

**Aleksandar Kojic**

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**From:** Deborah Langelaan  
**Sent:** November 8, 2010 10:07 AM  
**To:** Michael Killeavy  
**Subject:** FW: Letter  
**Attachments:** DOCS-#9768822-v2-LTR\_OPA\_Oct\_28\_10  
\_re\_TransCanada\_-\_TransCanada\_Letterhead.doc

Michael;

This is the letter I was referring to earlier.

Deb

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

**From:** JoAnne Butler  
**Sent:** November 5, 2010 2:51 PM  
**To:** Michael Lyle  
**Cc:** Deborah Langelaan  
**Subject:** Fw: Letter

Comments? Should arrive Monday afternoon but I can speak with Karl on Monday morning...

JCB

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

**From:** Karl Johansson <[karl\\_johansson@transcanada.com](mailto:karl_johansson@transcanada.com)>  
**To:** JoAnne Butler  
**Sent:** Fri Nov 05 12:56:07 2010  
**Subject:** Letter

Hi JoAnne

Here is a copy of the letter we are proposing to send Colin on Monday afternoon. As we discussed, I just wanted to make sure you saw it and we had an opportunity to discuss any concerns you may have before we sent it.

Please call me if you wish to discuss.

Regards

Karl

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November 8, 2010

Mr. Colin Anderson  
Chief Executive Officer  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario M5H 1T1

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

As you know, on October 7, 2010, OPA notified TransCanada Energy Ltd. that it would not proceed with the Contract, the effect of which was to repudiate the Contract. OPA also acknowledged that TCE was entitled to its reasonable damages, including the financial value of the Contract. In a without prejudice letter dated October 8, 2010, TCE acknowledged OPA's October 7<sup>th</sup> letter and expressed its willingness to initiate discussions on an efficient and economical wind-up of the Contract work. TCE looks forward to continuing to meet and proceeding on the basis of its October 8, 2010 letter.

In the interim, TCE wishes to confirm its acceptance of the OPA's repudiation of the Contract. TCE continues to reserve its right to sue the OPA and others for damages should our settlement negotiations not proceed satisfactorily.

Sincerely,

TransCanada Energy Ltd.

Alex Pourbaix  
President, Energy and Oil Pipelines

## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** November 16, 2010 3:50 PM  
**To:** Dan Slavei; Robert Godhue  
**Subject:** FW: Ontario Power Authority - Litigation Counsel Request for Submissions ....  
**Attachments:** Request For Submissions - Litigation Counsel 20 Oct 2010 - TCE.pdf  
  
**Importance:** High

As requested ...

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

---

**From:** Michael Killeavy  
**Sent:** October 20, 2010 2:28 PM  
**To:** Michael Killeavy  
**Subject:** Ontario Power Authority - Litigation Counsel Request for Submissions ....  
**Importance:** High

The Ontario Power Authority is seeking litigation counsel to advise it with respect to a matter involving one of its contract counterparties. Your firm is invited to respond to the attached Request for Submissions. If you do not intend to respond could you kindly notify us?

Thank you,  
Michael

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



**ONTARIO POWER AUTHORITY  
REQUEST FOR SUBMISSIONS**

**Legal Services – Litigation Counsel**

**CONFIDENTIAL**

**Services Required**

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by a contract counterparty, TransCanada Energy Ltd.

**Background**

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site: <http://www.powerauthority.on.ca/>

The OPA is currently managing over 16,000 MW of electricity generation contracts, which include large-scale gas-fired generation and hydropower contracts, as well as smaller-scale Feed-in Tariff and Renewable Energy Standard Offer Program ("RESOP") contracts.

**Scope of Services and Qualifications**

The retained counsel (the "Litigation Counsel") will be required to provide advice on managing this dispute to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

Counsel must demonstrate an ability to provide strong litigation advice in relation to managing the disputes and defending claims made against the OPA, must have a strong working knowledge of the electricity sector in Ontario, and electricity generating contracts (both contingent support payment and power purchase agreements). Knowledge of the OPA's electricity generation contracts will be considered an asset.

It is imperative that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA.

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA.

We understand that you may require additional information with respect to the potential litigation matter in order to prepare your submission. Additional information is available upon your request (together with

your confirmation that you have completed conflict searches and not identified any conflicts which would preclude you from acting in connection with the matter for which you are seeking additional information).

Please note that counsel for generation procurements, contract management, and for regulatory hearing work is not being retained pursuant to this Request for Submissions. Counsel for generation procurements, contract management and regulatory hearing work will be retained if, and as, needed pursuant to a separate process.

### **Term of Retainer**

The term of the retainer will be for a period of 12 months and will be extended, as needed, upon written notice. Retainers will be non-exclusive. The OPA may terminate the retainer at any time, in its sole discretion, upon written notice.

### **Submission Request**

If you wish to be considered to provide the above-noted services, please submit the following, preferably not later than 5:00:00 pm on 25 October 2010:

#### **A. Description of background and qualifications:**

1. Describe the names of the partners and associates you would expect to assign to the Services, describe the expected services to be provided by each lawyer and provide their resumes. If your firm has multiple offices and you anticipate drawing on the expertise of lawyers not located in Toronto, please identify the jurisdiction in which such lawyers are located. Please identify the partner who will be in charge of the retainer for your firm;
2. Describe your firm's relevant experience, including a brief summary of any notable litigations, issues and/or matters or cases handled by your firm which you feel demonstrate the nature and extent of your firm's expertise;

If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

#### **B. Cost:**

1. State the rates at which the services of partners, associates and non-lawyer law clerks, paralegals or other paraprofessionals would be provided to the OPA. Include:
  - a. For each lawyer whose resume is provided, the rate you propose to charge the OPA.
  - b. For each applicable category of billable, non-lawyer personnel including law clerk, paralegal or other paraprofessional, the rate you propose to charge the OPA.
  - c. A schedule of all out-of-pocket disbursements which you anticipate will result in a charge to the OPA and the rate for each. Note that the OPA expects that disbursements will be charged at the firm's actual out-of-pocket cost, without mark-up.
2. In addition, you may propose any alternative fee structure deemed appropriate as a supplement to the fees requested above.

In setting forth its qualifications, each law firm should provide, in concise but adequate detail, the information sought above. Responses should not exceed 20 single-sided pages (including resumes) and should be prepared on 8 1/2 x 11-inch paper using at least 12 point type with margins of no less than one-inch.

The OPA may follow-up with requests for additional information (for example, references) and may wish to interview candidates.

This request for submissions is a non-binding invitation to submit a response for consideration. This request does not create, and should not be construed as creating, any contractual relations or obligations between the OPA and any candidate.

Submissions can be made by email to the email address given below.

#### **Selection Timing**

The OPA expects to complete its selection process not later than 29 October 2010, however, this timing may be subject to change.

#### **Questions and Submissions**

Questions and submissions should be directed to:

Michael Killeavy  
Director, Contract Management  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6288  
Fax: 416-969-6071  
Email: [michael.killeavy@powerauthority.on.ca](mailto:michael.killeavy@powerauthority.on.ca)

**Please reference:** Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your submission.

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** November 18, 2010 6:43 PM  
**To:** 'RSebastiano@osler.com'  
**Cc:** Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Fw: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

**Importance:** High

Again, as you can see from this email, TCE is jamming us again. I thought we had until the end of November. I will need to check the MPS-TCE agreement again.

We intend to go with a 450MW peaking plant using the Mitsubishi turbines. Deb and I will draft a response that we'll run by you tomorrow morning.

As we have discussed, if we get firm pricing from TCE through MPS and it's acceptable to us I don't know that there is much value in this option to extend, since we'd go with the turbines. If the pricing isn't reasonable, then we may want to use other GT for the plant, and the option to extend would have value.

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](mailto:Michael.killeavy@powerauthority.on.ca)

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

**From:** Terry Bennett <[terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)>  
**To:** Deborah Langelaan; JoAnne Butler; Michael Killeavy; Amir Shalaby; Ben Chin  
**CC:** Chris Breen <[chris\\_breen@transcanada.com](mailto:chris_breen@transcanada.com)>; Karl Johannson <[karl\\_johannson@transcanada.com](mailto:karl_johannson@transcanada.com)>; Terri Steeves <[terri\\_steeves@transcanada.com](mailto:terri_steeves@transcanada.com)>; Terry Bennett <[terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)>; John Mikkelsen <[john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)>  
**Sent:** Thu Nov 18 18:24:53 2010  
**Subject:** Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

Under the current terms of the MPS Contract, after November 19, 2010 the termination payment under the MPS Contract increases to 60% of such contract price provided that notice of termination is given on or before December 21, 2010. As we have discussed, MPS has proposed

amending the MPS Contract to reduce the termination payment due for termination after November 19 and on or before December 21 to 55%. Termination of the MPS Contract after December 21st will trigger a substantial termination payment (75% of the contract price) which may be avoided if the OPA and TCE reach an agreement on an alternative project.

In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly, unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

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## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** November 19, 2010 4:54 AM  
**To:** 'RSebastiano@osler.com'  
**Cc:** Michael Lyle; JoAnne Butler; Deborah Langelaan; 'PIvanoff@osler.com'; 'ESmith@osler.com'  
**Subject:** Re: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Thanks. I didn't think it was such a pressing issue.

Deb and I'll draft a response this morning for your review and 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

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

**From:** Sebastiano, Rocco <RSebastiano@osler.com>  
**To:** Michael Killeavy  
**CC:** Michael Lyle; JoAnne Butler; Deborah Langelaan; Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>  
**Sent:** Thu Nov 18 21:39:18 2010  
**Subject:** Re: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Michael,

We don't know the terms of the original turbine supply agreement so we cannot comment on whether TCE has properly quoted the cancellation fees. However, we can tell you that their interpretation of the letter agreement of October 29th is not correct. That letter agreement does not have a November 19 deadline to further extend as Terry suggests in his email. As I indicated in my email of yesterday, we have four options and the option we recommended was to request TCE to ask MPS to agree to a one month extension of the suspension to the end of December with the understanding that they provide TCE with a firm price for the fast start turbine conversion by sometime in early or mid-December.

Regards, Rocco

**From:** Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
**Sent:** Thursday, November 18, 2010 06:42 PM  
**To:** Sebastiano, Rocco  
**Cc:** Michael Lyle <Michael.Lyle@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>

Subject: Fw: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Again, as you can see from this email, TCE is jamming us again. I thought we had until the end of November. I will need to check the MPS-TCE agreement again.

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Michael

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

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

From: Terry Bennett <terry\_bennett@transcanada.com>  
To: Deborah Langelaan; JoAnne Butler; Michael Killeavy; Amir Shalaby; Ben Chin  
CC: Chris Breen <chris\_breen@transcanada.com>; Karl Johansson  
<karl\_johansson@transcanada.com>; Terri Steeves <terri\_steeves@transcanada.com>; Terry Bennett <terry\_bennett@transcanada.com>; John Mikkelsen <john\_mikkelsen@transcanada.com>  
Sent: Thu Nov 18 18:24:53 2010  
Subject: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

Under the current terms of the MPS Contract, after November 19, 2010 the termination payment under the MPS Contract increases to 60% of such contract price provided that notice of termination is given on or before December 21, 2010. As we have discussed, MPS has proposed amending the MPS Contract to reduce the termination payment due for termination after November 19 and on or before December 21 to 55%. Termination of the MPS Contract after December 21st will trigger a substantial termination payment (75% of the contract price) which may be avoided if the OPA and TCE reach an agreement on an alternative project.

In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly,

unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

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## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** November 19, 2010 11:03 AM  
**To:** Sebastiano, Rocco; Deborah Langelaan; JoAnne Butler; Kevin Dick  
**Cc:** Ivanoff, Paul; Smith, Elliot  
**Subject:** RE: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

We need the permit information to inform government about its options re: an NYR-like regulation. They've asked for this.

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

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

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
**Sent:** Fri 11/19/2010 10:50 AM  
**To:** Deborah Langelaan; JoAnne Butler; Michael Killeavy; Kevin Dick  
**Cc:** Ivanoff, Paul; Smith, Elliot  
**Subject:** RE: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

Deb,

A few quick thoughts as I have to head out to an 11 am meeting, but I will ask Elliot and Paul to co-ordinate to provide any additional comments that they may have.

I think that it makes sense to ask for the OGS financial model so that we can see the make-up of their costs and IRR, but I think that we should consider sending that request under a separate email as it does not relate to the MPS turbine contract issue.

Secondly, why are we asking for a list of permits for OGS and the appeals process? I am concerned about us getting too much into their permitting process and the need for the appeals that they have undertaken at this stage. It will be incumbent upon that to explain to us why the suggested \$500k in settlement costs is reasonable and prudent under the circumstances, which may require them to explain their permitting process in more detail at that time..

Thanks, Rocco

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]  
Sent: Friday, November 19, 2010 10:39 AM  
To: JoAnne Butler; Michael Killeavy; Kevin Dick; Sebastiano, Rocco; Smith, Elliot  
Subject: FW: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")  
Importance: High

All;

Would you please review the following draft response to Terry's e-mail and provide me with your comments?

"Confidential and Without Prejudice

It's the OPA's understanding that the terms of the Letter Agreement are such that TCE and MPS agree to meet no later than November 19th; however, there doesn't seem to be anything to suggest that notice must be given on or before this date. It's our impression that if nothing is done by November 19th the suspension of the work will end on November 30th and the cancellation fees stays amended at 50% for Month 15. To assist us with our discussions it would be greatly appreciated if TCE would provide a copy of the Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc.

The OPA is agreeable to extending the suspension of Supplier's Work until December 31, 2010 with the understanding that MPS will provide TCE with a firm price (including scope) to convert from 501GAC to 501GAC Fast no later than December 10, 2010. The firm price should be valid up to January 31, 2011.

We also request that TCE provide us with a copy of the Oakville Generating Station (OGS) financial model showing how the NRR was derived. It would also be helpful if you would provide us with a list of required permits for the OGS and the appeals process that would be followed in the event the permits are not granted."

Thanks,

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |

Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | | deborah.langelaan@powerauthority.on.ca  
<mailto:%7Cdeborah.langelaan@powerauthority.on.ca> |

---

From: Terry Bennett [mailto:terry\_bennett@transcanada.com]  
Sent: November 18, 2010 6:25 PM  
To: Deborah Langelaan; JoAnne Butler; Michael Killeavy; Amir Shalaby; Ben Chin  
Cc: Chris Breen; Karl Johannson; Terri Steeves; Terry Bennett; John Mikkelsen  
Subject: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and  
MPS Canada, Inc. (the "MPS Contract")  
Importance: High

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

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In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly, unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

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\*\*\*\*\*

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** November 19, 2010 1:01 PM  
**To:** Deborah Langelaan  
**Cc:** JoAnne Butler; 'rsebastiano@osler.com'  
**Subject:** FW: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

**Importance:** High

I don't think that we want a telephone conversation on the TSA. They can get MPS to consent to its release. Until we review the agreement we don't know what questions to ask.

If they still won't release it I think that we just respond back like we did to their proposal to agree with the legal services settlement with the Town of Oakville.

I think that if he wants a telephone call on the second item we need to confirm what was said in writing via email.

---

**From:** Terry Bennett [mailto:terry\_bennett@transcanada.com]  
**Sent:** November 19, 2010 12:47 PM  
**To:** Deborah Langelaan  
**Cc:** Chris Breen; Karl Johansson; JoAnne Butler; Amir Shalaby; Ben Chin; Michael Killeavy; Terri Steeves; John Mikkelsen  
**Subject:** RE: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")  
**Importance:** High

Thanks for the response Deb.

The Equipment Supply Contract has a confidentiality clause that says the Contract is confidential and proprietary. However, I think I can clarify some matters for you. The Letter Agreement we negotiated and sent to you amends the fee for cancellation that takes effect in November. As is fairly standard in commercial agreements of this nature, the termination clause has a 10 day prior notice provision. So if we wish to make our termination effective in the month of November, we need to serve notice on MPS today.

I think a telephone call to discuss this and your second request would be a good idea. Are you and your team available?

Terry

---

**From:** Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]  
**Sent:** Friday, November 19, 2010 12:06 PM  
**To:** Terry Bennett  
**Cc:** Chris Breen; Karl Johansson; JoAnne Butler; Amir Shalaby; Ben Chin; Michael Killeavy; Terri Steeves; John Mikkelsen  
**Subject:** RE: Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

**Confidential and Without Prejudice**

Terry;

It's the OPA's understanding that the terms of the Letter Agreement are such that TCE and MPS agree to meet no later than November 19th; however, there doesn't seem to be anything to suggest that notice must be given on or before this date. It's our impression that if nothing is done by November 19th the suspension of the work will end on November 30th and the cancellation fees stays amended at 50% for Month 15. To assist us with our discussions it would be greatly

appreciated if TCE would provide (i) a copy of the Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc and (ii) a firm price (including scope) by December 10, 2010 and valid to January 31, 2011, to convert from 501GAC to 501GAC Fast.

Kind Regards,  
Deb

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

---

**From:** Terry Bennett [[mailto:terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)]  
**Sent:** November 18, 2010 6:25 PM  
**To:** Deborah Langelaan; JoAnne Butler; Michael Killeavy; Amir Shalaby; Ben Chin  
**Cc:** Chris Breen; Karl Johannson; Terri Steeves; Terry Bennett; John Mikkelsen  
**Subject:** Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")  
**Importance:** High

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

Under the current terms of the MPS Contract, after November 19, 2010 the termination payment under the MPS Contract increases to 60% of such contract price provided that notice of termination is given on or before December 21, 2010. As we have discussed, MPS has proposed amending the MPS Contract to reduce the termination payment due for termination after November 19 and on or before December 21 to 55%. Termination of the MPS Contract after December 21st will trigger a substantial termination payment (75% of the contract price) which may be avoided if the OPA and TCE reach an agreement on an alternative project.

In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly, unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

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## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** November 23, 2010 8:56 AM  
**To:** John Zych  
**Subject:** FW: Turbine Supply Agreement ("TSA") - Release Under FIPPA ...

John,

Here is a copy of the email we sent to TransCanada Energy ("TCE") today regarding the issue we discussed yesterday afternoon.

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

**From:** Deborah Langelaan  
**Sent:** November 23, 2010 8:39 AM  
**To:** [terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)  
**Cc:** 'Terri Steeves'; Michael Killeavy  
**Subject:** FW: Turbine Supply Agreement ("TSA") - Release Under FIPPA ...

Good Morning Terry;

We have discussed Mitsubishi Power Systems' ("MPS") concerns with respect to providing the Equipment Supply Agreement to the OPA with our internal FIPPA expert. In the event the OPA were to receive a request under the FIPPA to disclose it, it may be possible for the OPA to prevent its disclosure; however, we cannot guarantee that we would be successful. We suggest that MPS and TCE seek their own legal advice as to how best to protect their interests in this regard. Having said this, the OPA still requires a complete, unredacted copy of the Equipment Supply Agreement.

Deb

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



## Aleksandar Kojic

---

**From:** Ben Chin  
**Sent:** January 13, 2011 11:35 AM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy; JoAnne Butler  
**Subject:** FW: for the morning  
**Attachments:** Thursday morning 1.ppt; Thursdaymorning 2.pptx; Thursdaymorning 3; Thursdaymorning 4; Thursdaymorning 5 (2).doc

Guys, here are the materials we used to talk about outreach with our friends today. We're going to make some changes (requested changes, and changes I've requested)

On TC deck, I've asked them to add a slide on competitors' sites (currently there's only a deck for Eagle St and Boxwood).

They'll also be changing 515 MW to 450

On PSP's deck, we've been asked to take out Guelph, mention LTEP, and be more graphic on the residential impact of Tx alternatives.

