Pooled CCA Rate	8.7%	
ANR = INR?	NO	
Inflation Factor	(IFy)	2%
NRR Index Factor	(NRRIF)	20%
Statutory Tax Rate		25%
Contract Capacity (MW)		900 MW
Nameplate Capacity (MW)		950 MW
Specific Cost (CAPEX/MW)		$1,258,000 /MW
NRR	$17,277	/MW-month
Fixed O&M	Per schedule provided by SMS Energy Engineering	
Contract Variable O&M	$0.00	/MWh
Contract Heat Rate	7200	BTU/kWh
Actual Heat Rate	6800	BTU/kWh
Actual O&M Cost	$1.00	/MWh
Start-up Cost	2450	MMBTU/start
Minimum Block Run Time (h)	3	h
Capacity Factor	40%	
Cost of Capital	5.25%	

Development

Commercial Operation

							1	2	3	4	5	6	7	8	9	10
		01/Jul/09	01/Jul/10	01/Jul/11	01/Jul/12	01/Jul/13	01/Jul/14	01/Jul/15	01/Jul/16	01/Jul/17	01/Jul/18	01/Jul/19	01/Jul/20	01/Jul/21	01/Jul/22	01/Jul/23
% CAPEX Allocation to year		2.8%	21.9%	34.8%	23.3%	17.3%										
Yearly CAPEX Spend		$33.1	$261.1	$415.3	$278.7	$206.9										
Book Value of Capital		$33.1	$294.2	$709.5	$988.2	$1,195.1	$1,096	$1,005	$922	$846	$777	$714	$656	$603	$555	$512
Interest During Construction @	12.47%	$4.1	$36.7	$86.5	$123.2	$149.0										
Market Heat Rate (BTU/kWh)							4,241	4,471	4,082	6,688	7,358	7,519	7,778	7,524	6,835	6,790
AVERAGE HOEP ($/MWh)							$36.24	$38.21	$34.87	$57.16	$62.88	$64.26	$68.45	$64.22	$58.41	$58.03
AVERAGE GAS PRICE ($/MMBTU)							$8.55	$8.55	$8.54	$8.55	$8.55	$8.55	$8.54	$8.55	$8.55	$8.55
Spark Spread							($21.87)	($19.90)	($23.23)	($0.95)	$4.77	$6.15	$8.35	$6.10	$0.29	($0.08)
Capacity Factor							40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Run Hours/Year							3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504
GENRATION (TWh)							3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33
Actual Energy Market Costs (Fuel Cost)							$193.5	$193.5	$193.4	$193.5	$193.5	$193.5	$193.4	$193.5	$193.5	$193.5
Actual Variable O&M Costs							$3.33	$3.40	$3.46	$3.53	$3.60	$3.68	$3.75	$3.82	$3.90	$3.98
Actual Gross Energy Market Revenues							$121	$127	$116	$190	$209	$214	$221	$214	$194	$193
Actual Net Market Revenues (ANR)							*($76)*	*($70)*	*($81)*	*($7)*	*$12*	*$17*	*$24*	*$16*	*($3)*	*($4)*
Non-Indexed NRR							$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822
Indexed NRR							$3,455	$3,525	$3,595	$3,667	$3,740	$3,815	$3,891	$3,969	$4,049	$4,130
Total NRR							$17,277	$17,346	$17,417	$17,488	$17,562	$17,637	$17,713	$17,791	$17,870	$17,951
Fixed Capacity Payment							$187	$187	$168	$189	$190	$190	$191	$192	$193	$194
Contract Generation							3.35	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15
Contract Energy Market Costs							$194.1	$194.1	$194.0	$194.1	$194.1	$194.1	$194.0	$194.1	$194.1	$194.1
Contract Variable O&M Costs							$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Imputed Market Revenues (IGEMR)							$114	$121	$110	$180	$198	$203	$210	$203	$184	$183
Imputed Net Market Revenues (INR)							*($80)*	*($74)*	*($84)*	*($14)*	*$4*	*$9*	*$16*	*$8*	*($10)*	*($11)*
CONTINGENT SUPPORT PAYMENT							$266	$261	$272	$203	$185	$182	$176	$184	$203	$205
TOTAL REVENUES							*$190*	*$191*	*$191*	*$196*	*$198*	*$199*	*$200*	*$200*	*$200*	*$201*
OPEX – FIXED (including LTSA)							*$27.8*	*$27.3*	*$27.6*	*$28.1*	*$28.5*	*$29.0*	*$29.2*	*$29.4*	*$30.2*	*$31.0*
EBITDA							*$162*	*$164*	*$164*	*$168*	*$169*	*$170*	*$171*	*$171*	*$170*	*$170*
Opening UCC							$1,195	$1,143	$1,043	$953	$870	$794	$725	$662	$604	$551
Depreciation (Capital Cost Allowance)							$52	$100	$91	$83	$76	$69	$63	$58	$53	$48
Closing UCC							$1,143	$1,043	$953	$870	$794	$725	$662	$604	$551	$503
Capitalized Interest							$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income							$102.9	$57.0	$65.4	$77.4	$86.0	$93.1	$100.1	$105.7	$109.7	$114.2
Taxes Payable							$26	$14	$16	$19	$22	$23	$25	$26	$27	$29
Free Cash Flow		*($33)*	*($261)*	*($415)*	*($279)*	*($207)*	*$137*	*$150*	*$147*	*$148*	*$148*	*$146*	*$146*	*$144*	*$142*	*$141*
XNPV – Project	$267 million in 2009 $															
XIRR – Project	8.27%															
ANR-INR	($0.0)	$0	$0	$0	$0	$0	$4	$4	$3	$7	$8	$8	$8	$8	$7	$7
	-1.80%															