So now we wait to get green light to go to Cambridge...perhaps as early as next week, but more likely the week after. And we have time to refine these products



**Ben Chin** | Vice President, Corporate Communications  
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1  
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: [ben.chin@powerauthority.on.ca](mailto:ben.chin@powerauthority.on.ca)  
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---

**From:** Ben Chin  
**Sent:** January 12, 2011 5:17 PM  
**To:** 'MacLennan, Craig (MEI)'; Johnston, Alicia (MEI); Mullin, Sean (OPO)  
**Subject:** for the morning

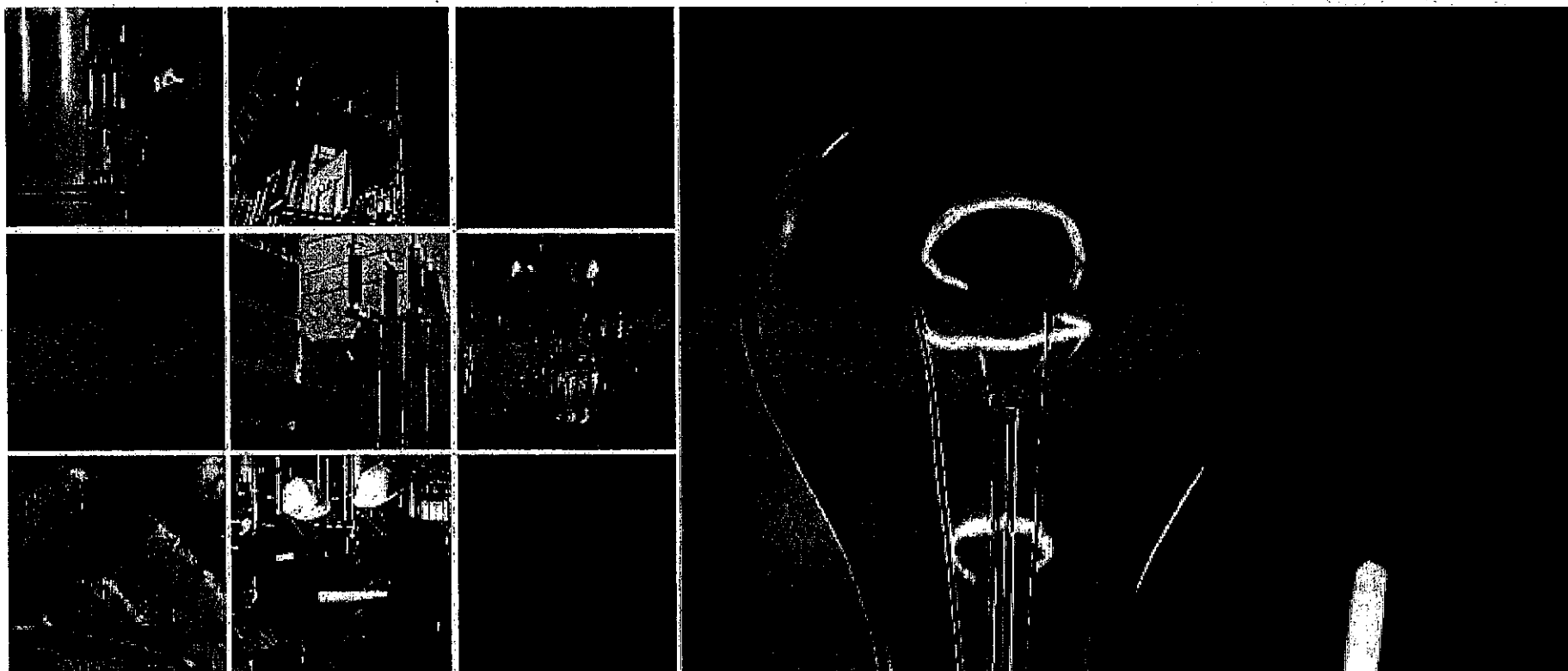
Some bedside reading materials...Index: 1 their powerpoint, 2 our powerpoint, 3 their/our outreach plan, 4 their media advisory (to show you what it would look like IF they did one), 5 our key messages and q's and a's



**Ben Chin** | Vice President, Corporate Communications  
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1  
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: [ben.chin@powerauthority.on.ca](mailto:ben.chin@powerauthority.on.ca)  
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# TransCanada Energy Ltd. KWCG Generating Station

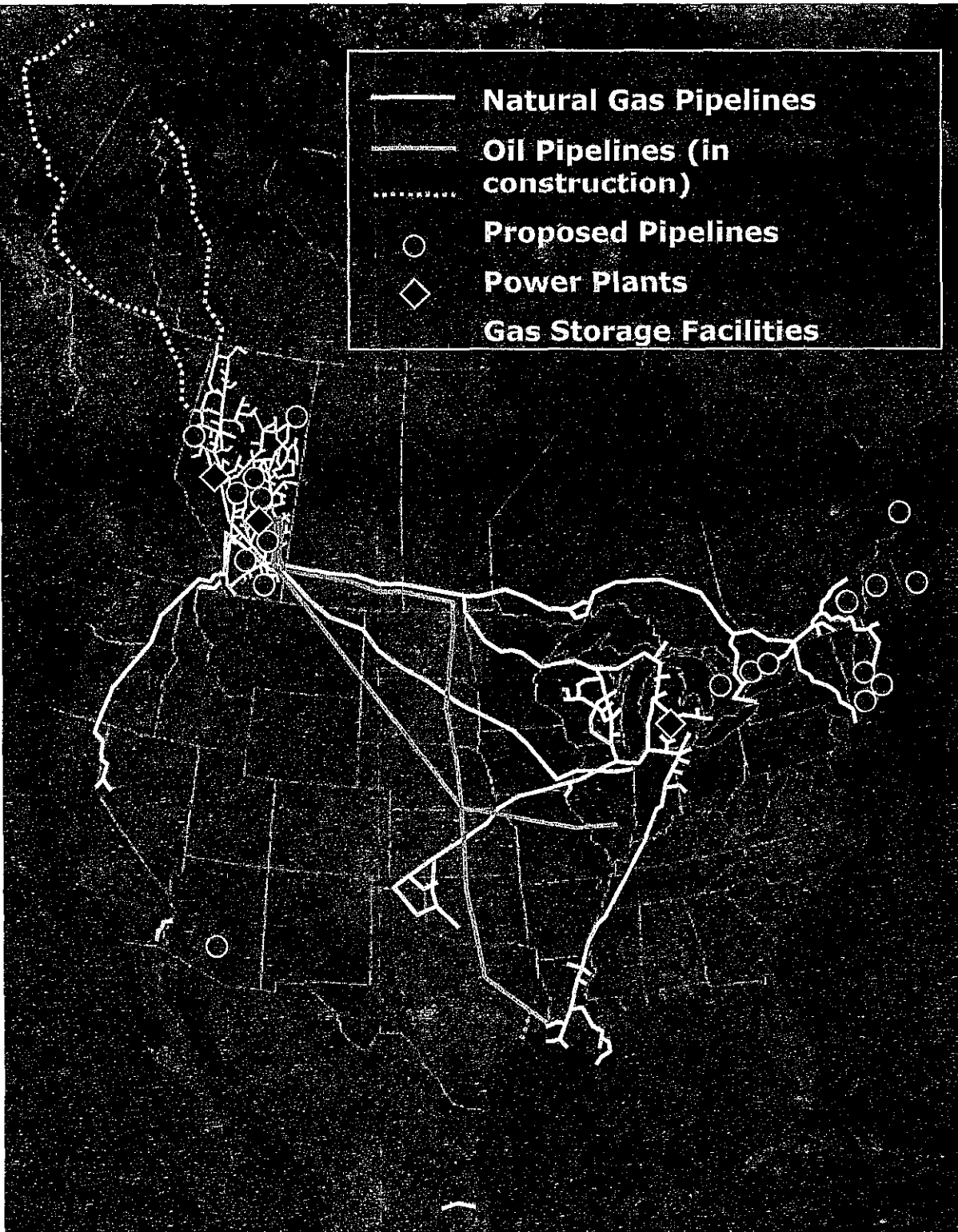
515 MW Simple Cycle Facility – Cambridge, Ontario

January 2011



# Introductions

- *Terry Bennett, Vice President Power Development*
- *Chris Breen, Government Relations*
- *Christine Cinnamon, Environment*
- *John Mikkelsen, Director Business Development*

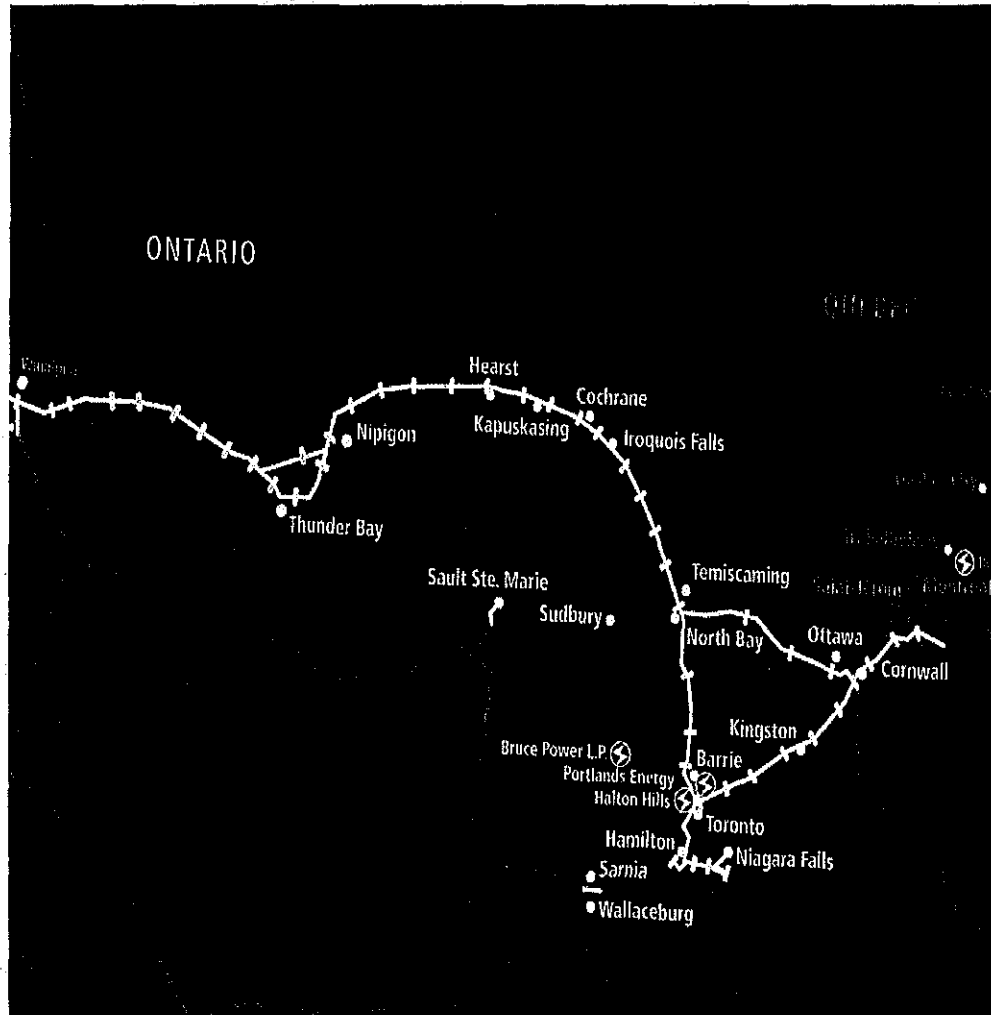


# **TransCanada Corporation (TSX/NYSE: TRP)**

## **Portfolio of Quality Assets**

- **60,000 km of wholly owned natural gas pipeline**
- **Interests in an additional 7,800 km of natural gas pipeline**
- **15 Bcf/d**
- **355 Bcf of natural gas storage capacity**
- **19 power plants**
- **10,900 megawatts**
- **Crude oil pipeline under construction**

# Ontario's Largest Private Power Generator



## Facilities:

7,997 km Pipeline

167 Meter Stations

78 Compressor Units

Bruce Nuclear Unit A (49%)

Bruce Nuclear Unit B (32%)

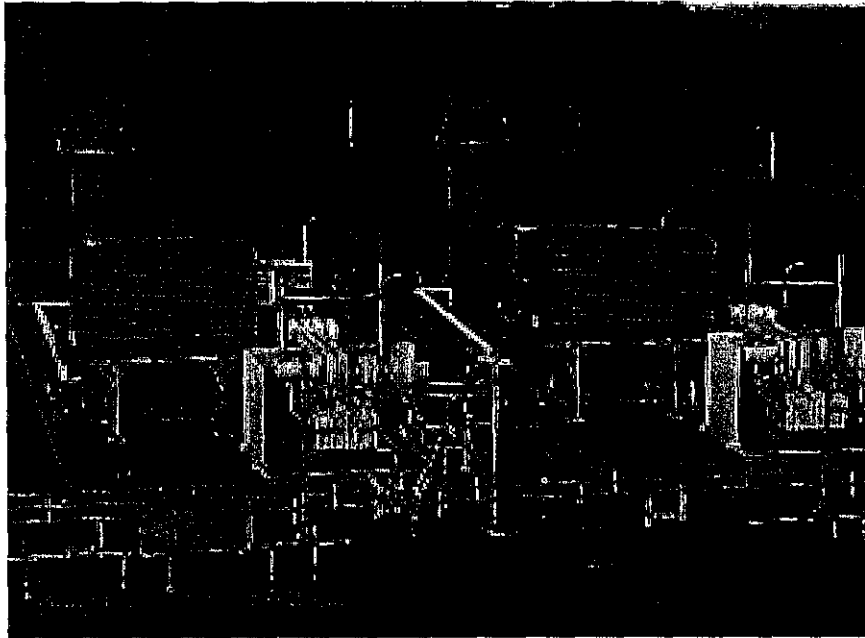
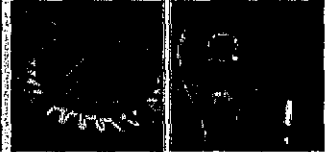
Portlands Energy Center (50%)

Halton Hills Generating Station

3,430 MW generating capacity



# TransCanada Generation Solution



- 515 MW simple cycle generating facility
- Two high efficiency 257 MW natural gas fired industrial gas turbines with low NOx combustion systems
- 230 kV connection to Hydro One M20D & M21D circuits
- 16 min start-up capability to 60% load
- Ramp rate of 13%/min
- Gas delivered by Union Gas

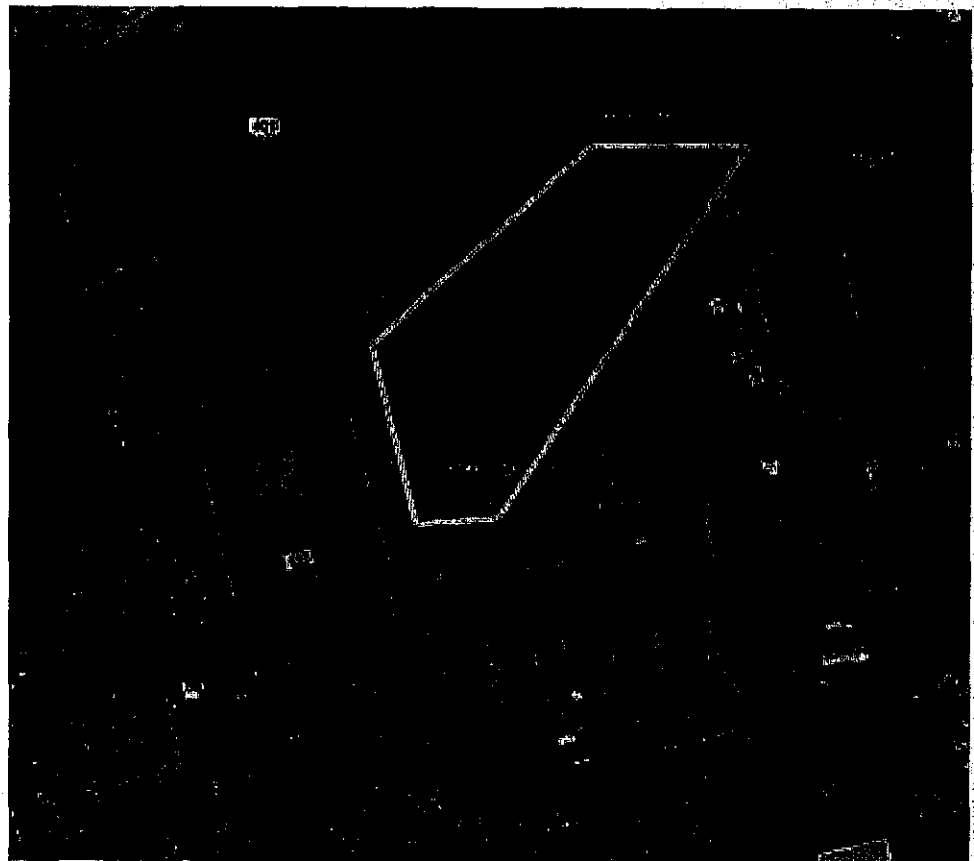
## *Mitigating Potential Concerns*



- Environmental/human health commitments:
  - NOISE: All major facilities enclosed; Silencers, sound attenuation; (45 dBA night / 50 dBA daytime)
  - EMISSIONS: Low NOx technology
- Minimal Infrastructure Needs
  - Proximity to interconnections
  - Minimal construction disruption (24 months)
- Consistent with local land use
- Minimal water and sewer requirements

## Eagle Street

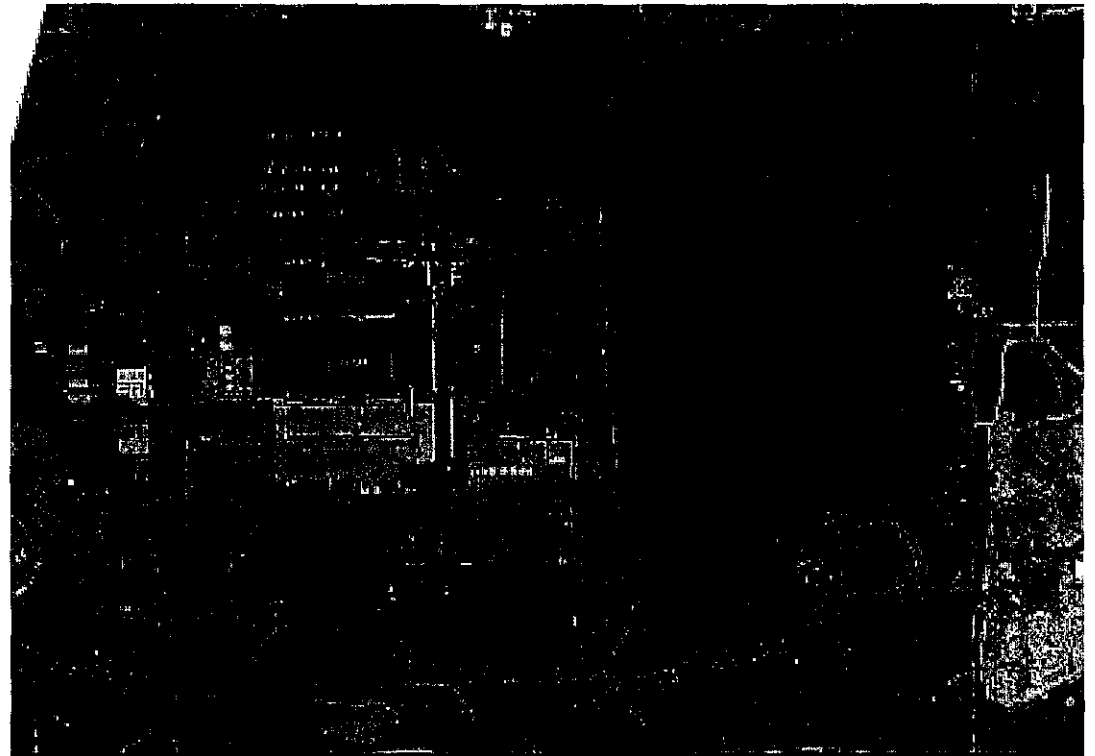
- Connection proximate at Preston TS (<2 km)
- 51 acres – room for construction and laydown
- Owned by TransCanada
- Industrial zoning
- Road and rail access
- Consistent with surrounding industrial activities
- Provincially significant wetlands bisect site
- Proximity to receptors:
  - closest resident ~250m
  - closest school ~475m



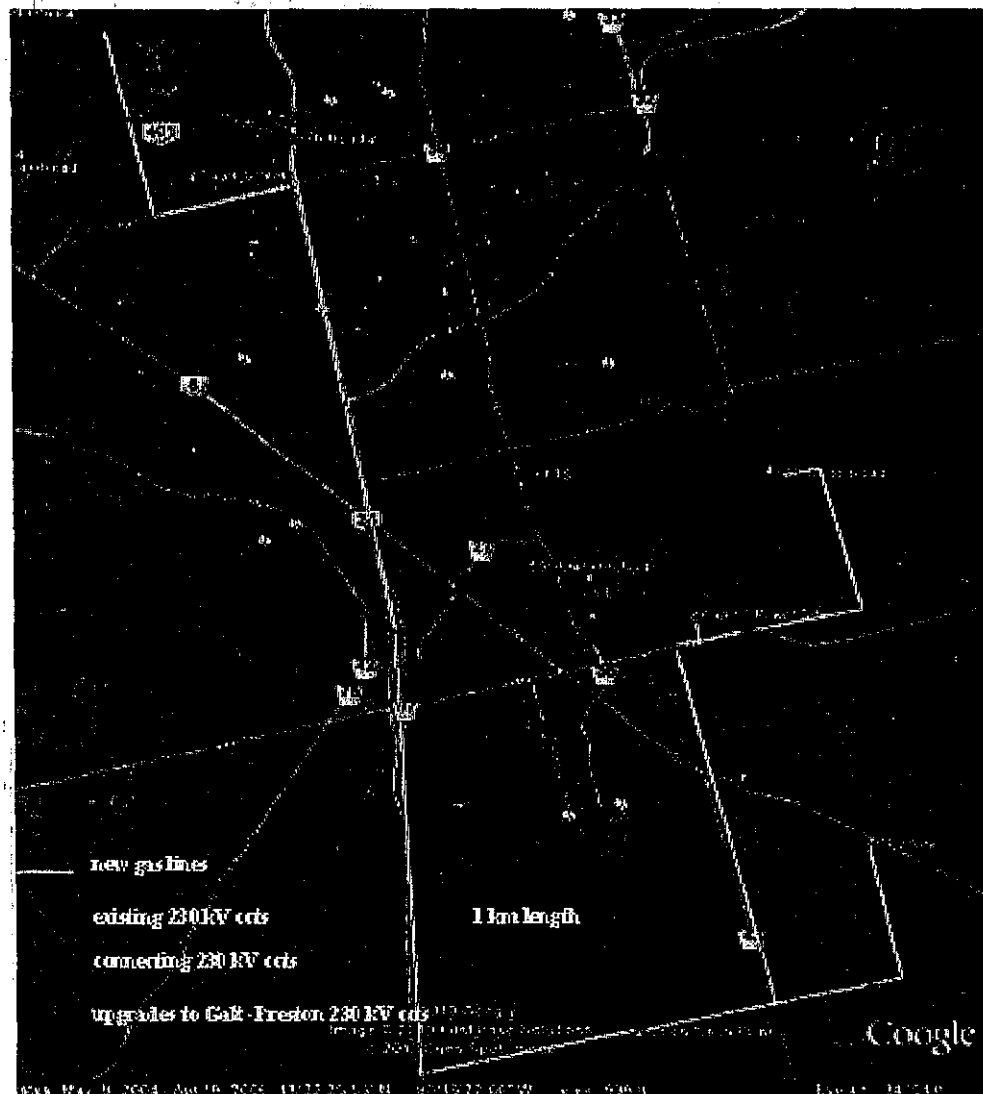
## Boxwood Industrial Park



- ~3.5 km Connection to Preston TS under 401 (require Section 92) – possible point of supply to new TS
- 156 acres (30 for facility) – room for construction and laydown
- Owned by City of Cambridge
- Road and rail access
- Planned Industrial park (anchor tenant)
- Longer gas connection
- No nearby residential communities
- Proximity to receptors:
  - closest resident >1000m\*
  - closest school > 2500m



# Project Interconnections



1. Routes shown for illustrative purposes only
  - Final route selection subject to Environmental Assessment (gas line) and Section 92 leave to construct (power line) processes.