	11	12	13	14	15	16	17	18	19	20
	01/Jul/24	01/Jul/25	01/Jul/26	01/Jul/27	01/Jul/28	01/Jul/29	01/Jul/30	01/Jul/31	01/Jul/32	01/Jul/33
Book Value of Capital	$472	$435	$402	$371	$343	$318	$295	$274	$254	$254
Market Heat Rate (BTU/kWh)	6,455	6,432	6,466	6,337	6,567	6,926	7,141	7,216	7,216	7,216
AVERAGE HOEP ($/MWh)	$55.15	$54.97	$55.26	$54.15	$56.10	$59.21	$62.03	$61.67	$61.67	$61.67
AVERAGE GAS PRICE ($/MMBTU)	$8.54	$8.55	$8.55	$8.55	$8.54	$8.55	$8.55	$8.55	$8.55	$8.55
Spark Spread	($2.95)	($3.15)	($2.86)	($3.96)	($1.99)	$1.10	$2.91	$3.55	$3.55	$3.55
Capacity Factor	40%	40%	40%	40%	40%	40%	40%	40%	40%	40%
Run Hours/Year	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504	3,504
GENRATION (TWh)	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33	3.33
Actual Energy Market Costs (Fuel Cost)	$193.4	$193.5	$193.5	$193.5	$193.4	$193.5	$193.5	$193.5	$193.5	$193.5
Actual Variable O&M Costs	$4.06	$4.14	$4.22	$4.31	$4.39	$4.48	$4.57	$4.66	$4.75	$4.85
Actual Gross Energy Market Revenues	$184	$183	$184	$180	$187	$197	$203	$205	$205	$205
Actual Net Market Revenues (ANR)	*($14)*	*($15)*	*($14)*	*($17)*	*($11)*	*($1)*	*$5*	*$7*	*$7*	*$7*
Non-Indexed NRR	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822	$13,822
Indexed NRR	$4,212	$4,296	$4,382	$4,470	$4,559	$4,651	$4,744	$4,838	$4,935	$5,034
Total NRR	$18,034	$18,118	$18,204	$18,292	$18,381	$18,472	$18,565	$18,660	$18,757	$18,855
Fixed Capacity Payment	$195	$196	$197	$198	$199	$199	$201	$202	$203	$204
Contract Generation	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15	3.15
Contract Energy Market Costs	$194.0	$194.1	$194.1	$194.1	$194.0	$194.1	$194.2	$194.1	$194.1	$194.1
Contract Variable O&M Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Imputed Market Revenues (IGEMR)	$174	$173	$174	$171	$177	$187	$192	$194	$194	$194
Imputed Net Market Revenues (INR)	*($20)*	*($21)*	*($20)*	*($23)*	*($17)*	*($7)*	*($2)*	*$0*	*$0*	*$0*
CONTINGENT SUPPORT PAYMENT	$215	$216	$216	$221	$216	$207	$202	$201	$202	$203
TOTAL REVENUES	*$201*	*$202*	*$203*	*$203*	*$205*	*$206*	*$207*	*$208*	*$209*	*$210*
OPEX – FIXED (including LTSA)	*$31.1*	*$31.6*	*$32.4*	*$45.3*	*$33.3*	*$33.9*	*$34.1*	*$36.1*	*$34.9*	*$34.4*
EBITDA	*$170*	*$170*	*$170*	*$158*	*$171*	*$172*	*$173*	*$172*	*$174*	*$176*
Opening UCC	$503	$460	$419	$383	$350	$319	$291	$266	$243	$222
Depreciation (Capital Cost Allowance)	$44	$40	$37	$33	$30	$28	$25	$23	$21	$19
Closing UCC	$460	$419	$383	$350	$319	$291	$266	$243	$222	$202
Capitalized Interest	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income	$118.6	$122.7	$126.3	$117.2	$133.4	$136.8	$140.3	$141.6	$145.7	$149.1
Taxes Payable	$30	$31	$32	$29	$33	$34	$35	$35	$36	$37
Free Cash Flow	*$140*	*$133*	*$139*	*$129*	*$138*	*$138*	*$138*	*$137*	*$138*	*$139*
ANR-INR	$6	$6	$6	$6	$6	$6	$7	$7	$7	$7