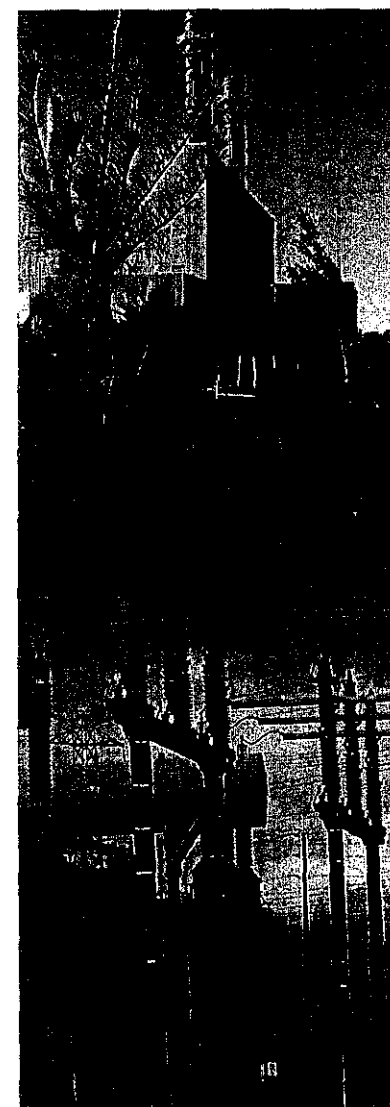
# Positive Economic Impact

## **Short Term (Prior to Commercial Operation)**

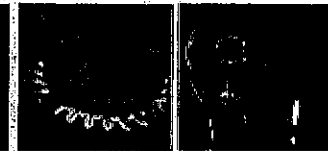
- \$ 700 million investment
- Up to 200 construction jobs over 24 mths
- Spin offs for local suppliers
- Development fees to the City

## **Long Term (After Commercial Operation)**

- Strengthens electrical supply / reliability
- Industrial Park infrastructure
- 10 high technology careers
- 20 year operation and maintenance opportunities for local suppliers
- Annual municipal tax payment to the City



# Community Benefits



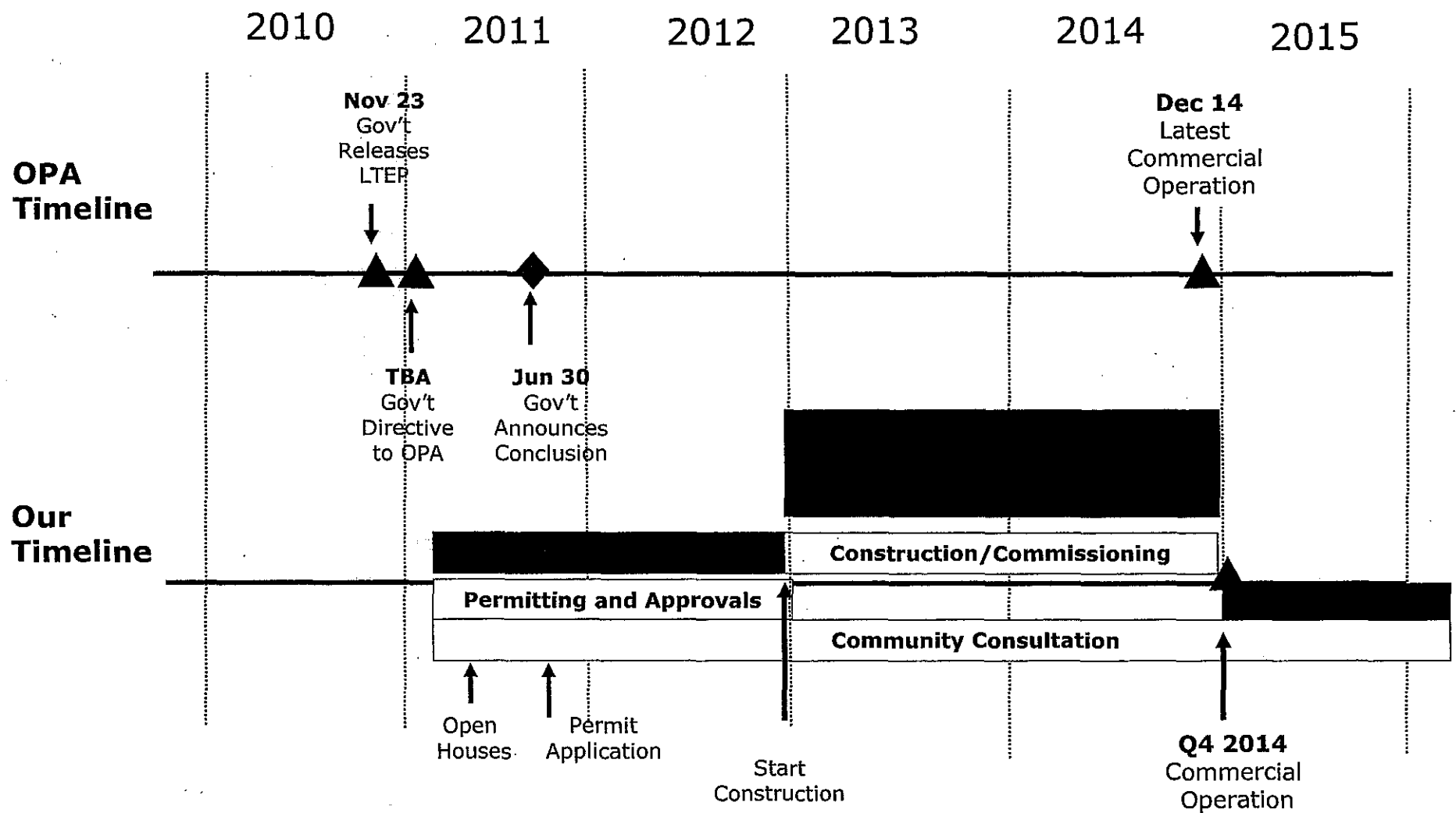
## Typical Components

- Community Liaison Committee
- Community fund contribution to health, education, environment or civic investment projects
- Fund Peer review of ERR and extended review process

## Project Specific Components (examples)

- Architectural treatment/Landscaping
- Front end financing of project related infrastructure (water / sewer, storm water)
- Purchase/ Leasing of municipal lands for project site construction and easements
- Road Improvements related to the project

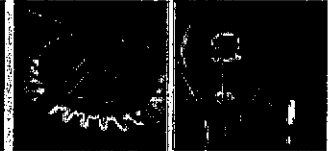
# Development Schedule





# TransCanada Generating Station

## *Discussion*



- City outlook on facility and location
- Supply and allocation of water and sewer services will be available for 2014 start-up in sufficient capacity
- Interpretation of M3 Zoning
- Process for seeking variance, if applicable
- Storm water management process
- City's permitting and approvals process

## TransCanada Generating Station

### *Next Steps*



We recognize need for early consultation with stakeholders including the City and First Nations

TransCanada commits to:

- Work with the City and stakeholders to mitigate issues related to this project
- Provide Site tour / visit of Halton Hills GS

TransCanada looks forward to working with the City on:

- Location
- Challenges and Opportunities
- Procedural requirements

## **Key Messages**

**Cambridge needs a secure supply of electricity to maintain reliability to families, businesses and communities in the region.**

- Electricity infrastructure in the Cambridge area does not meet reliability standards set by IESO
- Cambridge area is vulnerable to outages which have occurred twice – Jan 2003 and in the 80's
- The 2003 incident affected 45,000 customers for 5 hours
- OPA has indicated need for a 450 MW peaking facility along with other investments in electricity infrastructure in 2007 IPSP – and is contained again in current LTEP

**Investing in a secure supply of electricity in Cambridge is vital to attracting businesses to the area and to ensure the future growth of the community.**

- Cambridge area (KWCG) is among Ontario's largest load centres with over 500,000 people
- Population and electricity demand growth was among highest in province before the recession, and is forecast to grow at a rate higher than provincial average over next 20 years
- Electricity demand in the area has already recovered to pre-recession levels in 2010 (approx 1400 MW)
- Future investments in Cambridge, including business parks, high-tech industry and manufacturing will drive further growth
- The area has been identified as a Prime Industrial/Strategic Reserve in the Region of Waterloo Official Plan

**Power generation is one part of an integrated solution for the Cambridge area, which includes conservation and necessary upgrades to the electricity infrastructure.**

- OPA is part of a working group that is working together to implement an integrated solution (includes 4 LDC's, the IESO and Hydro One)
- OPA designed Conservation programs currently being delivered by your local distributors include: Peaksaver, ERIP, Commercial Direct Install and Appliance Retirement
- Recent transmission reinforcement (addition of a new 230/115 kV transformer at Cambridge Preston TS in 2007 to reinforce the supply to Kitchener and to some extent Cambridge)
- New generation in Cambridge area include Bio Gas (4 MW), Solar (15 MW) Hydro (1 MW) and Wind (120 MW)
- These measures have limited ability to meet the needs of future growth

- 2007 IPSP indicated 450 MW peaking facility as preferred alternative to any major new transmission could be disruptive to many more people and neighbourhoods.

## **Q's and A's**

### **Why now?**

Cambridge needs a secure supply of electricity to restore reliability to families, businesses and communities in the region. The OPA indicated a need for a 450 MW peaking facility along with other investments in electricity infrastructure more than 3 years ago in the 2007 IPSP – and this is repeated in the current Long-Term Energy Plan.

Investing in a secure supply of electricity in Cambridge is vital to attracting businesses to the area and to ensure the future growth of the community.

### **What about emissions from a gas plant?**

Natural gas generation is much cleaner than many other dispatchable types of generators like Coal or Oil. As well, a peaking facility typically runs only when there is a need, about 10-20% of the time.

TransCanada has a strong record of operating facilities that meet or exceed laws and standards in many jurisdictions and will be working with the Ministry of Environment and the community to ensure that the facility is fully compliant.

### **Aren't combined cycle gas plants cleaner than a simple cycle peaker like this proposed facility?**

Both types of facilities offer a cleaner alternative to coal or oil-fired generators, and they provide different kinds of service to communities and their electricity needs. Peaking facilities have the ability to respond quickly to need, and typically run for shorter periods of time than combined cycle facilities.

### **How close will it be from homes/schools?**

While TransCanada has acquired a site in Cambridge, they are looking to work with the community about how best to locate the facility.

### **What about a transmission alternative?**

The 2007 IPSP did consider alternatives to generation. The preferred alternative was and remains a peaking facility because of several reasons. New generation

means there would not be a need for major new transmission lines which would be disruptive to many neighbourhoods and people.

**When would it be built/operating?**

The preferred timeline is for 2015. Cambridge needs a secure supply of electricity to restore reliability to families, businesses and communities in the region.

Electricity infrastructure in Cambridge area does not meet reliability standards set by IESO

Cambridge area is vulnerable to outages which have occurred twice – Jan 2003 and in the 80's

The 2003 incident affected 45,000 customers for 5 hours

Investing in a secure supply of electricity in Cambridge is vital to attracting businesses to the area and to ensure the future growth of the community.

Cambridge area (KWCG) is among Ontario's largest load centres with over 500,000 people

Population and electricity demand growth was among highest in province before the recession, and is forecast to grow at a rate higher than provincial average over next 20 years

Electricity demand in the area has already recovered to pre-recession levels in 2010 (approx 1400 MW)

Future investments in Cambridge, including business parks, high-tech industry and manufacturing will drive further growth

The area has been identified as a Prime Industrial/Strategic Reserve in the Region of Waterloo Official Plan

**Why are you sole-sourcing with TCE? Is this plant being built to replace the cancelled OGS plant?**

The OPA indicated a need for a 450 MW peaking facility along with other investments in electricity infrastructure in the Cambridge area in the 2007 IPSP. That requirement is spelled out in the latest Long-Term Energy Plan, as well.

That need is independent of other proposals.

On the contract side, we are working with TransCanada because they agreed to work with us on a needed project in the future, when the Minister of Energy announced that OGS would not be proceeding.

**What is the cancellation of OGS and contracting of a power plant costing ratepayers?**

The 2007 IPSP called for two facilities in both the Cambridge area and in the Southwest GTA. We are now proceeding with only one of those.

There will be transmission projects required in the SWGTA, and that's estimated to cost far less than OGS.

**Why Cambridge and not Kitchener, Guelph or Waterloo?**

There is value to the whole region as it is an interconnected system. However, there is particular value to Cambridge because of its electricity supply configuration which currently provides limited back-up from one line.

Investing in a secure supply of electricity in Cambridge is vital to attracting businesses to the area and to ensure the future growth of the community.

Cambridge area (KWCG) is among Ontario's largest load centres with over 500,000 people

Population and electricity demand growth was among highest in province before the recession, and is forecast to grow at a rate higher than provincial average over next 20 years

Electricity demand in the area has already recovered to pre-recession levels in 2010 (approx 1400 MW)

Future investments in Cambridge, including business parks, high-tech industry and manufacturing will drive further growth

The area has been identified as a Prime Industrial/Strategic Reserve in the Region of Waterloo Official Plan.

**Is the deal done? How much will this plant cost? How much are you paying TransCanada? Will TransCanada be paid damages for sunk costs from OGS?**

Both the OPA and TransCanada have publicly indicated we are working together on a project that is needed to ensure a secure supply of electricity, and we are continuing to make good progress in our talks with TransCanada and we are both working to ensure a fair deal for ratepayers.

## Aleksandar Kojic

---

**From:** John Zych  
**Sent:** January 16, 2011 2:43 PM  
**To:** Michael Killeavy; Deborah Langelaan; Susan Kennedy; Mark Dodick  
**Cc:** Michael Lyle  
**Subject:** FW: Freedom of Information and Protection of Privacy Act Request 2010-020 (Ontario NDP - Two SWGTA Topics)  
**Attachments:** Request 2010-020 - Letter from Ontario NDP Caucus - October 14, 2010.pdf; Request 2010-020 Appendix A - December 17, 2010.xls; Request 2010-020 Appendix A - January 17, 2011.xls

This disposes of the NDP FOI request in relation to records that described TransCanada's "recourse should the Oakville project be cancelled". No records were released except for a redacted version of the agreement between TransCanada and the OPA (as redacted by TransCanada). MEI is aware. The NDP has until February 15, 2011 to appeal.

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
416-969-6055  
416-967-7474 Main telephone  
416-967-1947 OPA Fax  
416-324-5488 Personal Fax  
[John.Zych@powerauthority.on.ca](mailto:John.Zych@powerauthority.on.ca)

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**From:** John Zych  
**Sent:** January 16, 2011 2:31 PM  
**To:** 'rosenstockm@ndp.on.ca'  
**Subject:** Freedom of Information and Protection of Privacy Act Request 2010-020 (Ontario NDP - Two SWGTA Topics)

Dear Michael,

Further to your request of October 14, 2010 and our decision of December 17, 2010 (both attached), we sent a third party notice to TransCanada Energy in respect of withheld Record 8 and recently received a reply. TransCanada Energy has taken the view that the OPA should not release Record 8. The OPA supports that position (see third attachment).

Mr. Colin Andersen, Chief Executive Officer of the Ontario Power Authority, is responsible for the decision in this letter.

You may ask for a review of this decision within 30 days of receiving this letter by writing to: Registrar, Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8, Telephone: (416) 326-3333 or toll-free 1-800-387-0073.

If you decide to request a review of this decision, please provide the Commissioner's office with the following:

- the file number listed at the beginning of this letter;
- a copy of this decision letter; and,
- a copy of the original request for information you sent to our institution.

In addition, you must send an appeal fee to the Commissioner's office. The appeal fee is \$25.00. Please include the fee with your letter of appeal. Appeal fees should be in the form of a cheque or a money order, payable to the Minister of Finance.

Please do not hesitate to contact the undersigned at (416) 969-6055 if I may help you in any way.

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
416-969-6055  
416-967-7474 Main telephone  
416-967-1947 OPA Fax  
416-324-5488 Personal Fax  
[John.Zych@powerauthority.on.ca](mailto:John.Zych@powerauthority.on.ca)

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**From:** John Zych  
**Sent:** December 17, 2010 10:33 AM  
**To:** 'RosenstockM@ndp.on.ca'  
**Subject:** Freedom of Information and Protection of Privacy Act Request 2010-020 (Ontario NDP - Two SWGTA Topics)

Dear Michael,

Regarding your attached request 2010-020 for information relating to the Oakville Generating Station project, here is our reply.

The OPA has found eight records that are responsive to the request and is providing partial access to one of these records. I will courier it to you today as it is too big a document to e-mail.

Mr. Colin Andersen, Chief Executive Officer of the Ontario Power Authority, is responsible for the decision in this letter.

You may ask for a review of this decision within 30 days of receiving this letter by writing to: Registrar, Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8, Telephone: (416) 326-3333 or toll-free 1-800-387-0073.

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- a copy of this decision letter; and,
- a copy of the original request for information you sent to our institution.

In addition, you must send an appeal fee to the Commissioner's office. The appeal fee is \$25.00. Please include the fee with your letter of appeal. Appeal fees should be in the form of a cheque or a money order, payable to the Minister of Finance.

Please do not hesitate to contact the undersigned at (416) 969-6055 if I may help you in any way.

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1



416-969-6055  
416-967-7474 Main telephone  
416-967-1947 OPA Fax  
416-969-6383 Personal Fax  
John.Zych@powerauthority.on.ca

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October 14, 2010

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

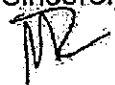
To Whom It May Concern:

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

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

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

Sincerely,

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

Freedom Of Information and Protection of Privacy Act Request 2010-020					
Index of Records and Decision as to Release or Withholding of Records					
Record No.	Description	Release yes/no/ partial	Section(s) Applied	Comments/Explanations	Estimated No. of Pages
1	Memorandum, dated 2/17/2010 from Aird & Berlis LLP to OPA entitled, "Memorandum entitled: Southwest GTA Clean Energy Supply Agreement dated as of October 9, 2009 between TransCanada Energy Ltd. (the "Supplier") and the OPA (the "SWGTA Contract") in respect of Oakville Generating Station (the "Facility"): Consequences of Termination by OPA"	no	19 (a)	the record is subject to solicitor-client privilege	9
2	PowerPoint presentation dated 3/1/2010 from OPA entitled, "Briefing: SWGTA Options"	no	13, 18 (a), (c), (d), (e) and (g)	the disclosure of the record would reveal, advice or recommendations of a public servant, any other person employed in the service of the OPA; financial, commercial or technical information that belongs to the Government of Ontario or the OPA and has monetary value or potential monetary value; information the disclosure of which could reasonably be expected to prejudice the economic interests of the OPA or its competitive position; information the disclosure of which could reasonably be expected to be injurious to the financial interests of the Government of Ontario or its ability to manage the economy of Ontario; information as to positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of the OPA or the Government of Ontario; information that includes proposed plans, policies or projects of the OPA where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person	13
3	Email dated 9/13/2010 at 3:56:00 PM from Susan Kennedy to Michael Killeavy entitled, "SWGTA" plus attach	no	19 (a)	the record is subject to solicitor-client privilege	3

4	Email dated 9/13/2010 at 5:07:00 PM from Susan Kennedy to Michael Killeavy entitled, "SWGTA"	no	19 (a)	the record is subject to solicitor-client privilege	2
5	Email dated 9/14/2010 at 12:44:00 PM from Susan Kennedy to Michael Killeavy entitled, "SWGTA Costs"	no	19 (a)	the record is subject to solicitor-client privilege	1
6	Email dated 9/14/2010 at 12:47:00 PM from Susan Kennedy to Michael Killeavy entitled, "SWGTA Costs"	no	19 (a)	the record is subject to solicitor-client privilege	2
7	agreement dated October 9, 2009 between Ontario Power Authority and TransCanada Energy Ltd.	partial	28 (1), 17 (1) and 18 (1) (c) and (d)	third party notice was sent to proponent as it appeared that the release of this information, which included the proponent's confidential and proprietary information, would lead, among other consequences, to similar information no longer being supplied in the future; also, release of this information would be injurious to the interests of the OPA, including the interests of Ontario electricity ratepayers, in conducting RFPs of this nature in future, and other consequences; access to the record is granted in part as requested by third party	201

8	OPA Letter to TransCanada - October 7, 2010	no	28 (1), 17 (1) and 18 (a), (c), (d), (e) and (g)	third party notice to be sent to proponent as it appears that the release of this information, which includes the proponent's confidential and proprietary information, would lead, among other consequences, to similar information no longer being supplied in the future; also, financial, commercial or technical information that belongs to the Government of Ontario or the OPA and has monetary value or potential monetary value; information the disclosure of which could reasonably be expected to prejudice the economic interests of the OPA or its competitive position; information the disclosure of which could reasonably be expected to be injurious to the financial interests of the Government of Ontario or its ability to manage the economy of Ontario; information as to positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of the OPA or the Government of Ontario; information that includes proposed plans, policies or projects of the OPA where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person	1
					232

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## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** January 17, 2011 10:51 AM  
**To:** JoAnne Butler; Deborah Langelaan  
**Subject:** Fw: Auditor-General Information Request ....  
**Attachments:** #5074238v2\_TOR\_P2Z\_ - MEM\_AuditorGeneralRequestReSWGTA (2).doc;  
WSComparison\_#5074238v1\_TOR\_P2Z\_ - MEM\_AuditorGeneralRequestReSWGTA  
(2).doc-#5074238v2\_TOR\_P2Z\_ - MEM\_AuditorGeneralRequestReSWGTA (2).doc.pdf

I did the interview this morning and it went well.

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](mailto:Michael.killeavy@powerauthority.on.ca)

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**From:** Smith, Elliot [<mailto:ESmith@osler.com>]  
**Sent:** Thursday, January 13, 2011 07:40 PM  
**To:** Michael Killeavy; Sebastiano, Rocco <[RSebastiano@osler.com](mailto:RSebastiano@osler.com)>; Ivanoff, Paul <[PIvanoff@osler.com](mailto:PIvanoff@osler.com)>  
**Cc:** Susan Kennedy  
**Subject:** RE: Auditor-General Information Request ....

Michael,

Further to your request below, we have provided a mark-up with our comments on your proposed answers to the AG's questions.

We would also like to point out that the definition of Representatives in both the Contract and the CA includes the Government of Ontario *and its auditors*. As such, a good argument could be made that the AG is a "Representative". It would be harder to justify that Confidential Information disclosed to the AG is for the purpose of assisting the OPA in complying with its obligations under the Contract (or in the case of the CA, assisting the OPA in resolving the differences between the Parties), but in case you were looking for an avenue by which you may disclose the contract to the AG without having to provide notice to TCE, we thought this might assist in your analysis.

If you have any questions, please let us know.  
Elliot

**OSLER**

Elliot Smith  
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

[osler.com](http://osler.com)

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**From:** Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]  
**Sent:** Wednesday, January 12, 2011 1:12 PM  
**To:** Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot  
**Cc:** Susan Kennedy  
**Subject:** Auditor-General Information Request ....

Rocco/Paul/Elliot,

The A-G is conducting an audit of the OPA and has made several information requests of the OPA. Susan has been working with me on this. We have determined that we have to meet with the A-G and provide information, so that is not something we need advice on. Attached is Susan's memorandum to me on this, which includes the questions posed and our proposed answers. Can you please review the proposed answers for me. I'll likely need to meet with the A-G this week or next week.

Thank you,

Michael

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

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## Aleksandar Kojic

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**From:** Deborah Langelaan  
**Sent:** January 17, 2011 12:09 PM  
**To:** JoAnne Butler  
**Cc:** Michael Killeavy  
**Subject:** Oakville GS Briefing Note  
**Attachments:** Briefing\_Note\_JoAnne\_20110117.doc

JoAnne;

Attached is an update on the OPA's negotiations with TCE regarding the Oakville Generating Station. I've kept it fairly high level and you will see at the end of the document that I've included the questions posed by the Auditor General. Please let me know if you require more detail - I wasn't sure if you plan on providing a copy to Ministry staff.

Deb

**MEMORANDUM**

**DATE:** January 17, 2011

**TO:** JoAnne Butler

**FROM:** Deborah Langelan

**RE:** Oakville Generating Station (OGS) Update

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- OPA/TransCanada Energy (TCE) negotiating team meet on a weekly basis (Thursday afternoon)
- Province has advised OPA that the negotiations with TCE for the replacement plant need to be completed by March/April 2011
- December 22, 2010 MOU executed between TCE and OPA regarding the potential development of a 450 MW simple cycle gas-fired power generation project in the Kitchener-Waterloo-Cambridge area
- TCE has withdrawn and settled all of its appeals and legal actions with the Town of Oakville and Ford Motor Company
- The two gas turbines (GT's) purchased and intended for the OGS are Mitsubishi Power Systems (MPS) M501GAC machines and were designed for Combined Cycle operation
- It has been determined that it is prudent, from both an economic and timing perspective, to have MPS convert the GT's to Fast Start capability rather than cancel the contract and undertake another procurement process for replacement GT's. TCE is in the midst of negotiating the terms and conditions for the conversion.
- OPA, TCE and MPS meeting on January 19, 2011 to streamline GT negotiations
- OPA/TCE met with Premier's Office on January 13, 2011 to discuss strategy for approaching City of Cambridge. The OPA expects to receive consent from the Premier's Office in the next 3 weeks to schedule an introductory meeting.
- OPA/TCE negotiating Implementation Agreement that will set out the process for expediting the development and construction of the proposed Cambridge peaking facility prior to finalizing the peaking contract
- OPA/TCE developing the technical design requirements for a simple cycle facility in Cambridge
- TCE's Annual Report will disclose status of Oakville Generating Station. OPA expects to receive draft language this week for its review and comment prior to publication.
- OPA met with Auditor General on January 17, 2011 and provided responses to the following questions:
  - Reason for signing the contract in 2009?
  - Reason for cancelling the contract now? Please provide supporting documents for the rationale.

- When did the OPA/Ministry decide that the Oakville plant is no longer needed?
- Please provide a copy of the contract.
- What is the status of the contract? Has it been determined what the penalty will be for terminating the contract?

## Aleksandar Kojic

---

**From:** Susan Kennedy  
**Sent:** January 17, 2011 4:19 PM  
**To:** 'Sebastiano, Rocco'; Deborah Langelaan; Michael Killeavy  
**Cc:** 'Ivanoff, Paul'  
**Subject:** Ministry of Energy Request  
**Attachments:** RE: Revised direction

### **Privileged and Confidential (Solicitor and Client Privilege)**

*This email contains privileged legal advice and should not be forwarded to parties outside of OPA. Please limit internal circulation.*

In furtherance of getting a directive in connection with the SWGTA/Cambridge matter, we have been asked by MEI Legal to provide them with a copy of the October 7<sup>th</sup> letter from the OPA to TCE. Specifically, MEI legal wants to see the language re "...the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract." (see attached re current draft – Ministry would like to go without the two sections that are flagged by "comment boxes").

MEI legal wants the letter in furtherance of getting approval to include the language re "anticipated financial value of the Contract" into the directive.

On my read, the October 7 letter is not subject [retroactively or otherwise] to the "as of" October 8 Confidentiality Agreement, so the only obligation on the OPA regarding the October 7 letter is contained in the final sentence of the letter itself which requires us to give TCE prior notice before we disclose letter to MEI (my guess is that TCE likely assumes Government already has an actual copy of the letter – certainly, folks at the Government knew what it said given their involvement in the negotiation thereof).

Please let me know if I've missed anything.

Thanks,

Susan H. Kennedy  
Director, Corporate/Commercial Law Group  
Ontario Power Authority  
T: 416-969-6054  
F: 416-969-6383  
E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca)

## Aleksandar Kojic

---

**From:** Susan Kennedy  
**Sent:** January 5, 2011 4:34 PM  
**To:** 'Calwell, Carolyn (MEI)'  
**Subject:** RE: Revised direction  
**Attachments:** KWC TransCanada Direction 20 12 2010 - OPA Comments\_110105.docx

Carolyn,

I have completed the requisite "whip 'round", please see attached (which shows track changes from the version you sent) – essentially, de-selecting two suggested changes. I've included explanatory comment boxes to explain our concerns.

Thanks,

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]  
**Sent:** December 23, 2010 3:28 PM  
**To:** Susan Kennedy  
**Subject:** Revised direction

Susan,

Attached are clean and black lined versions of the direction that we propose to send up through approvals. The direction has had policy input. I am reluctant to advance through our approvals processes until I have heard from you that the changes from the version that you sent to me do not create substantive issues for the OPA. Please let me know if there are show stoppers.

Thank you.

Carolyn

Carolyn Calwell  
A/Deputy Director  
Ministry of Energy - Legal Services Branch  
Ministry of the Attorney General  
416.212.5409

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December 1, 2010

Mr. Colin Anderson  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Anderson,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the "OPA") under section 25.32 of the *Electricity Act, 1998* (the "Act").

Background

The 2007 proposed Integrated Power System Plan forecast need for an additional gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). In our Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the KWC Area where demand is growing at more than twice the provincial rate.

The Ministry has determined that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has a nameplate capacity of approximately 450MW for deployment in the KWC Area by [the spring of 2014] (the "KWC Project").

Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA procured from TransCanada Energy Ltd. ("TransCanada") the design, construction and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station"). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station no longer necessary.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

In light of the foregoing, members of the Ministry of Energy staff have concluded that it is prudent to negotiate a project with TransCanada to replace its Oakville Generating Station project and meet the KWC Area supply requirement [by spring of 2014]. Ministry of Energy staff members have had discussions with TransCanada regarding such a project.

**Comment [shk1]:** Since directive is given per ss. 25.32(4), believe this is necessary to establish that directive relates to an initiative that was pursued by the Crown after January 1, 2004 and before the board's first approval of the OPA's procurement process. See for example, [redacted]

Direction

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Therefore, pursuant to my authority under subsection 25.32(4) of the *Electricity Act, 1998*, I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

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- a) negotiating and executing an implementation agreement which would, among other things, provide that the OPA indemnify TransCanada pending the completion of a final contract with respect to certain costs that TransCanada must incur if an in service date of the [spring of 2014] is to be met;
- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balance of risk and reward for TransCanada, and (ii) the costs reasonably incurred by TCE with respect to the Oakville Generating Station and the financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014].

Comment [shk2]: As per October discussions and October 7 letter, this was agreed to with TCE. Language is needed if this is to be considered as part of new plant pricing.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all local, municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

  
\_\_\_\_\_  
**Brad Duguid**  
**Minister of Energy**

## Aleksandar Kojic

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**From:** Sebastiano, Rocco [RSebastiano@osler.com]  
**Sent:** January 17, 2011 6:55 PM  
**To:** Susan Kennedy  
**Cc:** Michael Killeavy; Deborah Langelaan; Ivanoff, Paul; Smith, Elliot  
**Subject:** RE: Ministry of Energy Request  
**Attachments:** KWC TransCanada Direction 20 12 2010 - OPA Comments\_110105 (3).docx

Susan,

Regarding your question about disclosing the OPA letter of October 7 to TCE, I agree with your assessment that the October 8 Confidentiality Agreement does not cover this letter. This was quite purposeful. The letter does state that the OPA would undertake not to disclose the letter without giving prior notice to TCE. Although this statement may be a bit self-serving, it would be prudent to comply with it even though the OPA is disclosing it only to the Government of Ontario and TCE probably already does assume that the Government has a copy.

I wonder whether this letter would constitute Confidential Information under Section 8.1 of the Agreement. If so, the OPA may be able to disclose it to the Government under Section 8.1(a) or the OPA's Representative if it's for the purpose of assisting the OPA in complying with its obligations under the Agreement.... perhaps a bit of a stretch as the letter is about cancelling the project and terminating the Agreement.

I know that you did not ask us to review the draft Direction, but we'd like to propose a few suggested revisions if there is still an opportunity to make changes to it. I realize that the operative language in page 2 of the letter comes from the Minister's Direction on Goreway, but there was some language in the Minister's Direction on PEC in lieu of the indemnity language under the implementation agreement that would be preferable.

Also, we'd like to avoid including any specific language in the Direction around costs incurred by TCE or the financial value of the SWGTA Contract. We have replaced it with more general language which should provide the OPA with the flexibility it needs for assessing the appropriate economic value of the contract for the KWC Project, but at the same time, avoiding the language in the October 7 letter being incorporated into the Direction and having it come back to bite us in any future litigation. In other words, we have not yet given up the fight with TCE that the October 7 letter is a "without prejudice" letter, but if this language becomes part of the Direction we may be stuck with it forever. I realize that there needs to be a balance with the OPA being able to justify the NRR under the KWC contract, while at the same time protecting the OPA's position in the event of future litigation.

Another addition, is a statement that if the OPA and TCE cannot reach agreement on a contract for the KWC Project, the OPA can recover its costs under the implementation agreement. This statement also comes out of the PEC Direction.

Lastly, consider whether to drop the statement about the KWC Project having to undergo all permitting requirements. The statement is not true for all OPA procured projects (e.g., YEC and PEC). Furthermore, it would preclude JoAnne's idea of trading some permitting risk for a lower NRR.

We'd be glad to discuss our suggested changes further with you, if you would like. Regards, Rocco

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**From:** Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]  
**Sent:** Monday, January 17, 2011 4:19 PM  
**To:** Sebastiano, Rocco; Deborah Langelaan; Michael Killeavy

**Cc:** Ivanoff, Paul  
**Subject:** Ministry of Energy Request

**Privileged and Confidential (Solicitor and Client Privilege)**

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Please limit internal circulation.***

In furtherance of getting a directive in connection with the SWGTA/Cambridge matter, we have been asked by MEI Legal to provide them with a copy of the October 7<sup>th</sup> letter from the OPA to TCE. Specifically, MEI legal wants to see the language re "...the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract." (see attached re current draft – Ministry would like to go without the two section that are flagged by "comment boxes").

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Please let me know if I've missed anything.

Thanks,

Susan H. Kennedy  
Director, Corporate/Commercial Law Group  
Ontario Power Authority  
T: 416-969-6054  
F: 416-969-6383  
E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca)

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January 1, 2011 December 1, 2010

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the "OPA") under section 25.32 of the *Electricity Act, 1998* (the "Act").

Background

The 2007 proposed Integrated Power System Plan forecast the need for an additional gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). In our Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the KWC Area where demand is growing at more than twice the provincial rate.

The Ministry has determined that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has a nameplate capacity of approximately 450MW for deployment in the KWC Area by [the spring of 2014] (the "KWC Project").

Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA procured from TransCanada Energy Ltd. ("TransCanada") the design, construction and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station"). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating Station no longer necessary.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

In light of the foregoing, members of the Ministry of Energy has staff have concluded that it is prudent to negotiate a contract project with TransCanada for the KWC Project in lieu of the to replace its Oakville Generating Station project and meet the KWC Area supply requirement [by spring of 2014]. The Ministry of Energy has staff members have had discussions with TransCanada regarding such a project.

Comment (shk1): Since directives given per ss. 25.32(4) believe this is necessary to establish that directive dates to an initiative that was pursued by the Crown, at least January 1, 2004 and before the Board's first approval of the OPA procurement process. See, for example,

Direction

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Therefore, pursuant to my authority under subsection 25.32(4) of the *Electricity Act, 1998*, I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

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- a) negotiating and executing an implementation agreement which ~~may would~~, among other things, ~~require provide~~ that the OPA ~~provide indemnify~~ TransCanada ~~with certain interim financial guarantees or recoverable assistance~~ pending the completion of a final contract with respect to certain costs that TransCanada must incur ~~for work on the project during the course of the negotiations, but before the contract is executed~~; if an in-service date of the [spring of 2014] is to be met; and
- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balance of risk and reward for TransCanada, and (ii) ~~certain costs or damages associated with the mutual termination of the contract for the Oakville Generating Station the costs reasonably incurred by TCE with respect to the Oakville Generating Station and the financial value of the SWGTA Contract to in assessing the appropriate economic value of the contract for the KWC Project~~. It is further expected that the contract provide for an in service date of no later than [spring of 2014].

Comment [shk2]: As per October discussions and October 7 letter, this was agreed to with TCE. Language is needed if this is to be considered as part of new plant pricing.

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**[As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all local, municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration.]**  
**[NTD: Consider whether this statement should be deleted. JoAnne Butler has suggested considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRR. This statement may inadvertently tie our hands if left in the Direction. Furthermore, this statement is not technically correct for all electricity generation projects procured by the OPA (e.g., legal exemptions granted to YEC and PEC).]**

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For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction. In such event, it is understood that the OPA may seek to recover its costs, if any, relating to the implementation agreement by using its statutory authority for cost recovery.

I further direct that the 2008 Direction is hereby revoked.

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

This direction shall be effective and binding as of the date hereof.

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**Brad Duguid**  
**Minister of Energy**

CONFIDENTIAL

## Aleksandar Kojic

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**From:** Susan Kennedy  
**Sent:** January 20, 2011 4:41 PM  
**To:** Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Revised draft KWC directive  
**Attachments:** KWC TransCanada Direction 20 12 2010 - OPA Comments\_110120.docx

I've been going back and forth with the Ministry on a draft MEI directive. Latest from Ministry Legal is that MO is not amenable [at all] to the following paragraph(s):

"In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balancing of risk and reward for TCE, and (ii) the costs reasonably incurred by TCE with respect to the Oakville Generating Station and the financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014]."

or

"In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project."

It was articulated as "nothing about costs".

In light of this, I've changed the language somewhat to hopefully give us the latitude we need to factor in SWGTA termination costs in the KWC negotiations. Please see attached draft.



January 11, 2011

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the "OPA") under section 25.32 of the *Electricity Act, 1998* (the "Act").

Background

The 2007 proposed Integrated Power System Plan forecast the need for an additional gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). In our Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the KWC Area where demand is growing at more than twice the provincial rate.

The Ministry has determined that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has a nameplate capacity of approximately 450MW for deployment in the KWC Area by [the spring of 2014] (the "KWC Project").

Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA procured from TransCanada Energy Ltd. ("TransCanada") the design, construction and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station"). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating Station no longer necessary.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the *Electricity Act, 1998*, I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

- a) negotiating and executing an implementation agreement which may, among other things, require that the OPA provide TransCanada with certain interim financial guarantees or recoverable assistance pending the completion of a final contract with respect to certain costs that TransCanada must incur for work on the project during the course of the negotiations, but before the contract is executed, if an in-service date of the [spring of 2014] is to be met; and
- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

In negotiating this contract, it is anticipated that the OPA will have regard to a reasonable balance of risk and reward for TransCanada, in the context of the mutual termination of the contract for the Oakville Generating Station, in assessing the appropriate economic value of the contract for the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014].

~~As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all local, municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration.~~

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction. In such event, it is understood that the OPA may seek to recover its costs, if any, relating to the implementation agreement by using its statutory authority for cost recovery.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

**Brad Duguid**  
**Minister of Energy**

**Comment [OPA1]:** Consider whether this statement should be deleted. OPA is considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRE. This statement may inadvertently prevent use of such a strategy. In addition, this statement is not actually correct for all electricity generation projects procured by the OPA (e.g. legal exemptions granted to YEC and PEC). OPA understands that there is some possibility of facilitative regulation for KWC project and this statement could be limiting.

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** January 20, 2011 5:13 PM  
**To:** 'RSebastiano@osler.com'  
**Subject:** Fw: Revised draft KWC directive  
**Attachments:** KWC TransCanada Direction 20 12 2010 - OPA Comments\_110120.docx

FYI .... I am really concerned about this.

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

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**From:** Susan Kennedy  
**Sent:** Thursday, January 20, 2011 04:40 PM  
**To:** Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Revised draft KWC directive

I've been going back and forth with the Ministry on a draft MEI directive. Latest from Ministry Legal is that MO is not amenable [at all] to the following paragraph(s):

"In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balancing of risk and reward for TCE, and (ii) the costs reasonably incurred by TCE with respect to the Oakville Generating Station and the financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014]."

or

"In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project."

It was articulated as "nothing about costs".

In light of this, I've changed the language somewhat to hopefully give us the latitude we need to factor in SWGTA termination costs in the KWC negotiations. Please see attached draft.

January 11, 2011

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the "OPA") under section 25.32 of the *Electricity Act, 1998* (the "Act").

Background

The 2007 proposed Integrated Power System Plan forecast the need for an additional gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). In our Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the KWC Area where demand is growing at more than twice the provincial rate.

The Ministry has determined that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has a nameplate capacity of approximately 450MW for deployment in the KWC Area by [the spring of 2014] (the "KWC Project").

Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA procured from TransCanada Energy Ltd. ("TransCanada") the design, construction and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station"). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating Station no longer necessary.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the *Electricity Act, 1998*, I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

- a) negotiating and executing an implementation agreement which may, among other things, require that the OPA provide TransCanada with certain interim financial guarantees or recoverable assistance pending the completion of a final contract with respect to certain costs that TransCanada must incur for work on the project during the course of the negotiations, but before the contract is executed, if an in-service date of the [spring of 2014] is to be met; and
- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

In negotiating this contract, it is anticipated that the OPA will have regard to a reasonable balance of risk and reward for TransCanada, in the context of the mutual termination of the contract for the Oakville Generating Station, in assessing the appropriate economic value of the contract for the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014].

~~As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all local, municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration.~~

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction. In such event, it is understood that the OPA may seek to recover its costs, if any, relating to the implementation agreement by using its statutory authority for cost recovery.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

**Brad Duguid**  
**Minister of Energy**

**Comment [OPA1]:** Consider whether this statement should be deleted. OPA is considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRR. This statement may inadvertently prevent use of such a strategy. In addition, this statement is not actually correct for all electricity generation projects procured by the OPA (e.g., legal exemptions granted to YEC and PEC). OPA understands that there is some possibility of facilitative regulation for KWC project and this statement could be limiting.

## Aleksandar Kojic

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**From:** Susan Kennedy  
**Sent:** January 21, 2011 4:57 PM  
**To:** Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Cc:** 'RSebastiano@osler.com'  
**Subject:** RE: Revised draft KWC directive  
**Attachments:** Blackline.docx

This time with attachment – apologies.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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**From:** Susan Kennedy  
**Sent:** January 21, 2011 3:51 PM  
**To:** Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Cc:** 'RSebastiano@osler.com'  
**Subject:** RE: Revised draft KWC directive

Further to the below, I've had a request from MEI to get them something as soon as possible. I've followed up and said "today if I can" and "Monday at the latest". With a view to meeting that timeline, I am putting out a call for comments/inputs/suggestions.