Gas-fired Combined Cycle GS Financial Model With ANR ≠ INR (Merchant Revenues Earned) – SENSITIVITY ANALYSIS

CAPEX Sound: $1,235 million in 2009 $

Capital Cost Allowance:

		CCA Rate
CAPEX to Class 1	30%	4%
CAPEX to Class 17	18%	8%
CAPEX to Class 48	19%	15%
Pooled CCA Rate	8.3%	

Inflation Factor	CPI	2%
RRR Index Factor	(RRRI)	10%
Statutory Tax Rate		25%
Contract Capacity (MW)		900 MW
Nameplate Capacity (MW)		950 MW
Specific Cost (CAPEX/MW)		$1,235,000 /MW
NRR	$17,273 /MW-month	
Fixed O&M	Per schedule provided by SMS Energy Engineering	
Contract Variable O&M	$0.00 /MWh	
Contract Heat Rate	7200 BTU/kWh	
Actual Heat Rate	6800 BTU/kWh	
Actual O&M Cost	$1.00 /MWh	
Start-up Cost	2450 MMBTU/start	
Minimum Block Run Time (h)	3 h	
Capacity Factor	40%	
Cost of Capital	5.29%	

Development

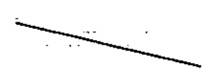
Commercial Operation

		01/Jul/09	01/Jul/10	01/Jul/11	01/Jul/12	01/Jul/13	01/Jul/14	01/Jul/15	01/Jul/16	01/Jul/17	01/Jul/18	01/Jul/19	01/Jul/20	01/Jul/21	01/Jul/22	01/Jul/23	01/Jul/24	01/Jul/25	01/Jul/26	01/Jul/27	01/Jul/28	01/Jul/29	01/Jul/30	01/Jul/31	01/Jul/32	01/Jul/33
							1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
% CAPEX Allocation to year		2.3%	11.3%	34.8%	33.3%	17.3%																				
Yearly CAPEX Spend		$28.1	$251.1	$415.3	$278.7	$206.9																				
Book Value of Capital		$33.3	$294.2	$709.5	$988.2	$1,193.1	$1,096	$1,005	$922	$846	$777	$714	$656	$603	$555	$511	$472	$435	$402	$371	$343	$318	$295	$274	$254	$234
Interest During Construction @	12.47%	$4.1	$36.7	$88.5	$123.2	$149.0																				

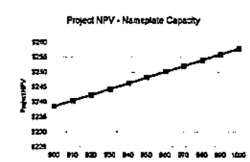
[redacted]