In case it is helpful, I've attached a blackline which compares the version I circulated per the below email to the version MEI sent over (i.e. the version we've been editing from).

As some additional colour, I note that I have been told that the MO does not even want the following language in the directive, "In negotiating this contract, it is anticipated that the OPA will have regard to a reasonable balance of risk and reward for TransCanada ..." When I was drafting I wasn't feeling creative enough to do without this but if someone can figure out a way to eliminate it (while still giving us appropriate negotiating parameters), I'd welcome the suggestion.

In order to meet the Monday deadline (I expect if I don't get it to them by noon, there will be some panic), I'd appreciate receiving comments by 10AM on Monday.

Many thanks,

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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**From:** Susan Kennedy  
**Sent:** January 20, 2011 4:41 PM  
**To:** Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Revised draft KWC directive

I've been going back and forth with the Ministry on a draft MEI directive. Latest from Ministry Legal is that MO is not amenable [at all] to the following paragraph(s):

"In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balancing of risk and reward for TCE, and (ii) the costs reasonably incurred by TCE with respect to the Oakville Generating Station and the financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014]."

OT

“In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project.”

It was articulated as “nothing about costs”.

In light of this, I’ve changed the language somewhat to hopefully give us the latitude we need to factor in SWGTA termination costs in the KWC negotiations. Please see attached draft.

December 1, 2010

January 1, 2011

Mr. Colin Anderson ~~Andersen~~  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. ~~Anderson~~ Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the "OPA") under section 25.32 of the *Electricity Act, 1998* (the "Act").

Background

The 2007 proposed Integrated Power System Plan forecast the need for an additional gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). In our Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the KWC Area where demand is growing at more than twice the provincial rate.

The Ministry has determined that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has a nameplate capacity of approximately 450MW for deployment in the KWC Area by [the spring of 2014] (the "KWC Project").

Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA procured from TransCanada Energy Ltd. ("TransCanada") the design, construction and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station"). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station Station no longer necessary.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

In light of the foregoing, the Ministry of Energy has concluded that it is prudent to negotiate a contract with TransCanada for the KWC Project in lieu of the Oakville Generating Station. The Ministry of Energy has had discussions with TransCanada regarding such a project.



Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the *Electricity Act, 1998*, I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

- a) negotiating and executing an implementation agreement which would ~~may~~, among other things, ~~provide~~ require that the OPA ~~indemnify~~ provide TransCanada with certain interim financial guarantees or recoverable assistance pending the completion of a final contract with respect to certain costs that TransCanada must incur for work on the project during the course of the negotiations, but before the contract is executed, if an in-service date of the [spring of 2014] is to be met; and
- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

In negotiating this contract, it is anticipated that the OPA will have regard to (i) a reasonable balance of risk and reward for TransCanada, and (ii) ~~in the costs reasonably incurred by TransCanada with respect to~~ context of the mutual termination of the contract for the Oakville Generating Station, in assessing the appropriate economic value of the contract for the KWC Project. It is further expected that the contract provide for an in service date of no later than [spring of 2014].

~~As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all local, municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration.~~

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction. In such event, it is understood that the OPA may seek to recover its costs, if any, relating to the implementation agreement by using its statutory authority for cost recovery.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

1  
Brad Duguid  
Minister of Energy

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Comment [OPA1]: Consider whether this statement should be deleted. OPA is considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRR. This statement may inadvertently prevent use of such a strategy. In addition, this statement is not actually correct for all electricity generation projects procured by the OPA (e.g., legal exemptions granted to YEC and PEC). OPA understands that there is some possibility of facilitative regulation for KWC project and this statement could be limiting.

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## **Aleksandar Kojic**

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**From:** Michael Killeavy  
**Sent:** January 24, 2011 10:21 AM  
**To:** Deborah Langelaan  
**Subject:** FW: Directive  
**Attachments:** RE: Directive Blackline; Directive Blackline; Draft Directive  
**Importance:** High

Deb,

Can you please send John an email letting him know that the 7 October 2010 letter will be shared with the Ministry.

Michael

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

---

**From:** Susan Kennedy  
**Sent:** January 24, 2011 10:17 AM  
**To:** Michael Killeavy; JoAnne Butler; 'Sebastiano, Rocco'  
**Cc:** Michael Lyle  
**Subject:** Directive  
**Importance:** High

Attached, fyi, is what I just sent to MEI legal – sorry for the jam but Craig MacLennan gave MEI legal 30 minutes to get him a draft, so we were very much in rush mode.

Based on input from Rocco, I reverted to the earlier language regarding taking into account “costs or damages” (on the theory that the most conservative ask was the best way to go).

Having said that, I have been told by MEI legal that the MO is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it.

On a related note, could one of Michael or Deb let TCE know that we are sharing the October 7 letter with MEI, I need to get it over to them ASAP in order to support the ask for the cost reference(s).

Thanks.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group  
Ontario Power Authority  
T: 416-969-6054  
F: 416-969-6383

E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca)

## Aleksandar Kojic

---

**From:** Susan Kennedy  
**Sent:** January 24, 2011 10:12 AM  
**To:** 'Calwell, Carolyn (MEI)'  
**Subject:** RE: Directive Blackline

Further to the below, I could not find language that got us comfortable that we could factor in Oakville cost in negotiating for a Cambridge plant unless directed to do so. My attempts to include language along the lines of "taking into account the context of the negotiations" just didn't get us there from a comfort perspective.

I have confirmed I can send you the October letter. We just need to give TCE prior notice that we are doing so.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Susan Kennedy  
**Sent:** January 24, 2011 10:10 AM  
**To:** 'Calwell, Carolyn (MEI)'  
**Subject:** Directive Blackline

Attached.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group  
Ontario Power Authority  
T: 416-969-6054  
F: 416-969-6383  
E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca)

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** January 25, 2011 9:23 AM  
**To:** Susan Kennedy  
**Subject:** Fw: TransCanada - Ontario Power Authority - Implementation Agreement  
**Attachments:** IA Cambridge (draft Jan 24, 2011 v3).doc

**Importance:** High

FYI ...

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](mailto:Michael.killeavy@powerauthority.on.ca)

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**From:** Deborah Langelaan  
**Sent:** Monday, January 24, 2011 04:47 PM  
**To:** Michael Killeavy; Sebastiano, Rocco <[RSebastiano@osler.com](mailto:RSebastiano@osler.com)>; 'Smith, Elliot' <[ESmith@osler.com](mailto:ESmith@osler.com)>  
**Subject:** FW: TransCanada - Ontario Power Authority - Implementation Agreement

Drum roll please.....attached is the draft Implementation Agreement.

TCE is asking if we still want to meet tomorrow at 3:00 p.m. to discuss or if we require more time to review? Please let me know what your preference is.

Thanks,  
Deb

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

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**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 24, 2011 4:41 PM  
**To:** Deborah Langelaan  
**Cc:** Terry Bennett; Geoff Murray; John Cashin  
**Subject:** TransCanada - Ontario Power Authority - Implementation Agreement

Deborah,

Attached please find attached draft Implementation Agreement for the Potential Project.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

**TransCanada**

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

TCE Draft – January 24, 2011

WITH PREJUDICE

## IMPLEMENTATION AGREEMENT

between

**TRANSCANADA ENERGY LTD.**

and

**ONTARIO POWER AUTHORITY**

This IMPLEMENTATION AGREEMENT (the "**Agreement**"), effective as of •, 2011, is by and between (a) TransCanada Energy Ltd. ("**TCE**"), a Canadian corporation, and (b) the Ontario Power Authority, a statutory corporation established under Part II.1 and Part II.2 of the *Electricity Act, 1998* (Ontario) (the "**OPA**"), which are sometimes collectively referred to herein as the "**Parties**" or singularly as a "**Party**".

WHEREAS the OPA and TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the "**Original Contract**") dated October 9, 2009 for a power generation facility (the "**Facility**") to be built and operated by TCE in Oakville, Ontario;

AND WHEREAS TCE had entered into contracts and expended funds to develop the Facility;

AND WHEREAS by letter dated October 7, 2010, the OPA advised TCE that it would not proceed with the Original Contract and directed TCE to cease all further work and activities in connection with the Facility;

AND WHEREAS the OPA and TCE entered into a Confidentiality Agreement dated effective as of October 8, 2010 (the "**Confidentiality Agreement**") (a copy of which is attached as Exhibit I);

AND WHEREAS in accordance with the OPA's letter of October 7, 2010, the OPA and TCE have been working cooperatively to identify other generation projects;

AND WHEREAS in its 18-Month Outlook Update (December 3, 2010), the Independent Electricity System Operator ("**IESO**") confirmed the need for a peaking natural gas-fired power plant in the Kitchener-Waterloo-Cambridge area;

AND WHEREAS the OPA and TCE have been discussing the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area having an approximate Season 3 (as defined in the Original Contract) contract capacity of 450 MW (the "**Potential Project**");

AND WHEREAS the OPA has delivered to TCE and MPS Canada Inc. an Acknowledgement dated December 17, 2010 and has delivered to TCE an Acknowledgement dated • (copies of which are attached as Exhibit II), and may at a future date designate specified information as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act*

and provide additional acknowledgements of such designations (existing and future acknowledgements collectively referred to as the "Acknowledgements");

AND WHEREAS the OPA and TCE entered into a letter agreement dated December 21, 2010 regarding the Potential Project (the "MOU") (a copy of which is attached as Exhibit III);

AND WHEREAS on •, 2011, the Minister of Energy of Ontario issued a directive (the "Directive") to the OPA (a copy of which is attached as Exhibit IV) to continue negotiations with TCE related to the Potential Project, with the view to concluding and executing a definitive contract for the Potential Project by June, 2011, which will address the system needs described above;

**[NTD: TCE and the OPA to discuss what the expectation is *vis a vis* the timing and content of the Directive.]**

AND WHEREAS the OPA and TCE desire to enter into an agreement setting forth the process for expediting TCE's development and construction of the Potential Project prior to finalizing the Contract (as defined herein);

NOW THEREFORE, in consideration of the agreements, premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), TCE and the OPA agree as follows:

## **ARTICLE I TERM OF AGREEMENT**

- 1.1 Unless extended by mutual written agreement of the Parties, and subject to earlier termination as set forth in Sections 1.2, the term of this Agreement (the "Term") shall be from the effective date hereof until the earlier of (i) 5:00 PM (Toronto time) on June 30, 2011 and (ii) execution and delivery by the Parties of the Contract.
- 1.2 This Agreement may be terminated at any time by mutual agreement of the Parties.
- 1.3 Notwithstanding termination of this Agreement by effluxion of time or otherwise as provided herein, the provisions of Sections 2.3, 2.4, 2.5, 3.3(a), 3.3(b), 6.1 and 6.2 and Articles V and VII shall survive if the Contract is not executed and delivered by the Parties; whereas if the Contract is executed and delivered by the Parties, only Sections 6.1 and 6.2 shall survive, unless otherwise set forth in the Contract.

## **ARTICLE II COMMITMENTS**

- 2.1 TCE hereby covenants and agrees to proceed during the Term with the development of the Potential Project, with a target of achieving commercial operation by **[December 31, 2015]** and being registered and available as a dispatchable facility with the IESO by **[December 31, 2015]**. **[NTD; to be discussed re permit risk.]**
- 2.2 During the Term, the Parties covenant and agree to negotiate in good faith and to use their commercially reasonable efforts to execute an agreement (the "Contract") on the basis described in the Directive, the MOU and this Agreement for the development, construction and operation of the Potential Project and on terms and conditions acceptable to each of the Parties, acting reasonably. The Parties further covenant and agree that upon the execution and delivery of the



Contract, they will terminate the Original Contract. For greater certainty and without limiting the generality of the foregoing, the Parties acknowledge and agree that:

- (a) The Potential Project shall meet the Technical Design Requirements set out in Schedule A;
- (b) The Contract shall be based on the form of the Northern York Region Peaking Generation Contract (the "**NYR Contract**") and shall include the additional terms set out in Schedule B and such other terms as may be required by this Agreement;
- (c) The process for the good faith negotiations is set out in Schedule C;

provided that if, after negotiating in good faith, the Parties cannot agree on the appropriate amount to be the "Net Revenue Requirement", the O&M payment or any other variable to be included in Exhibit B of the Contract or any changes that should be made to the NYR Contract, the Parties shall be deemed to have negotiated the terms of the Contract in good faith and used commercially reasonable efforts.

2.3 In the event that the Parties do not enter into the Contract prior to the end of the Term, unless such event is the result of TCE not having negotiated the terms of the Contract in good faith or TCE not having used its commercially reasonable efforts to execute and deliver a Contract in the form that was negotiated and agreed by the Parties' respective negotiating teams, subject to Section 3.1(a), the OPA hereby indemnifies and holds TCE harmless against, and agrees to reimburse TCE for, all costs and expenses TCE reasonably incurs in undertaking its obligations pursuant to this Agreement as set forth in Schedule D hereto (as such Schedule may be revised from time to time in accordance with Section 3.1, all as more particularly described in Article III hereof), except that TCE shall not be entitled to indemnification for any particular costs and expenses incurred in terminating any commitments included in Schedule D to the extent that TCE has not used its commercially reasonable efforts to mitigate such costs and expenses following the end of the Term. At the request of the OPA, TCE shall,

- (a) provide copies of all work product, the cost and expense for which the OPA has reimbursed TCE or its affiliates pursuant to the indemnity herein (the "**Indemnified Work Product**");
- (b) grant to the OPA a license to use that portion of the Indemnified Work Product that does not constitute confidential information of TCE or any third party or is not otherwise proprietary with respect to the Potential Project;
- (c) upon the future productive use by TCE of any portion of the Indemnified Work Product, reimburse the OPA for the indemnified cost related to that portion of the Indemnified Work Product; and
- (d) to the extent that Indemnified Tangible Goods (as defined below) are assignable, transfer, assign or deliver Indemnified Tangible Goods to the OPA, without further liability of the OPA save and except for its assumption of any liabilities associated with such Indemnified Tangible Goods after the date of such transfer, assignment or delivery; for the purposes hereof "**Indemnified Tangible Goods**" includes TCE's or its affiliates' right, title and interest in and to any tangible goods, materials and equipment, the costs and expenses relating to which the OPA has reimbursed TCE or its affiliates pursuant to the indemnity herein.

For greater certainty, the Parties acknowledge and agree that (A) there is no intention that pursuant hereto TCE would transfer to the OPA any real property, intellectual property, processes, copyright, licences, permits or approvals or confidential proprietary information and work product; and (B) the OPA's obligation to indemnify TCE shall not exceed the aggregate of the Cap Amount, as hereafter defined.

The OPA also acknowledges that the Indemnified Work Product and Indemnified Tangible Goods are being prepared specifically for TCE as part of the Potential Project, and that they are not intended or represented to be suitable for reuse by the OPA in respect of any other project or for any other purpose. The transfer, assignment or delivery of the Indemnified Work Product and Indemnified Tangible Goods is made without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods, including as to fitness for use, accuracy, quality or merchantability. Any use thereof by the OPA will be without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods and at the OPA's sole risk and without liability or legal recourse to TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods.

- 2.4 If for any reason the Parties do not enter into the Contract prior to the end of the Term, then TCE shall be entitled to pursue all of its legal remedies against the OPA for claims arising out of the decision by the OPA not to proceed with the Original Contract, including for the repudiation of the Original Contract.
- 2.5 Notwithstanding any other provision of this Agreement, neither Party shall have any obligation or liability to the other for any indirect, special or consequential damages resulting from a breach of this Agreement. For greater certainty, no provision of this Agreement will in any way affect, limit or interfere with TCE's rights and remedies in respect of the Original Contract.

### **ARTICLE III BREAK-UP COSTS**

- 3.1 (a) Schedule D attached hereto, as it may be revised and replaced from time to time in accordance with the procedure set forth in this Article III, sets forth the aggregate and the categories of the costs and expenses relating to the Potential Project for which the OPA agrees to indemnify TCE. The OPA acknowledges and agrees that the consent or approval of the OPA is not required if the allocations of the aggregate costs amongst the categories are changed by TCE provided that the OPA's obligations to indemnify TCE for its costs and expenses in accordance with the provisions of Section 2.3 at any given point shall not exceed the aggregate dollar amount of the costs and expenses set forth in Schedule D for that point in time plus \$1,000,000 (the "**Cap Amount**").
- (b) During the Term, with respect to any individual expenditure or commitment by TCE in excess of \$1,000,000 for which the OPA may be liable pursuant to Section 2.3, TCE shall provide written notice (as provided in Section 7.1 hereof) together with a brief explanation of the nature of the expenditure or commitment within five (5) Business Days of TCE having executed a written agreement to incur such expenditure. The OPA acknowledges that TCE has already made the expenditures or commitments identified in Schedule D as non recoverable costs for the Facility or owing to MPS Canada, Inc. and that no written notice of such expenditures or commitments is required.

- (c) During the Term, if there occurs
  - (i) any change in an expenditure or commitment provided for on Schedule D, or
  - (ii) any new expenditure not included on Schedule D which TCE would intend to claim pursuant to Section 2.3,

which change or new expenditure would cause the total potential liability of the OPA under Section 2.3 to exceed the aggregate amount set forth in Schedule D at that point in time by an amount greater than \$1,000,000 and provided that such change or new expenditure is reasonably required to maintain the schedule to achieve the commercial operation milestone dates set forth in Section 2.1, TCE shall seek the consent of the OPA to such change or new expenditure, as set forth in Section 3.1(d) hereof.

- (d) In case of the occurrence of any event described in Section 3.1(c), TCE shall propose a revised Schedule D reflecting such expenditure or commitment or change in expenditure or commitment, together with a brief explanation thereof, including an explanation as to the impact on achieving the commercial operation milestone dates set forth in Section 2.1 if such expenditure, commitment or change is not made, and obtain the OPA's written consent to the revision prior to incurring such expenditure or making such commitment. In the event that the OPA does not respond to such proposed revision within five (5) Business Days of receipt of notice thereof from TCE as provided above, the OPA shall be deemed to have refused its consent. If the OPA provides its written consent to such revisions, then the revised Schedule D proposed by TCE and accepted by the OPA shall become the operative Schedule D for the purposes hereof until replaced in accordance with the terms hereof.

3.2 In the event the OPA does not consent to a revision to Schedule D proposed by TCE within five (5) Business Days of receipt of notice thereof from TCE, or is deemed not to have consented, the commercial operation milestone dates set forth in Section 2.1 may be adjusted by mutual agreement of the Parties.

3.3 (a) In the event that (i) this Agreement is terminated as provided in Section 1.2, or (ii) the Parties have not executed the Contract and terminated the Original Contract prior to the end of the Term, TCE shall, within thirty (30) Business Days of such termination or the end of the Term, as the case may be, submit to the OPA an invoice for the amounts for which it claims indemnification pursuant to Section 2.3, together with reasonable documentation in support of the invoice. The OPA may, acting reasonably, request additional supporting documentation. The OPA shall notify TCE of any dispute with any amounts so claimed within fifteen (15) Business Days of receipt thereof, in which case the provisions of Article V shall apply.

- (b) All amounts not subject to dispute shall be paid by the OPA to TCE within thirty (30) calendar days of the date of the invoice and all amounts settled pursuant to the dispute resolution provisions hereof shall be paid within ten (10) Business Days of their resolution. All amounts not paid when due shall bear interest from the date due hereunder to the date of payment at a rate equal to the annual rate of interest quoted by, published and commonly known as the "prime rate" of the Royal Bank of Canada at its main office in Toronto Ontario as the reference rate then in effect for interest rates on commercial demand loans made by it in Canadian dollars to its Canadian borrowers plus four percent (4%) per annum.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 TCE represents and warrants to the OPA and acknowledges and confirms that the OPA is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) TCE is a corporation incorporated under the laws of the Canada and has the corporate power and authority to enter into and perform its obligations under this Agreement.
  - (b) The execution and delivery and performance by TCE of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of TCE.
  - (c) The execution and delivery of and performance by TCE of this Agreement:
    - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of the constating documents or by-laws of TCE, as applicable;
    - (ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which TCE is a party; and
    - (iii) do not and will not result in the violation of any applicable (x) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (y) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting TCE.
  - (d) This Agreement has been duly executed and delivered by TCE and constitutes legal, valid and binding agreements of TCE (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- 4.2 The OPA represents and warrants to TCE and acknowledges and confirms that TCE is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) The OPA is a statutory corporation incorporated and existing under Parts II.1 and II.2 of the *Electricity Act, 1998* (Ontario) and has the corporate power and authority to enter into and perform its obligations under this Agreement.
  - (b) The execution and delivery of and performance by the OPA of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the OPA.

- (c) The execution and delivery of and performance by the OPA of this Agreement:
  - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of its constating documents or by-laws;
  - (ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which it is a party; and
  - (iii) do not and will not result in the violation of any applicable (x) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (y) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting the OPA.
- (d) This Agreement has been duly executed and delivered by the OPA and constitutes legal, valid and binding agreements of the OPA (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

[NTD: OPA to confirm that this is a "procurement contract" for the purposes of the *Electricity Act, 1998*.]

- (e) This Agreement is a "procurement contract" for the purposes of Section 25.31 of the *Electricity Act, 1998* (Ontario).

## ARTICLE V DISPUTE RESOLUTION

- 5.1 If any dispute, claim, question or difference (each a "Dispute") arises with respect to this Agreement, including Schedule D and the amounts owing by the OPA to TCE pursuant to Section 2.3 hereof, one senior executive of TCE and one from the OPA will use their reasonable best efforts to settle the Dispute. Notwithstanding the foregoing, the Parties agree that the provisions of this Article V shall not apply to any disputes relating to the negotiation of the terms and conditions of the Contract.
- 5.2 If the Parties do not reach a solution pursuant to Section 5.1 within five (5) Business Days following receipt of the notice of the Dispute by either Party to the other, then either Party can deliver a written notice to the other Party requiring the Dispute to be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) and the national arbitration rules of the ADR Institute of Canada, based upon the following:

- (a) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties. In the event of failure to agree within three (3) Business Days following delivery of the written notice to arbitrate, each of the Parties to the Dispute shall designate an arm's-length third party within a further three (3) Business Days who together shall agree upon and appoint an arbitrator. In the event such third parties fail to appoint the arbitrator within three (3) Business Days after their appointment, either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator.
- (b) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within fifteen (15) Business Days after the arbitrator has been appointed.

**[NTD: These timelines are extremely tight. This may be limiting the pool of arbitrators to people who do not get a lot of arbitration work.]**

- (c) The arbitration shall take place in Toronto, Ontario and shall be conducted in English.
  - (d) The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal (other than those limited rights of appeal set forth in the *Arbitration Act, 1991* (Ontario)), and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators' fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation of the Parties.
  - (e) Judgment upon any award may be entered in any Court having jurisdiction or application may be made to the Court for a judicial recognition of the award or an order of enforcement, as the case may be.
- 5.3 After written notice is given to refer any Dispute to arbitration, the Parties will meet within five (5) Business Days of delivery of the notice and will negotiate in good faith any changes to these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.

#### **ARTICLE VI CONFIDENTIALITY, ANNOUNCEMENTS AND DEALING WITH THE OPA**

- 6.1 The Parties acknowledge that this Agreement is confidential and is subject to the terms of the Confidentiality Agreement.
- 6.2 **[TCE acknowledges 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. TCE agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if TCE continues to possess such FIPPA Records in a readily deliverable form at the time of the OPA's request. Information stored in any computer archive shall not be considered to be in a readily deliverable form. If TCE does possess such FIPPA Records in a readily deliverable form, it shall provide the same within a reasonable time after being directed to do so by the OPA. The OPA acknowledges that FIPPA Records do not include any**

document or information provided to the OPA or its representatives pursuant to the Acknowledgements. The provisions of this Section 6.2 shall prevail over, and in lieu of, any other applicable provisions in this Agreement.]

[NTD: The foregoing provision to be discussed with the OPA.]

- 6.3 No press release, public statement, announcement or other public disclosure (a "Public Statement") with respect to this Agreement, the Contract or the transactions contemplated in this Agreement may be made by either Party unless with the prior written consent and joint approval of the other Party except as may be required by law or a governmental entity. Where the Public Statement is required by law or by a governmental entity, the Party required to make the Public Statement will use its best effort to obtain the approval of the other Party as to the form, nature and extent of the disclosure.
- 6.4 Either Party shall be free to communicate, or initiate any discussions or exchanges of information, with the Ministry of Energy (Ontario) ("OME") or any other ministry of the Province of Ontario regarding any role the OME or such other ministry may have with respect to the Potential Project, including in respect of any required regulatory approvals.

#### **ARTICLE VII MISCELLANEOUS**

- 7.1 Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile, along with a copy by electronic mail, and addressed:

to the OPA at:

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

Attention: •

Telephone: •

Facsimile: •

e-mail: •

with a copy to:

Osler, Hoskin & Harcourt LLP P.O. Box 50, 61st Floor  
1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Rocco Sebastiano

Telephone: 416-862-5859

Facsimile: 416-862-6666

e-mail: rsebastiano@osler.com

to TCE at:

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, ON M5J 2J1

Attention: Terry Bennett, Vice-President, Power Generation Development

Telephone: 416-869-21330  
Facsimile: 416-869-2056  
e-mail: terry\_bennett@transcanada.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (ii) if sent by same-day courier service, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice by electronic mail or to legal counsel does not invalidate delivery of that Notice to a Party.

- 7.2 Time is of the essence in this Agreement.
- 7.3 The Parties intend that this Agreement will not benefit or create any right or cause of action in favour of, any person or entity, other than the Parties to this Agreement. The Parties acknowledge and agree that at the conclusion of good faith negotiations of a Contract, the approval of their respective boards of directors (in such boards' sole discretion) will be required for execution and delivery of such Contract.
- 7.4 Except as otherwise expressly provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this Agreement and the Contract.
- 7.5 This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties. Subject to Section 1.3, if the Contract is executed and delivered by the Parties, the terms of the Contract shall supersede and govern over the terms of this Agreement.
- 7.6 No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.



- 7.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns. TCE shall be entitled to assign this Agreement, in whole or in part, with notice to the OPA, to one or more corporations, limited or general partnerships and/or other entities of which TCE or its affiliates retain control. Upon TCE giving notice to the OPA of any such assignment, all references herein to TCE shall to the extent appropriate be deemed to be and include such assignee or assignees. For the purposes hereof "**control**" shall have the meaning given thereto in the *Business Corporations Act* (Ontario).
- 7.8 If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
- 7.9 This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 7.10 For purposes of this Agreement, "**Business Day**" means any day of the year other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.
- 7.11 This Agreement may be executed in any number of counterparts (including counterparts by electronic mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.
- 7.12 This Agreement, along with Exhibits I, II, III, and IV and Schedules A, B, C and D hereto, together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. Any conflict or inconsistency between the Agreement and the Exhibits or Schedules shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely: **[NTD: To be confirmed.]**
- (i) the Agreement;
  - (ii) Exhibit II;
  - (iii) Exhibit III;
  - (iv) Exhibit IV;
  - (v) Exhibit I;
  - (vi) Schedule D;
  - (vii) Schedule B;
  - (viii) Schedule C; and
  - (ix) Schedule A.

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

IN WITNESS WHEREOF, the Parties have executed this Implementation Agreement

**TRANSCANADA ENERGY LTD.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT I**  
**CONFIDENTIALITY AGREEMENT**

**EXHIBIT II**  
**ACKNOWLEDGEMENTS**

**EXHIBIT III**  
**MOU**

**EXHIBIT IV**  
**MINISTER'S DIRECTIVE**

## **SCHEDULE A TECHNICAL DESIGN REQUIREMENTS**

**[NTD: Further discussion required.]**

### **Potential Project**

The Potential Project will:

- (a) be a dispatchable facility.
- (b) be a simple cycle configuration generating facility.
- (c) utilize gas (which has been defined as natural gas supplied by pipeline) as the fuel.
- (d) have a minimum Ramp Rate, over a single five minute interval, of a least 20 MW/minute, and will be capable of responding to market prices at its specified Ramp Rate, both increasing and decreasing output.

### **Contract Capacity**

The Potential Project will be a single generating facility and will

- (a) be able to provide a minimum of 125 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Potential Project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of [450] MW at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of no less than 250 MW; and
- (d) have a Contract Capacity of no more than [550] MW in any Season.

### **Electrical Connection**

The Potential Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. The Potential Project will have a direct connection to the Hydro One circuits M20D and M21D with a connection point located at or near the Preston TS.

### **Emissions Requirements**

The Potential Project will not emit:

- (i) Nitrogen Oxides (NO<sub>x</sub>) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O<sub>2</sub> in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; or
- (ii) Carbon Monoxide (CO) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O<sub>2</sub> in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract.

The Contract will require that the emission limits for NO<sub>x</sub> and CO pursuant to this Section, be (i) incorporated into the Potential Project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the Potential Project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

The emission limits for NO<sub>x</sub> and CO stated in the Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the Potential Project must comply with the NO<sub>x</sub> and CO limits set out above

**Fuel Supply**

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

**Equipment**

The Potential Project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment as purchased under Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010 November 19, 2010 and December 31, 2010 and as may be further amended from time to time. Each Generator shall be nominally rated at [250] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.



**SCHEDULE B**  
**ADDITIONAL CONTACT TERMS**

[NTD: details to follow.]

NRR

Permits and Approvals

Gas Delivery and Management Services Costs

Interconnection Costs

Operating Reserve

Option to Extend Term

Future Changes – Risk Mitigation

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**SCHEDULE C  
PROCESS**

**[NTD: to be provided separately.]**

**SCHEDULE D**  
**PROJECTED COSTS AND EXPENSES**  
**DURING THE TERM**

[NTD: The following is preliminary and subject to change.]

	Cancellation Schedule	January 2011	February 2011	March 2011	April 2011	May 2011	June 2011
		Values are in millions and are cumulative month to month					
	Non-Recoverable costs for the Facility	\$33.6	\$33.6	\$33.6	\$33.6	\$33.6	\$33.6
	MPS Canada, Inc. ESA US\$	\$108.5	\$130.2	\$137.5	\$143.3	\$144.7	\$144.7
	Hedging Costs US\$ to Cdn\$	\$12.4	\$12.4	\$12.4	\$12.4	\$12.4	\$12.4
	MPS Canada, Inc. ESA f/s Option	\$34.6	\$34.6	\$34.6	\$34.6	\$34.6	\$34.6
	MPS Canada, Inc. LTSA	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1
	MPS Canada, Inc. TRA	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5
	TransCanada Business Development		\$0.1	\$0.1	\$0.2	\$0.3	\$0.3
	TransCanada Development Engineering	\$0.2	\$0.3	\$0.6	\$0.7	\$1.0	\$1.1
	External Detailed Design Engineering	\$-	\$0.8	\$1.7	\$2.6	\$3.3	\$4.0
	Other Engineering Consulting	\$0.1	\$0.3	\$0.5	\$0.7	\$0.8	\$0.9
	Consultant Environmental		\$0.1	\$0.2	\$0.3	\$0.4	\$0.5
	Land Options Costs and Real Estate			\$0.5	\$0.5	\$0.5	\$0.5

	Community and Public Relations		\$0.0	\$0.1	\$0.1	\$0.1	\$0.1
	External Legal		\$0.0	\$0.0	\$0.0	\$0.0	\$0.1
	Union Gas		\$0.0	\$0.0	\$0.0	\$0.0	\$0.1
	Other		\$0.1	\$0.1	\$0.2	\$0.2	\$0.3
	<b>Total</b>	<b>\$200.9</b>	<b>\$224.1</b>	<b>\$233.4</b>	<b>\$240.7</b>	<b>\$243.5</b>	<b>\$244.7</b>

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** January 25, 2011 9:23 AM  
**To:** Susan Kennedy  
**Subject:** Fw: Redline to PEC Implementation Agreement  
**Attachments:** WSComparison\_Implementation Agreement-IA Cambridge (draft Jan 24, 2011 v3).pdf

FYI ...

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]  
**Sent:** Monday, January 24, 2011 05:14 PM  
**To:** Michael Killeavy; Deborah Langelaan  
**Cc:** Susan Kennedy; Smith, Elliot <[ESmith@osler.com](mailto:ESmith@osler.com)>; Ivanoff, Paul <[PIvanoff@osler.com](mailto:PIvanoff@osler.com)>  
**Subject:** Redline to PEC Implementation Agreement

For your reference, here is a redline of the draft Implementation Agreement to the one executed for PEC.

Regards, Rocco

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\*\*\*\*\*  
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de le divulguer sans autorisation.

\*\*\*\*\*

TCE Draft – January 24, 2011

WITH PREJUDICE

## IMPLEMENTATION AGREEMENT

between

PORTLANDSTRANSCANADA ENERGY CENTRE L.P. LTD.

and

ONTARIO POWER AUTHORITY

This IMPLEMENTATION AGREEMENT (the "Agreement"), effective as of February 10, 2006, ~~2011~~, is by and between (a) ~~Portlands Energy Centre L.P. ("PEC"), a limited partnership consisting of TransCanada Energy Ltd., Ontario Power Generation Inc., and Portlands Energy Centre Inc. ("PECI"), as general partner for PEC ("TCE"), a Canadian corporation, and (b) the Ontario Power Authority, a statutory corporation established under Part II.1 and Part II.2 of the *Electricity Act, 1998* (Ontario) (the "OPA"), which are sometimes collectively referred to herein as the "Parties" or singularly as a "Party".~~

WHEREAS, ~~PEC has commenced development of a 550 megawatt (nominal) natural gas fuelled "combined-cycle" electric generating station (the "Portlands Project") at a brownfield site located on the eastern portion of the lands formerly used by the R.L. Hearn Generating Station, in the City of Toronto; the OPA and TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the "Original Contract") dated October 9, 2009 for a power generation facility (the "Facility") to be built and operated by TCE in Oakville, Ontario;~~

AND WHEREAS TCE had entered into contracts and expended funds to develop the Facility;

AND WHEREAS by letter dated October 7, 2010, the OPA advised TCE that it would not proceed with the Original Contract and directed TCE to cease all further work and activities in connection with the Facility;

AND WHEREAS the OPA and TCE entered into a Confidentiality Agreement dated effective as of October 8, 2010 (the "Confidentiality Agreement") (a copy of which is attached as Exhibit D);

AND WHEREAS in accordance with the OPA's letter of October 7, 2010, the OPA and TCE have been working cooperatively to identify other generation projects;

AND WHEREAS, in its two most recent 18-month Outlook reports of Update (December 22, 2005 and February 2, 2006, 3, 2010), the Independent Electricity System Operator (the "IESO") identified") confirmed the critical need for at least 250 MW of new supply of electricity in downtown Toronto by the summer of 2008, and at least a further 250 MW by 2010 a peaking natural gas-fired power plant in the Kitchener-Waterloo-Cambridge area;

~~WHEREAS, the Portlands Project has obtained connection approval and those approvals and easements required to connect the facility to Hydro One Networks Inc.'s circuits located at the 115 kV bus at the Hearn SS, although the IESO is currently considering such approvals to determine if any changes are required;~~

AND WHEREAS the OPA and TCE have been discussing the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area having an approximate Season 3 (as defined in the Original Contract) contract capacity of 450 MW (the "Potential Project");

AND WHEREAS the OPA has delivered to TCE and MPS Canada Inc. an Acknowledgement dated December 17, 2010 and has delivered to TCE an Acknowledgement dated • (copies of which are attached as Exhibit II), and may at a future date designate specified information as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act* and provide additional acknowledgements of such designations (existing and future acknowledgements collectively referred to as the "Acknowledgements");

~~WHEREAS, the Ontario Ministry of Energy (the "OME") has determined that the Portlands Project is best able to meet the critical need for new supply in downtown Toronto—Leaside Sector; AND WHEREAS the OPA and TCE\* entered into a letter agreement dated \*December 21, 2010 regarding the Potential Project (the "MOU") (a copy of which is attached as Exhibit III);~~

AND WHEREAS, on February 10, 2006, •, 2011, the Minister of Energy of Ontario issued a directive (the "Directive") to the OPA (a copy of which is attached as Exhibit IV) to continue negotiations with PECTCE related to the PortlandsPotential Project, with the view to concluding and executing a definitive contract for the PortlandsPotential Project by May 2006, June, 2011, which will address the critical-system needs described above;

~~WHEREAS, as referred to in the Directive, PEC and the OPA have\*-entered into a letter agreement dated \*February 9, 2006 (the "Process Letter") (a copy of which is attached as Exhibit II) setting out the process for negotiation and execution of a definitive contract for the Portlands Project;~~

~~WHEREAS, the OPA has entered into an Accelerated Clean Energy Supply Contract with the Goreway Station Partnership dated as of December 31, 2005 (the "Goreway ACES Contract") in connection with\* the development, construction and operation of \*a natural gas fuelled electric generating station on Goreway Drive, City of Brampton (the "Goreway Project");~~  
[NTD: TCE and the OPA to discuss what the expectation is vis a vis the timing and content of the Directive.]

AND WHEREAS, the OPA and PECTCE desire to enter into an agreement setting forth the process for expediting PECTCE's development and construction of the PortlandsPotential Project prior to finalizing the Portlands ACES Contract (as defined herein);

NOW, THEREFORE, in consideration of the agreements, premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), PECTCE and the OPA agree as follows:

## ARTICLE I

## ARTICLE I TERM OF AGREEMENT

- 1.1 ~~1.1-~~ Unless extended by mutual written agreement of the Parties, and subject to earlier termination as set forth in Sections 1.2, the term of this Agreement (the "Term") shall be from the effective date hereof until the earlier of (i) 5:00 PM (Toronto time) on ~~May 1, 2006~~ June 30, 2011 and (ii) execution and delivery by the Parties of the ~~Portlands ACES Contract~~. ~~Notwithstanding the foregoing, the OPA shall be entitled, at its sole option and upon delivery of written notice to PEC\* prior to the end of the Term\* or extended Term, as the case may be, to extend the Term for two thirty day periods, provided that Schedule A attached hereto shall be amended in accordance with Article III to reflect the additional costs and expenses which may be incurred by PEC during such extension periods.~~ Contract.
- 1.2 ~~1.2-~~ This Agreement may be terminated at any time by mutual agreement of the Parties.
- 1.3 ~~1.3-~~ Notwithstanding termination of this Agreement by effluxion of time or otherwise as provided herein, the provisions of Sections 2.3, 2.4, ~~3.3-12.5, 3.3(a), 3.3(b), 6.1 and 3.3-26.2~~ and Articles V and ~~VII~~ VI shall survive if the ~~Portlands ACES Contract~~ is not executed and delivered by the Parties; whereas if the ~~Portlands ACES Contract~~ is executed and delivered by the Parties, only ~~Article VI~~ Sections 6.1 and 6.2 shall survive, unless otherwise set forth in the ~~Portlands ACES Contract~~.

## ARTICLE II

### ARTICLE II COMMITMENTS

- 2.1 ~~2.1-~~ PECTCE hereby covenants and agrees to proceed during the Term with the development of the ~~Portlands Potential Project~~, with a view to ~~(i) target of achieving commercial operation in "simple cycle" mode by June 1, 2008 by~~ [December 31, 2015] and being registered and available as a dispatchable facility with the IESO in ~~"simple cycle" mode between June 1, 2008 and October 1, 2008, and (ii) achieving commercial operation in "combined cycle" mode and being registered and available as a dispatchable facility with the IESO in "combined cycle" mode by June 1, 2009 by~~ [December 31, 2015]. ~~[NTD: to be discussed re permit risk.]~~
- 2.2 ~~2.2-~~ During the Term, the Parties covenant and agree to negotiate in good faith and to use their ~~commercially reasonable best efforts~~ to execute an agreement (the "Portlands ACES Contract") on the basis described in the Directive, the MOU and the Process Letter for the scheduling and delivery of power from the Portlands Project to the IESO-controlled grid this Agreement for\* the development, construction and operation of\* the Potential Project and on terms and conditions acceptable to each of the Parties, acting reasonably. The Parties further covenant and agree that upon the execution and delivery of the Contract, they will terminate the Original Contract. For greater certainty and without limiting the generality of the foregoing, the Parties acknowledge and agree that:
- (a) The Potential Project shall meet the Technical Design Requirements set out in Schedule A:



(b) ~~(a) if, after negotiating in good faith, the Parties cannot agree on the material differences between The Contract shall be based on the form of the Northern York Region Peaking Generation Contract (the Goreway Project and the Portlands Project, "NYR Contract") and shall include the Parties shall be deemed to have negotiated the terms of the Portlands ACES Contract in good faith; and additional terms set out in Schedule B and such other terms as may be required by this Agreement;~~

(c) ~~The process for the good faith negotiations is set out in Schedule C;~~

~~(b) provided that if, after negotiating in good faith, the Parties cannot agree on the appropriate adjustment amount to be the "Net Revenue Requirement", the O&M payment or any other variable listed to be included in Exhibit B to of the Goreway ACES Contract to reflect any material difference between the Goreway Project and the Portlands Project Contract or any changes that should be made to the NYR Contract, the Parties shall be deemed to have negotiated the terms of the Portlands ACES Contract in good faith and used commercially reasonable efforts.~~

2.3 ~~2.3-~~In the event that the Parties do not enter into the Portlands ACES Contract prior to the end of the Term, unless such event is the result of PECTCE not having negotiated the terms of the Portlands ACES Contract in good faith or PECTCE not having used its commercially reasonable best efforts to execute and deliver a Portlands ACES Contract in the form that was negotiated and agreed by the Parties<sup>21</sup>; respective negotiating teams, subject to Section ~~3.1.1, 3.1(a)~~, the OPA hereby indemnifies and holds TCE harmless ~~PEC for against, and agrees to reimburse TCE for~~, all costs and expenses PECTCE reasonably incurs in undertaking its obligations pursuant to this Agreement as set forth in Schedule ~~A~~ D hereto (as such Schedule may be revised from time to time in accordance with Section 3.1, all as more particularly described in Article III hereof), except ~~to the extent that PEC has not used its reasonable best efforts to mitigate that TCE shall not be entitled to indemnification for any particular costs and expenses incurred in terminating any commitments included in Schedule A; and provided that, at D to the extent that TCE has not used its commercially reasonable efforts to mitigate such costs and expenses following the end of the Term.~~ At the request of the OPA, PECTCE shall,

- (a) provide copies of all work product, the cost and expense for which the OPA has reimbursed PECTCE or its affiliates pursuant to the indemnity herein (the **"Indemnified Work Product"**);
- (b) grant to the OPA a license to use that portion of the Indemnified Work Product that does not constitute confidential information of PECTCE or any third party or is not otherwise proprietary with respect to the Portlands Potential Project;
- (c) upon the future productive use by PECTCE of any portion of the Indemnified Work Product, reimburse the OPA for the indemnified cost related to that portion of the Indemnified Work Product; and
- (d) to the extent that Indemnified Tangible Goods (as defined below) are assignable, transfer, assign or deliver Indemnified Tangible Goods to the OPA, without further liability of the OPA save and except for its assumption of any liabilities associated with such Indemnified Tangible Goods after the date of such transfer, assignment or delivery; **"for the purposes hereof "Indemnified Tangible Goods"** includes PECTCE's or its affiliates<sup>21</sup> right, title

and interest in and to any tangible goods, materials and equipment, the costs and expenses relating to which the OPA has reimbursed PECTCE or its affiliates pursuant to the indemnity herein.