TOTAL REVENUES							$189	$190	$191	$192	$193	$194	$195	$196	$197	$198	$199	$200	$201	$202	$203	$204	$205	$206	$207	$208
OPEX + FIXED (including (TLA))							$27.0	$27.3	$27.6	$28.1	$28.5	$29.0	$29.2	$29.4	$30.2	$31.0	$31.1	$31.6	$32.4	$45.8	$33.3	$33.7	$34.2	$36.2	$34.9	$34.0
EBITDA							$162	$163	$164	$164	$165	$165	$166	$168	$166	$167	$167	$168	$169	$156	$169	$170	$171	$170	$172	$174
Opening UCC							$1,193	$1,348	$1,049	$953	$879	$794	$725	$662	$604	$551	$503	$460	$419	$383	$350	$319	$291	$266	$243	$222
Depreciation (Capital Cost Allowance)							$32	$100	$91	$83	$76	$69	$63	$58	$53	$44	$44	$40	$37	$33	$30	$28	$25	$23	$21	$19
Closing UCC							$1,343	$1,048	$953	$870	$794	$725	$662	$604	$551	$503	$460	$419	$383	$350	$319	$291	$266	$243	$222	$202
Capitalized Interest							$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5	$7.5
Taxable Income							$101.4	$56.2	$65.4	$73.8	$81.2	$88.2	$93.0	$101.3	$106.4	$111.2	$116.1	$118.4	$124.2	$115.4	$131.4	$134.3	$137.6	$139.2	$143.5	$147.0
Taxes Payable							$26	$14	$16	$18	$20	$22	$24	$25	$27	$28	$29	$30	$31	$29	$33	$34	$34	$35	$36	$37
Free Cash Flow			($33)	($242)	($415)	($279)	($207)	$136	$149	$147	$146	$144	$143	$142	$141	$140	$139	$138	$138	$137	$127	$136	$135	$136	$135	$136	$137
KNPV – Project	$248	million in 2009 $																								
KIRR – Project	8.12%																									
ANR-INR	($0.4)		$0	$0	$0	$0	$0	$3	$3	$3	$3	$3	$3	$3	$4	$4	$4	$4	$4	$4	$4	$4	$4	$4	$4	$4	$4

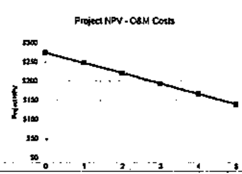
Heat Rate	$248
6000	$333
6250	$308
6500	$261
6750	$234
7000	$237
7250	$200
7500	$173



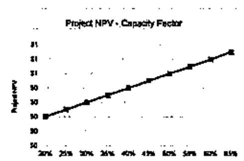
Nameplate Capacity	$248
900	$239
910	$240
920	$242
930	$244
940	$246
950	$248
960	$250
970	$252
980	$254
990	$256
1000	$258



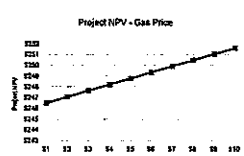
O&M Cost	$248
0	$275
1	$244
2	$222
3	$194
4	$167
5	$140



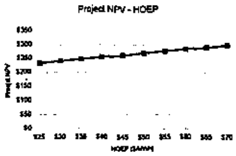
Capacity Fact	$248
20%	$0
25%	$0
30%	$0
35%	$0
40%	$0
45%	$0
50%	$1
55%	$1
60%	$1
65%	$1



Gas Price	$248
$1	$246
$2	$247
$3	$248
$4	$248
$5	$249
$6	$249
$7	$250
$8	$250
$9	$251
$10	$252



HOEP	$248
$25	$234
$30	$241
$35	$245
$40	$255
$45	$262
$50	$270
$55	$277
$60	$284
$65	$291
$70	$294



Heat Rate	348.30464
6000	374.567160
6250	307.392642
6500	268.398096
6750	233.608549
7000	176.609008
7250	139.614457
7500	172.61881

Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 2:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

How do the nominal yearly cash flows for the twenty years compare to the nominal yearly TCE cash flows using your simpler model, ie. before you do any discounting??

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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Michael.killeavy@powerauthority.on.ca

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

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Aleksandar Kojic

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Sent: December 28, 2011 6:12 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

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Aleksandar Kojic

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Sent: December 28, 2011 6:14 AM
To: Ronak Mozayyan
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Can you please do the comparison JoAnne is looking for sometime today?

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 6:15 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

As a follow up to my last email, I did an equity analysis, too. Their project NPV is not profits - deductions need to be made for paying off the debt.

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Aleksandar Kojic

From: Keith Sandor
Sent: December 28, 2011 7:51 AM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Thanks Michael – nice model!

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Keith

From: Michael Killeavy
Sent: December 27, 2011 3:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
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Importance: High

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Sent: December 28, 2011 8:56 AM
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Subject: Re: OGS Shadow Valuation Model ...