For greater certainty, the Parties acknowledge and agree that (A) there is no intention that pursuant hereto PECTCE would transfer to the OPA any real property, intellectual property, processes, copyright, licences, permits or approvals or confidential proprietary information and work product; and (B) the OPA's obligation to indemnify PECTCE shall not exceed the aggregate of the amounts set forth in Schedule A hereto, as revised from time to time: Cap Amount, as hereafter defined.

The OPA also acknowledges that the Indemnified Work Product and Indemnified Tangible Goods are being prepared specifically for PECTCE as part of the PortlandsPotential Project, and that they are not intended or represented to be suitable for reuse by the OPA in respect of any other project. Any reuse by the OPA in respect of any other project or for any other purpose. The transfer, assignment or delivery of the Indemnified Work Product and Indemnified Tangible Goods is made without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods, including as to fitness for use, accuracy, quality or merchantability. Any use thereof by the OPA will be without any representation or warranty by PECTCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods and at the OPA's sole risk and without liability or legal exposure to PECTCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods.

2.4 If for any reason the Parties do not enter into the Contract\* prior to the end of the Term\*, then TCE shall be entitled to pursue all of its legal remedies against the OPA for claims arising out of the decision by the OPA not to proceed with the Original Contract, including for the repudiation of the Original Contract.

2.5 2.4. Notwithstanding any other provision of this Agreement, neither Party shall have any obligation or liability to the other for any indirect, special or consequential damages, resulting from a breach of this Agreement. For greater certainty, no provision of this Agreement will in any way affect, limit or interfere with TCE's rights and remedies in respect of the Original Contract.

### **ARTICLE III**

#### **ARTICLE III** **BREAK-UP COSTS**

3.1 3.1.1.(a) Schedule AD attached hereto, as it may be revised and replaced from time to time as in accordance with the procedure set forth in this Article III, sets forth the aggregate and the categories of the costs and expenses relating to the Potential Project for which the OPA agrees to indemnify PECTCE. The OPA acknowledges and agrees that the consent or approval of the OPA is not required if the allocations of the aggregate costs amongst the categories are changed by PECTCE provided that the aggregate OPA's obligations to indemnify TCE for its costs and expenses at such point in time do in accordance with the provisions of Section 2.3 at any given point shall not exceed the aggregate dollar amount of the costs and expenses set forth in Schedule AD for that point in time plus \$1,000,000 (the "Cap Amount").

(b) 3.1.2.—During the Term, with respect to any individual expenditure or commitment to expenditure by PECTCE in excess of \$100,000~~1,000,000~~ for which the OPA may be liable pursuant to Section 2.3, PECTCE shall provide written notice (as provided in Section 7.1 hereof) together with a brief explanation of the nature of the expenditure or commitment within five (5) Business Days of PECTCE having executed a written agreement to incur such expenditure. The OPA acknowledges that TCE has already made the expenditures or commitments identified in Schedule D as non recoverable costs for the Facility or owing to MPS Canada, Inc. and that no written notice of such expenditures or commitments is required.

(c) \*During the Term, if there occurs \*

3.1.3.—\*During the Term, if there occurs \*(i) (i) any change in an expenditure or commitment provided for on Schedule AD, or

(ii) any new expenditure not included on Schedule AD which PECTCE would intend to claim pursuant to Section 2.3,

which change or new expenditure would cause the total potential liability of the OPA under Section 2.3 to exceed the aggregate amount set forth in Schedule AD at that point in time by an amount greater than \$100,000~~1,000,000~~ and provided that such change or new expenditure is reasonably required to maintain the schedule to achieve the commercial operation milestone dates set forth in Section 2.1, PECTCE shall seek the consent of the OPA to such change or new expenditure, as set forth in Section 3.1.43.1(d) hereof.

(d) 3.1.4.—In case of the occurrence of any event described in Section 3.1.3, PEC~~3.1(c)~~, TCE shall propose a revised Schedule AD reflecting such expenditure or commitment or change in expenditure or commitment, together with a brief explanation thereof, including an explanation as to the impact on achieving the commercial operation milestone dates set forth in Section 2.1 if such expenditure, commitment or change is not made, and obtain the OPA's written consent to the revision prior to incurring such expenditure or making such commitment. In the event that the OPA does not respond to such proposed revision within five (5) Business Days of receipt of notice thereof from PECTCE as provided above, the OPA shall be deemed to have refused its consent. If the OPA provides its written consent to such revisions, then the revised Schedule D proposed by TCE and accepted by the OPA shall become the operative Schedule D for the purposes hereof until replaced in accordance with the terms hereof.

3.2 3.2.—In the event the OPA does not consent to a revision to Schedule AD proposed by PECTCE within five (5) Business Days of receipt of notice thereof from PECTCE, or is deemed not to have consented, the commercial operation milestone dates set forth in Section 2.1 may be adjusted by mutual agreement of the Parties. ~~If within five (5) Business Days of the date the OPA does not consent to the proposed revision (or is deemed not to have consented), the Parties cannot agree on the appropriate adjustment of the commercial operation dates as a result of the failure of PEC to incur the expenditure or make the commitment which PEC proposed to add to Schedule A, either Party may submit the dispute to Mike Noga, Principal and Senior Director, R.W. Beck Inc. (the "Independent Expert") upon providing notice to the other Party. The Independent Expert, acting as an expert and not as an arbitrator, shall investigate the dispute and make his decision in accordance with the following:~~

~~(a) the Independent Expert shall observe the principle of procedural fairness and natural justice;~~

~~(b) each Party may deliver information to the Independent Expert provided that a copy of any such information is also concurrently provided to the other Party;~~

~~(c) the Parties shall at all times do all things which the Independent Expert reasonably requires to permit an equitable decision to be made, including making available any documents he reasonably requests to inspect or any employee he reasonably requests to interview; the Parties shall not act so as to delay or prevent a timely decision from being made;~~

~~(d) the Independent Expert shall make his determination within ten (10) Business Days of the dispute being submitted to the Independent Expert;~~

~~(e) the Independent Expert's determination shall be in writing and include in it a statement of the reasons for making his decision;~~

~~(f) the Independent Expert's investigation and decision shall be kept confidential between the Parties and the Independent Expert;~~

~~(g) the Independent Expert's determination shall be final and binding on the Parties, with the following exception:~~

~~(i) — the Independent Expert may, at his own initiative or where requested by one or both Parties, correct his determination where in his opinion it contains a clerical mistake, a material miscalculation or a material mistake in the description of any matter or issue referred to in the determination, provided that any such correction must be made and promulgated to the Parties within five (5) business days, or such other period agreed to by the Parties, of his initial written determination being issued to the Parties; and~~

~~(h) each Party shall bear its own costs relating to the expert determination process and any expenses relating to the engagement of the Independent Expert shall be shared equally between the Parties.~~

~~Article V shall not apply to any disputes submitted to the Independent Expert.~~

3.3     3.3.1(a)     In the event that (i) this Agreement is terminated as provided in Section 1.2, or (ii) the Parties have not executed the Portland's ACES Contract and terminated the Original Contract prior to the end of the Term, PECTCE shall, within thirty (30) Business Days of such termination or the end of the Term, as the case may be, submit to the OPA an invoice for the amounts for which it claims indemnification pursuant to Section 2.3, together with such reasonable documentation in support of the invoice as the. The OPA may, acting reasonably, request additional supporting documentation. The OPA shall notify PECTCE of any dispute with any amounts so claimed within fifteen (15) Business Days of receipt thereof, in which case the provisions of Article V shall apply.

- (b) ~~3.3.2.~~ All amounts not subject to dispute shall be paid by the OPA to PECTCE within thirty (30) calendar days of the date of the invoice and all amounts settled pursuant to the dispute resolution provisions hereof shall be paid within ten (10) Business Days of their resolution. All amounts not paid when due shall bear interest from the date due hereunder to the date of payment at a rate equal to the annual rate of interest quoted by, published and commonly known as the "prime rate" of the Royal Bank of Canada at its main office in Toronto Ontario as the reference rate then in effect for interest rates on commercial demand loans made by it in Canadian dollars to its Canadian borrowers plus four percent (4%) per annum.

#### ARTICLE IV

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 ~~4.1.~~ PECTCE represents and warrants to the OPA and acknowledges and confirms that the OPA is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) ~~4.1.1.~~ PEC is a ~~limited partnership formed and existing under the laws of the Province of Ontario.~~ PECTCE is a corporation incorporated under the laws of the Province of Ontario and as the general partner of PECCanada and has the corporate power and authority to enter into and perform ~~the~~its obligations of PEC under this Agreement.
- (b) ~~4.1.2.~~ The execution and delivery and performance by PECTCE of this Agreement ~~on behalf of PEC~~ and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of PECTCE.
- (c) ~~4.1.3.~~ The Execution and delivery of and performance by PECTCE of this Agreement ~~on behalf of PEC~~:
- (i) ~~4.1.3.1.~~ —do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of the constating documents or by-laws of PECI or PECTCE, as applicable;
- (ii) ~~4.1.3.2.~~ —do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which PECTCE is a party; and
- (iii) ~~4.1.3.3.~~ —do not and will not result in the violation of any applicable (ix) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (iiy) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting PECTCE.

(d) 4.1.4.—This Agreement has been duly executed and delivered by ~~PECI~~ on behalf of PECTCE and constitutes legal, valid and binding agreements of PECTCE (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors<sup>21</sup> rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

4.2 4.2.—The OPA represents and warrants to PECTCE and acknowledges and confirms that PECTCE is relying on such representations and warranties in connection with the transactions contemplated herein:

(a) 4.2.1.—The OPA is a statutory corporation incorporated and existing under Parts II.1 and II.2 of the *Electricity Act, 1998 (Ontario)* and has the corporate power and authority to enter into and perform its obligations under this Agreement.

(b) 4.2.2.—The execution and delivery of and performance by the OPA of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the OPA.

(c) 4.2.3.—~~The Execution~~ and delivery of and performance by the OPA of this Agreement:

(i) 4.2.3.1.—do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of its constating documents or by-laws;

(ii) 4.2.3.2.—do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which it is a party; and

(iii) 4.2.3.3.—do not and will not result in the violation of any applicable (~~ix~~) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (~~ix~~) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting the OPA.

(d) 4.2.4.—This Agreement has been duly executed and delivered by the OPA and constitutes legal, valid and binding agreements of the OPA (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors<sup>21</sup> rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

~~4.2.5. The terms and conditions contained in the Goreway ACES Contract are in all material respects equal to the terms and conditions contained in the draft Accelerated Clean Energy Supply Contract provided by the OPA to PEC on January 24, 2006.~~

**ARTICLE V**

[NTD: OPA to confirm that this is a "procurement contract" for the purposes of the *Electricity Act, 1998.*]

(e) This Agreement is a "procurement contract" for the purposes of Section 25.31 of the *Electricity Act, 1998* (Ontario).

**ARTICLE V**

**DISPUTE RESOLUTION**

5.1 ~~5.1. Subject to Section 3.2, if~~ any dispute, claim, question or difference (each a "**Dispute**") arises with respect to this Agreement, including Schedule ~~A~~D and the amounts owing by the OPA to ~~PECTCE~~ pursuant to Section 2.3 hereof, ~~two~~one senior executives of ~~PECTCE~~ and one from the OPA will use their reasonable best efforts to settle the Dispute. Notwithstanding the foregoing, the Parties agree that the provisions of this Article V shall not apply to any disputes relating to the negotiation of the terms and conditions of the ~~Portlands ACES~~ Contract.

5.2 ~~5.2.~~—If the Parties do not reach a solution pursuant to Section 5.1 within five (5) Business Days following receipt of the notice of the Dispute by either Party to the other, then either Party can deliver a written notice to the other Party requiring the Dispute to be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) and the national arbitration rules of the ADR Institute of Canada, based upon the following:

(a) ~~5.2.1.~~—The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties. In the event of failure to agree within three (3) Business Days following delivery of the written notice to arbitrate, each of the Parties to the Dispute shall designate an arm's-length third party within a further three (3) Business Days who together shall agree upon and appoint an arbitrator. In the event such third parties fail to appoint the arbitrator within three (3) Business Days after their appointment, either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator.

(b) ~~5.2.2.~~—The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within fifteen (15) Business Days after the arbitrator has been appointed.

[NTD: These timelines are extremely tight. This may be limiting the pool of arbitrators to people who do not get a lot of arbitration work.]

(c) ~~5.2.3.~~—The arbitration shall take place in Toronto, Ontario and shall be conducted in English.

(d) ~~5.2.4.~~—The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal (other than those limited rights of appeal set forth in the *Arbitration Act, 1991* (Ontario)), and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators' fees and expenses, the

provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation of the Parties.

(e) ~~5.2.5.~~—Judgment upon any award may be entered in any Court having jurisdiction or application may be made to the Court for a judicial recognition of the award or an order of enforcement, as the case may be.

5.3 5.3.—After written notice is given to refer any Dispute to arbitration, the Parties will meet within five (5) Business Days of delivery of the notice and will negotiate in good faith any changes to these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.

## ARTICLE VI

### ARTICLE VI CONFIDENTIALITY, ANNOUNCEMENTS AND DEALING WITH THE OPA

6.1 6.1.— Each Party shall keep confidential and will not use for any improper purpose or disclose to any other person or entity any information obtained from the other Party or its agents and representatives, unless such information (i) is or becomes generally available to the public other than as a result of a disclosure in violation of this Agreement, (ii) becomes available to the Party on a non-confidential basis from a source other than the other Party or its agents and representatives, unless the Party knows that such source is prohibited from disclosing the information to it by a contractual, fiduciary or other legal obligation to the other Party, or (iii) was known to the Party on a non-confidential basis before its disclosure to the Party by the other Party or its agents and representatives. In the event that either Party is required by any law, by law, rule or policy of any governmental entity to disclose any confidential information, it will, to the extent not prohibited by any law, by law, rule or policy of any governmental entity, provide the other Party with prompt notice of such requirements so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 6.1. Notwithstanding the foregoing, but subject to Section 6.4, either Party shall be permitted to disclose any such information to the OME or any other ministry of the Province of Ontario to the extent required in connection with the Portlands Project. The Parties acknowledge that this Agreement is confidential and is subject to the terms of the Confidentiality Agreement.

6.2 6.2.— PECTICE acknowledges 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. PECTICE agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if PECTICE continues to possess such FIPPA Records in a readily deliverable form at the time of the OPA's request. Information stored in any computer archive shall not be considered to be in a readily deliverable form. If PECTICE does possess such FIPPA Records in a readily deliverable form, it shall provide the same within a reasonable time after being



directed to do so by the OPA. The OPA acknowledges that FIPPA Records do not include any document or information provided to the OPA or its representatives pursuant to the Acknowledgements. The provisions of this Section 6.2 shall prevail over, and in lieu of, any other applicable provisions in this Agreement.]

INTD: The foregoing provision to be discussed with the OPA.]

6.3 6.3.—No press release, public statement, announcement or other public disclosure (a “Public Statement<sup>22</sup>”) with respect to this Agreement, the ~~Portlands ACES Contract~~ or the transactions contemplated in this Agreement may be made by either Party unless with the prior written consent and joint approval of the other Party except as may be required by law or a governmental entity. Where the Public Statement is required by law or by a governmental entity, the Party required to make the Public Statement will use its best effort to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

6.4

6.5 6.4.—Each Party specifically acknowledges and agrees that it will negotiate the ~~Portlands ACES Contract solely with the other Party hereto and will not indirectly negotiate the Portland ACES Contract through the Government of Ontario, including the OME or any other ministry of the Province of Ontario.~~

6.6 6.5—Either Party shall be free to communicate, or initiate any discussions or exchanges of information, with the ~~OME~~ Ministry of Energy (Ontario) (“OME”) or any other ministry of the Province of Ontario regarding any role the OME or such other ministry may have with respect to the ~~Portlands Potential~~ Project, including in respect of any required regulatory approvals.

## ARTICLE VII

### ARTICLE VII MISCELLANEOUS

7.1 7.1.—Any notice, direction or other communication (each a “Notice<sup>22</sup>”) given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile, along with a copy by electronic mail, and addressed:

to the OPA at:

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

Attention:—~~Paul J. Bradley, Vice President, Generation Development~~ ●

Telephone:—416-969-6005 ●

Facsimile: 416-967-1947 ●

e-mail: paul.bradley@powerauthority.on.ca ●

with a copy to:

Osler, Hoskin & Harcourt LLP P.O. Box 50, 61st Floor  
1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Rocco Sebastiano

Telephone: 416-862-5859  
Facsimile: 416-862-6666  
e-mail: rsebastiano@osler.com

to PECTCE at:

~~700 University Avenue~~  
~~Toronto, ON M5G 1X6~~

Attention: ~~James D. Burpee, Chairman~~

Telephone: ~~416-592-5130~~  
Facsimile: ~~416-592-5662~~  
e-mail: ~~j.r.burpee@opg.com~~

with copies to:

~~Ontario Power Generation Inc.~~  
~~700 University Avenue~~  
~~Toronto, ON M5G 1X6~~

Attention: ~~Chris Young, Vice President Projects, Business Development~~

Telephone: ~~416-592-3619~~  
Facsimile: ~~416-592-3511~~  
e-mail: ~~chris.young@opg.com~~

and

~~TransCanada Energy~~  
~~8 Royal Bank Plaza~~  
~~200 Bay Street~~  
~~24th Floor, 55 Yonge Street South Tower~~  
Toronto, ON M5E 1J4

Attention: ~~Finn Greflund~~ Terry Bennett, Vice President, Power Generation Development

Telephone: 416-869-2162/21330  
Facsimile: 416-869-2056  
e-mail: finn\_greflund terry\_bennett@transcanada.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (ii) if sent by same-day service-courier service, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice by electronic mail or to legal counsel does not invalidate delivery of that Notice to a Party.

- 7.2     ~~7.2.~~—Time is of the essence in this Agreement.
- 7.3     ~~7.3.~~—The Parties intend that this Agreement will not benefit or create any right or cause of action in favour of, any person or entity, other than the Parties to this Agreement. The Parties acknowledge and agree that at the conclusion of good faith negotiations of a Portlands ACES Contract, the approval of their respective boards of directors (in such boards' sole discretion) will be required for execution and delivery of such Portlands ACES Contract.
- 7.4     ~~7.4.~~—Except as otherwise expressly provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this Agreement and the Portlands ACES Contract.
- 7.5     ~~7.5.~~—This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties. Subject to Section 1.3, if the Portlands ACES Contract is executed and delivered by the Parties, the terms of the Portlands ACES Contract shall supersede and govern over the terms of this Agreement.
- 7.6     ~~7.6.~~—No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- 7.7     ~~7.7.~~—This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns. PECTCE shall be entitled to assign this Agreement, in whole or in part, with notice to the OPA, to one or more corporations, limited or general partnerships and/or other entities of which the limited partners of PECTCE or its affiliates retain control. Upon PECTCE giving notice to the OPA of any such assignment, all references herein to PECTCE shall to the extent appropriate be deemed to be and include such assignee or assignees.

For the purposes hereof "control" shall have the meaning given thereto in the *Business Corporations Act* (Ontario).

7.8 7.8.—If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

7.9 7.9.—This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7.10 7.10.—For purposes of this Agreement, "Business Day" means any day of the year other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

7.11 7.11.—This Agreement may be executed in any number of counterparts (including counterparts by ~~facsimile~~electronic mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.

7.12

7.13 7.12.—This Agreement, along with Exhibits ~~I and II, III, and IV~~ and Schedules ~~A, B, C and D~~ hereto, together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. Any conflict or inconsistency between the Agreement and the Exhibits or Schedules shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely: [NTD: To be confirmed.]

7.14

(i) \_\_\_\_\_ (i) —the Agreement;

(ii) \_\_\_\_\_ (ii) —Exhibit II; ~~and~~

(iii) Exhibit III;

(iv) Exhibit IV;

(v) \_\_\_\_\_ (iii) —Exhibit I;

(vi)

(vii) Schedule D;

(viii) Schedule B;

(ix) Schedule C; and

(x) Schedule A.

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

IN WITNESS WHEREOF, the Parties have executed this Implementation Agreement:

**PORTLANDSTRANSCANADA ENERGY**  
**CENTRE INC., as general partner for**  
**PORTLANDS ENERGY CENTRE L.P.**  
**LTD.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_

~~Name:~~ \_\_\_\_\_

Name: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

**EXHIBIT I**  
**DIRECTIVE CONFIDENTIALITY AGREEMENT**

**EXHIBIT II**  
**ACKNOWLEDGEMENTS**

**PROCESS LETTER**

**EXHIBIT III**  
**MOU**



**EXHIBIT IV**  
**MINISTER'S DIRECTIVE**

## **SCHEDULE A**

### **TECHNICAL DESIGN REQUIREMENTS**

**INTD: Further discussion required.]**

#### **Potential Project**

The Potential Project will:

- (a) be a dispatchable facility.
- (b) be a simple cycle configuration generating facility.
- (c) utilize gas (which has been defined as natural gas supplied by pipeline) as the fuel.
- (d) have a minimum Ramp Rate, over a single five minute interval, of a least 20 MW/minute, and will be capable of responding to market prices at its specified Ramp Rate, both increasing and decreasing output.