To be clear, IO is not "hung" up" on the nominal cash flow issue, it was something that we collectively agreed to do to see if there was any way to correlate to the years and make sure that there were no big gaps. If it is something that cannot work because of differing forward curves of gas and HOEP and that it is a waste of time, then we need to come clean on that. Even if we got to an EBITDA level on a yearly basis that was reasonably close, that might help with future auditing. I do agree that getting close on an NPV value (regardless of what discount rate is assumed) is helpful.

I have a call today at ten thirty. I am thinking to going back to a set of principles that I talked about with David Livingston awhile back.

Here is my start on them:
1) Any discussion on terminal value goes right to Arbitration and all information needs to be disclosed, including the model;
2) The twenty year contract value will be based on our modelling and assumptions on HRate, capacity, availability, gas costs, O and M, major maintenance, etc., and ANR = INR.
3) Other market revenues in excess of contract will also be determined using our assumptions;
4) Discount Factor discussion needs to factor in inherent risks of operation and appropriate cost of debt and equity;
5) Per your earlier email, if we are just cutting them a cheque, "profits" need to be cut back to cover cost of debt. If we are looking at a replacement project, the profits can be used, assuming that they will finance in a similar fashion.

Other suggestions?

JCB

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Michael.killeavy@powerauthority.on.ca

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 9:10 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

Ok. I've asked Ronak to compare the nominal cash flows. At first blush, if the NPV's are close, then I think the nominal cash flows also must be close. We will do the check, though.

I was focussing on getting the math correct and plugging in reasonable assumptions for the model parameter - the result looks reasonable. I have asked Ronak and Keith to confirm that the model's working properly.

I have no other suggestions beyond us not waiving any rights to documentary evidence in any arbitration.

Tactically, proving damages is TCE's burden and not ours. I fear that with all the work we're agreeing to do with regard to modelling that we're assuming a burden of "disproving" their damages claim and proving what the damages ought to be. This puts us on defence and not offence. Since we don't have access to their detailed information this puts the ratepayer/taxpayer at a disadvantage. My advice is that we avoid having the tables turned on us.

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From: JoAnne Butler
Sent: Wednesday, December 28, 2011 08:55 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

To be clear, IO is not "hung" up" on the nominal cash flow issue, it was something that we collectively agreed to do to see if there was any way to correlate to the years and make sure that there were no big gaps. If it is something that cannot work because of differing forward curves of gas and HOEP and that it is a waste of time, then we need to come clean on that. Even if we got to an EBITDA level on a yearly basis that was reasonably close, that might help with future auditing. I do agree that getting close on an NPV value (regardless of what discount rate is assumed) is helpful.

I have a call today at ten thirty. I am thinking to going back to a set of principles that I talked about with David Livingston awhile back.

Here is my start on them:
1) Any discussion on terminal value goes right to Arbitration and all information needs to be disclosed, including the model;

2) The twenty year contract value will be based on our modelling and assumptions on HRate, capacity, availability, gas costs, O and M, major maintenance, etc., and ANR = INR.
3) Other market revenues in excess of contract will also be determined using our assumptions;
4) Discount Factor discussion needs to factor in inherent risks of operation and appropriate cost of debt and equity;
5) Per your earlier email, if we are just cutting them a cheque, "profits" need to be cut back to cover cost of debt. If we are looking at a replacement project, the profits can be used, assuming that they will finance in a similar fashion.

Other suggestions?

JCB

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 06:12 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

I don't know. I don't know why OEFC is so hung up on this. We don't have their modelling, so comparing line items is very hard to do. If the NPV of free cash flows (bottom line cash flow) is close to what they have in terms of NPV, then we independently have confirmed that their project NPV is about right - based on our reasonable assumptions (but their unrealistic "cost of equity" discount rate).

I cannot get their spread on ANR and INR with our assumptions on physical operation. They have $80M in NPV terms (NPV of ANR-INR). I get it to be about $40M. They likely have a higher nameplate capacity and/or lower heat rate. We used our own assumptions (950 MW and 6800 BTU/kWh). If you check the sensitivity analysis we can get up to their NPV, but we would need to change our physical assumptions for the plant.

I don't think comparing nominal cash flows on a yearly basis will get us very far. I could not replicate a lot of their line items (CCA, IDC, etc.). The underlying formulae and assumptions haven't been disclosed, so it's a mess trying to figure out how they arrived at some of their cash flows.

I'll ask Ronak to do a comparison for you.

Michael

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From: JoAnne Butler
Sent: Wednesday, December 28, 2011 02:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

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Sent: Tuesday, December 27, 2011 03:30 PM
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Aleksandar Kojic

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Aleksandar Kojic

From: Ronak Mozayyan
Sent: December 28, 2011 10:29 AM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Just realized what she meant.

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 10:35 AM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

Ok. Great. How was your time off? I trust Santa was good to you?

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Subject: RE: OGS Shadow Valuation Model ...

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Aleksandar Kojic

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Attachments: NOMINAL DIFFERENCE.xls

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EBITDA

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10	30-Sep-10
OGS	$ -	$ -	$ -	$ -	$ -	$ -
OPA	$ -	$ -	$ -	$ -	$ -	$ -
Delta	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

31-Dec-10	1-Apr-11	1-Jul-11	30-Sep-11	31-Dec-11	1-Apr-12	1-Jul-12	30-Sep-12	31-Dec-12	1-Apr-13
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18	1-Jul-19
$ -	$ -	$ 41.2	$ 167.5	$ 167.8	$ 168.6	$ 169.4	$ 167.8	$ 167.1
$ -	$ -	$ -	$ 162.40	$ 163.98	$ 163.78	$ 167.86	$ 169.22	$ 169.71
$ -	**$ -**	**$ 41.18**	**$ 5.11**	**$ 3.86**	**$ 4.81**	**$ 1.53**	**$ 1.42**	**$ 2.58**

1-Jul-20		1-Jul-21		1-Jul-22		1-Jul-23		1-Jul-24		1-Jul-25		1-Jul-26		1-Jul-27
$	170.3	$	173.5	$	170.7	$	171.0	$	175.0	$	174.4	$	159.1	$	172.6
$	170.64	$	170.82	$	169.77	$	169.64	$	169.85	$	170.17	$	170.29	$	158.01
$	**0.38**	**$**	**2.69**	**$**	**0.95**	**$**	**1.37**	**$**	**5.16**	**$**	**4.24**	**$**	**11.24**	**$**	**14.59**

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$ 176.2	$ 176.1	$ 178.4	$ 179.0	$ 184.1	$ 149.1	$ 154.8	$ 155.5	$ 156.3
$ 171.28	$ 172.06	$ 173.08	$ 172.20	$ 174.30	$ 175.81	$ -	$ -	$ -
$ 4.93	**$ 4.01**	**$ 5.34**	**$ 6.80**	**$ 9.83**	**$ 26.68**	**$ 154.82**	**$ 155.53**	**$ 156.26**

1-Jul-37	1-Jul-38	1-Jul-39	1-Jul-40	1-Jul-41	1-Jul-42	1-Jul-43	1-Jul-44
$ 157.0	$ 157.8	$ 158.5	$ 159.3	$ 160.1	$ 161.0	$ 118.1	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 157.01	**$ 157.77**	**$ 158.54**	**$ 159.33**	**$ 160.13**	**$ 160.96**	**$ 118.05**	**$ -**

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That's what I was trying to understand on Thursday when I was asking about goalseeking for the CAPEX using the CCA allowance for the first year, they are definitely not calculating it the way we did for our models. I'll look into it some more. Keith is looking in his CFA books for possible ways to calculate taxes and I'm going to go over your model.

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Sent: Wednesday, December 28, 2011 09:50 AM
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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 11:10 AM
To: Ronak Mozayyan
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I think their calculation is seriously messed up.

I understand now all the trouble you were having!

When ANR=INR the NPV has to be lower than in thee case when we assume market revenues are earned (unless they consistently operate in the market at a loss).

You are completely vindicated - the TCE spreadsheet is messed up not your understanding of what's going on.

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Sent: Wednesday, December 28, 2011 11:01 AM
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That's what I was trying to understand on Thursday when I was asking about goalseeking for the CAPEX using the CCA allowance for the first year, they are definitely not calculating it the way we did for our models. I'll look into it some more. Keith is looking in his CFA books for possible ways to calculate taxes and I'm going to go over your model.

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 10:55 AM
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Excellent. Thank you. I'll forward this to JoAnne.

In the absence of proof, I just assumed they'd hit COD on the milestone. I remain to be convinced that an earlier start was possible.

Do you or Keith have any idea how they did their CCA calculation?

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Aleksandar Kojic

From: Ronak Mozayyan
Sent: December 28, 2011 12:17 PM
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Not at this time...

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