#### **Contract Capacity**

The Potential Project will be a single generating facility and will

- (a) be able to provide a minimum of 125 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Potential Project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of [450] MW at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of no less than 250 MW; and
- (d) have a Contract Capacity of no more than [550] MW in any Season.

#### **Electrical Connection**

The Potential Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. The Potential Project will have a direct connection to the Hydro One circuits M20D and M21D with a connection point located at or near the Preston TS.

#### **Emissions Requirements**

The Potential Project will not emit:

- (i) Nitrogen Oxides (NOx) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; or
- (ii) Carbon Monoxide (CO) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract.

The Contract will require that the emission limits for NOx and CO pursuant to this Section, be (i) incorporated into the Potential Project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the Potential Project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

The emission limits for NOx and CO stated in the Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the Potential Project must comply with the NOx and CO limits set out above

**Fuel Supply**

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

**Equipment**

The Potential Project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment as purchased under Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010 November 19, 2010 and December 31, 2010 and as may be further amended from time to time. Each Generator shall be nominally rated at [250] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

**SCHEDULE B**  
**ADDITIONAL CONTACT TERMS**

**[NTD: details to follow.]**

**NRR**

**Permits and Approvals**

**Gas Delivery and Management Services Costs**

**Interconnection Costs**

**Operating Reserve**

**Option to Extend Term**

**Future Changes – Risk Mitigation**

**SCHEDULE C**  
**PROCESS**

**[NTD: to be provided separately.]**

**SCHEDULE D**  
**PROJECTED COSTS AND EXPENSES**  
**DURING THE TERM**

**[NTD: The following is preliminary and subject to change.]**

<u>Cancellation Schedule</u>	<u>January 2011</u>	<u>February 2011</u>	<u>March 2011</u>	<u>April 2011</u>	<u>May 2011</u>	<u>June 2011</u>
	<u>Values are in millions and are cumulative month to month</u>					
<u>Non-Recoverable costs for the Facility</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>
<u>MPS Canada, Inc. ESA US\$</u>	<u>\$108.5</u>	<u>\$130.2</u>	<u>\$137.5</u>	<u>\$143.3</u>	<u>\$144.7</u>	<u>\$144.7</u>
<u>Hedging Costs US\$ to Cdn\$</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>
<u>MPS Canada, Inc. ESA f/s Option</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>
<u>MPS Canada, Inc. LTSA</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>
<u>MPS Canada, Inc. TRA</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>
<u>TransCanada Business Development</u>		<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.3</u>
<u>TransCanada Development Engineering</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.6</u>	<u>\$0.7</u>	<u>\$1.0</u>	<u>\$1.1</u>
<u>External Detailed Design Engineering</u>	<u>\$-</u>	<u>\$0.8</u>	<u>\$1.7</u>	<u>\$2.6</u>	<u>\$3.3</u>	<u>\$4.0</u>
<u>Other Engineering Consulting</u>	<u>\$0.1</u>	<u>\$0.3</u>	<u>\$0.5</u>	<u>\$0.7</u>	<u>\$0.8</u>	<u>\$0.9</u>
<u>Consultant Environmental</u>		<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.4</u>	<u>\$0.5</u>
<u>Land Options Costs and Real Estate</u>			<u>\$0.5</u>	<u>\$0.5</u>	<u>\$0.5</u>	<u>\$0.5</u>

	<u>Community and Public Relations</u>			<u>\$0.0</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>
	<u>External Legal</u>			<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.1</u>
	<u>Union Gas</u>			<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.1</u>
	<u>Other</u>			<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.2</u>	<u>\$0.2</u>	<u>\$0.3</u>
	<u>Total</u>		<u>\$200.9</u>	<u>\$224.1</u>	<u>\$233.4</u>	<u>\$240.7</u>	<u>\$243.5</u>	<u>\$244.7</u>	

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** January 25, 2011 10:55 AM  
**To:** JoAnne Butler  
**Subject:** FW: TransCanada - Ontario Power Authority - Implementation Agreement  
**Attachments:** IA Cambridge (draft Jan 24, 2011 v3).doc; WSCcomparison\_Implementation Agreement-IA Cambridge (draft Jan 24, 2011 v3).pdf

**Importance:** High

Clean version and blackline against the PEC agreement.

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

---

**From:** Deborah Langelaan  
**Sent:** January 24, 2011 4:47 PM  
**To:** Michael Killeavy; Sebastiano, Rocco; 'Smith, Elliot'  
**Subject:** FW: TransCanada - Ontario Power Authority - Implementation Agreement  
**Importance:** High

Drum roll please.....attached is the draft Implementation Agreement.

TCE is asking if we still want to meet tomorrow at 3:00 p.m. to discuss or if we require more time to review? Please let me know what your preference is.

Thanks,  
Deb

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

---

**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 24, 2011 4:41 PM  
**To:** Deborah Langelaan  
**Cc:** Terry Bennett; Geoff Murray; John Cashin  
**Subject:** TransCanada - Ontario Power Authority - Implementation Agreement

Deborah,



Attached please find attached draft Implementation Agreement for the Potential Project.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

**TransCanada**

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

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TCE Draft – January 24, 2011

WITH PREJUDICE

## IMPLEMENTATION AGREEMENT

between

**TRANSCANADA ENERGY LTD.**

and

**ONTARIO POWER AUTHORITY**

This IMPLEMENTATION AGREEMENT (the "**Agreement**"), effective as of ●, 2011, is by and between (a) TransCanada Energy Ltd. ("TCE"), a Canadian corporation, and (b) the Ontario Power Authority, a statutory corporation established under Part II.1 and Part II.2 of the *Electricity Act, 1998* (Ontario) (the "**OPA**"), which are sometimes collectively referred to herein as the "**Parties**" or singularly as a "**Party**".

WHEREAS the OPA and TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the "**Original Contract**") dated October 9, 2009 for a power generation facility (the "**Facility**") to be built and operated by TCE in Oakville, Ontario;

AND WHEREAS TCE had entered into contracts and expended funds to develop the Facility;

AND WHEREAS by letter dated October 7, 2010, the OPA advised TCE that it would not proceed with the Original Contract and directed TCE to cease all further work and activities in connection with the Facility;

AND WHEREAS the OPA and TCE entered into a Confidentiality Agreement dated effective as of October 8, 2010 (the "**Confidentiality Agreement**") (a copy of which is attached as Exhibit I);

AND WHEREAS in accordance with the OPA's letter of October 7, 2010, the OPA and TCE have been working cooperatively to identify other generation projects;

AND WHEREAS in its 18-Month Outlook Update (December 3, 2010), the Independent Electricity System Operator ("**IESO**") confirmed the need for a peaking natural gas-fired power plant in the Kitchener-Waterloo-Cambridge area;

AND WHEREAS the OPA and TCE have been discussing the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area having an approximate Season 3 (as defined in the Original Contract) contract capacity of 450 MW (the "**Potential Project**");

AND WHEREAS the OPA has delivered to TCE and MPS Canada Inc. an Acknowledgement dated December 17, 2010 and has delivered to TCE an Acknowledgement dated • (copies of which are attached as Exhibit II), and may at a future date designate specified information as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act*

and provide additional acknowledgements of such designations (existing and future acknowledgements collectively referred to as the "Acknowledgements");

AND WHEREAS the OPA and TCE entered into a letter agreement dated December 21, 2010 regarding the Potential Project (the "MOU") (a copy of which is attached as Exhibit III);

AND WHEREAS on ●, 2011, the Minister of Energy of Ontario issued a directive (the "Directive") to the OPA (a copy of which is attached as Exhibit IV) to continue negotiations with TCE related to the Potential Project, with the view to concluding and executing a definitive contract for the Potential Project by June, 2011, which will address the system needs described above;

[NTD: TCE and the OPA to discuss what the expectation is *vis a vis* the timing and content of the Directive.]

AND WHEREAS the OPA and TCE desire to enter into an agreement setting forth the process for expediting TCE's development and construction of the Potential Project prior to finalizing the Contract (as defined herein);

NOW THEREFORE, in consideration of the agreements, premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), TCE and the OPA agree as follows:

#### ARTICLE I TERM OF AGREEMENT

- 1.1 Unless extended by mutual written agreement of the Parties, and subject to earlier termination as set forth in Sections 1.2, the term of this Agreement (the "Term") shall be from the effective date hereof until the earlier of (i) 5:00 PM (Toronto time) on June 30, 2011 and (ii) execution and delivery by the Parties of the Contract.
- 1.2 This Agreement may be terminated at any time by mutual agreement of the Parties.
- 1.3 Notwithstanding termination of this Agreement by effluxion of time or otherwise as provided herein, the provisions of Sections 2.3, 2.4, 2.5, 3.3(a), 3.3(b), 6.1 and 6.2 and Articles V and VII shall survive if the Contract is not executed and delivered by the Parties; whereas if the Contract is executed and delivered by the Parties, only Sections 6.1 and 6.2 shall survive, unless otherwise set forth in the Contract.

#### ARTICLE II COMMITMENTS

- 2.1 TCE hereby covenants and agrees to proceed during the Term with the development of the Potential Project, with a target of achieving commercial operation by [December 31, 2015] and being registered and available as a dispatchable facility with the IESO by [December 31, 2015]. [NTD; to be discussed re permit risk.]
- 2.2 During the Term, the Parties covenant and agree to negotiate in good faith and to use their commercially reasonable efforts to execute an agreement (the "Contract") on the basis described in the Directive, the MOU and this Agreement for the development, construction and operation of the Potential Project and on terms and conditions acceptable to each of the Parties, acting reasonably. The Parties further covenant and agree that upon the execution and delivery of the

Contract, they will terminate the Original Contract. For greater certainty and without limiting the generality of the foregoing, the Parties acknowledge and agree that:

- (a) The Potential Project shall meet the Technical Design Requirements set out in Schedule A;
- (b) The Contract shall be based on the form of the Northern York Region Peaking Generation Contract (the "**NYR Contract**") and shall include the additional terms set out in Schedule B and such other terms as may be required by this Agreement;
- (c) The process for the good faith negotiations is set out in Schedule C;

provided that if, after negotiating in good faith, the Parties cannot agree on the appropriate amount to be the "Net Revenue Requirement", the O&M payment or any other variable to be included in Exhibit B of the Contract or any changes that should be made to the NYR Contract, the Parties shall be deemed to have negotiated the terms of the Contract in good faith and used commercially reasonable efforts.

2.3 In the event that the Parties do not enter into the Contract prior to the end of the Term, unless such event is the result of TCE not having negotiated the terms of the Contract in good faith or TCE not having used its commercially reasonable efforts to execute and deliver a Contract in the form that was negotiated and agreed by the Parties' respective negotiating teams, subject to Section 3.1(a), the OPA hereby indemnifies and holds TCE harmless against, and agrees to reimburse TCE for, all costs and expenses TCE reasonably incurs in undertaking its obligations pursuant to this Agreement as set forth in Schedule D hereto (as such Schedule may be revised from time to time in accordance with Section 3.1, all as more particularly described in Article III hereof), except that TCE shall not be entitled to indemnification for any particular costs and expenses incurred in terminating any commitments included in Schedule D to the extent that TCE has not used its commercially reasonable efforts to mitigate such costs and expenses following the end of the Term. At the request of the OPA, TCE shall,

- (a) provide copies of all work product, the cost and expense for which the OPA has reimbursed TCE or its affiliates pursuant to the indemnity herein (the "**Indemnified Work Product**");
- (b) grant to the OPA a license to use that portion of the Indemnified Work Product that does not constitute confidential information of TCE or any third party or is not otherwise proprietary with respect to the Potential Project;
- (c) upon the future productive use by TCE of any portion of the Indemnified Work Product, reimburse the OPA for the indemnified cost related to that portion of the Indemnified Work Product; and
- (d) to the extent that Indemnified Tangible Goods (as defined below) are assignable, transfer, assign or deliver Indemnified Tangible Goods to the OPA, without further liability of the OPA save and except for its assumption of any liabilities associated with such Indemnified Tangible Goods after the date of such transfer, assignment or delivery; for the purposes hereof "**Indemnified Tangible Goods**" includes TCE's or its affiliates' right, title and interest in and to any tangible goods, materials and equipment, the costs and expenses relating to which the OPA has reimbursed TCE or its affiliates pursuant to the indemnity herein.

For greater certainty, the Parties acknowledge and agree that (A) there is no intention that pursuant hereto TCE would transfer to the OPA any real property, intellectual property, processes, copyright, licences, permits or approvals or confidential proprietary information and work product; and (B) the OPA's obligation to indemnify TCE shall not exceed the aggregate of the Cap Amount, as hereafter defined.

The OPA also acknowledges that the Indemnified Work Product and Indemnified Tangible Goods are being prepared specifically for TCE as part of the Potential Project, and that they are not intended or represented to be suitable for reuse by the OPA in respect of any other project or for any other purpose. The transfer, assignment or delivery of the Indemnified Work Product and Indemnified Tangible Goods is made without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods, including as to fitness for use, accuracy, quality or merchantability. Any use thereof by the OPA will be without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods and at the OPA's sole risk and without liability or legal recourse to TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods.

- 2.4 If for any reason the Parties do not enter into the Contract prior to the end of the Term, then TCE shall be entitled to pursue all of its legal remedies against the OPA for claims arising out of the decision by the OPA not to proceed with the Original Contract, including for the repudiation of the Original Contract.
- 2.5 Notwithstanding any other provision of this Agreement, neither Party shall have any obligation or liability to the other for any indirect, special or consequential damages resulting from a breach of this Agreement. For greater certainty, no provision of this Agreement will in any way affect, limit or interfere with TCE's rights and remedies in respect of the Original Contract.

### **ARTICLE III BREAK-UP COSTS**

- 3.1 (a) Schedule D attached hereto, as it may be revised and replaced from time to time in accordance with the procedure set forth in this Article III, sets forth the aggregate and the categories of the costs and expenses relating to the Potential Project for which the OPA agrees to indemnify TCE. The OPA acknowledges and agrees that the consent or approval of the OPA is not required if the allocations of the aggregate costs amongst the categories are changed by TCE provided that the OPA's obligations to indemnify TCE for its costs and expenses in accordance with the provisions of Section 2.3 at any given point shall not exceed the aggregate dollar amount of the costs and expenses set forth in Schedule D for that point in time plus \$1,000,000 (the "**Cap Amount**").
- (b) During the Term, with respect to any individual expenditure or commitment by TCE in excess of \$1,000,000 for which the OPA may be liable pursuant to Section 2.3, TCE shall provide written notice (as provided in Section 7.1 hereof) together with a brief explanation of the nature of the expenditure or commitment within five (5) Business Days of TCE having executed a written agreement to incur such expenditure. The OPA acknowledges that TCE has already made the expenditures or commitments identified in Schedule D as non recoverable costs for the Facility or owing to MPS Canada, Inc. and that no written notice of such expenditures or commitments is required.

- (c) During the Term, if there occurs
  - (i) any change in an expenditure or commitment provided for on Schedule D, or
  - (ii) any new expenditure not included on Schedule D which TCE would intend to claim pursuant to Section 2.3,

which change or new expenditure would cause the total potential liability of the OPA under Section 2.3 to exceed the aggregate amount set forth in Schedule D at that point in time by an amount greater than \$1,000,000 and provided that such change or new expenditure is reasonably required to maintain the schedule to achieve the commercial operation milestone dates set forth in Section 2.1, TCE shall seek the consent of the OPA to such change or new expenditure, as set forth in Section 3.1(d) hereof.

- (d) In case of the occurrence of any event described in Section 3.1(c), TCE shall propose a revised Schedule D reflecting such expenditure or commitment or change in expenditure or commitment, together with a brief explanation thereof, including an explanation as to the impact on achieving the commercial operation milestone dates set forth in Section 2.1 if such expenditure, commitment or change is not made, and obtain the OPA's written consent to the revision prior to incurring such expenditure or making such commitment. In the event that the OPA does not respond to such proposed revision within five (5) Business Days of receipt of notice thereof from TCE as provided above, the OPA shall be deemed to have refused its consent. If the OPA provides its written consent to such revisions, then the revised Schedule D proposed by TCE and accepted by the OPA shall become the operative Schedule D for the purposes hereof until replaced in accordance with the terms hereof.
- 3.2 In the event the OPA does not consent to a revision to Schedule D proposed by TCE within five (5) Business Days of receipt of notice thereof from TCE, or is deemed not to have consented, the commercial operation milestone dates set forth in Section 2.1 may be adjusted by mutual agreement of the Parties.
- 3.3 (a) In the event that (i) this Agreement is terminated as provided in Section 1.2, or (ii) the Parties have not executed the Contract and terminated the Original Contract prior to the end of the Term, TCE shall, within thirty (30) Business Days of such termination or the end of the Term, as the case may be, submit to the OPA an invoice for the amounts for which it claims indemnification pursuant to Section 2.3, together with reasonable documentation in support of the invoice. The OPA may, acting reasonably, request additional supporting documentation. The OPA shall notify TCE of any dispute with any amounts so claimed within fifteen (15) Business Days of receipt thereof, in which case the provisions of Article V shall apply.
- (b) All amounts not subject to dispute shall be paid by the OPA to TCE within thirty (30) calendar days of the date of the invoice and all amounts settled pursuant to the dispute resolution provisions hereof shall be paid within ten (10) Business Days of their resolution. All amounts not paid when due shall bear interest from the date due hereunder to the date of payment at a rate equal to the annual rate of interest quoted by, published and commonly known as the "prime rate" of the Royal Bank of Canada at its main office in Toronto Ontario as the reference rate then in effect for interest rates on commercial demand loans made by it in Canadian dollars to its Canadian borrowers plus four percent (4%) per annum.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 TCE represents and warrants to the OPA and acknowledges and confirms that the OPA is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) TCE is a corporation incorporated under the laws of the Canada and has the corporate power and authority to enter into and perform its obligations under this Agreement.
  - (b) The execution and delivery and performance by TCE of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of TCE.
  - (c) The execution and delivery of and performance by TCE of this Agreement:
    - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of the constating documents or by-laws of TCE, as applicable;
    - (ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which TCE is a party; and
    - (iii) do not and will not result in the violation of any applicable (x) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (y) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting TCE.
  - (d) This Agreement has been duly executed and delivered by TCE and constitutes legal, valid and binding agreements of TCE (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- 4.2 The OPA represents and warrants to TCE and acknowledges and confirms that TCE is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) The OPA is a statutory corporation incorporated and existing under Parts II.1 and II.2 of the *Electricity Act, 1998* (Ontario) and has the corporate power and authority to enter into and perform its obligations under this Agreement.
  - (b) The execution and delivery of and performance by the OPA of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the OPA.

- (c) The execution and delivery of and performance by the OPA of this Agreement:
- (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of its constating documents or by-laws;
  - (ii) do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which it is a party; and
  - (iii) do not and will not result in the violation of any applicable (x) laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or (y) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting the OPA.
- (d) This Agreement has been duly executed and delivered by the OPA and constitutes legal, valid and binding agreements of the OPA (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

[NTD: OPA to confirm that this is a "procurement contract" for the purposes of the *Electricity Act, 1998*.]

- (e) This Agreement is a "procurement contract" for the purposes of Section 25.31 of the *Electricity Act, 1998* (Ontario).

## ARTICLE V DISPUTE RESOLUTION

- 5.1 If any dispute, claim, question or difference (each a "**Dispute**") arises with respect to this Agreement, including Schedule D and the amounts owing by the OPA to TCE pursuant to Section 2.3 hereof, one senior executive of TCE and one from the OPA will use their reasonable best efforts to settle the Dispute. Notwithstanding the foregoing, the Parties agree that the provisions of this Article V shall not apply to any disputes relating to the negotiation of the terms and conditions of the Contract.
- 5.2 If the Parties do not reach a solution pursuant to Section 5.1 within five (5) Business Days following receipt of the notice of the Dispute by either Party to the other, then either Party can deliver a written notice to the other Party requiring the Dispute to be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) and the national arbitration rules of the ADR Institute of Canada, based upon the following:



- (a) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties. In the event of failure to agree within three (3) Business Days following delivery of the written notice to arbitrate, each of the Parties to the Dispute shall designate an arm's-length third party within a further three (3) Business Days who together shall agree upon and appoint an arbitrator. In the event such third parties fail to appoint the arbitrator within three (3) Business Days after their appointment, either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator.
- (b) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within fifteen (15) Business Days after the arbitrator has been appointed.

**[NTD: These timelines are extremely tight. This may be limiting the pool of arbitrators to people who do not get a lot of arbitration work.]**

- (c) The arbitration shall take place in Toronto, Ontario and shall be conducted in English.
  - (d) The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal (other than those limited rights of appeal set forth in the *Arbitration Act, 1991* (Ontario)), and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators' fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation of the Parties.
  - (e) Judgment upon any award may be entered in any Court having jurisdiction or application may be made to the Court for a judicial recognition of the award or an order of enforcement, as the case may be.
- 5.3 After written notice is given to refer any Dispute to arbitration, the Parties will meet within five (5) Business Days of delivery of the notice and will negotiate in good faith any changes to these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.

#### **ARTICLE VI CONFIDENTIALITY, ANNOUNCEMENTS AND DEALING WITH THE OPA**

- 6.1 The Parties acknowledge that this Agreement is confidential and is subject to the terms of the Confidentiality Agreement.
- 6.2 **[TCE acknowledges 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. TCE agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if TCE continues to possess such FIPPA Records in a readily deliverable form at the time of the OPA's request. Information stored in any computer archive shall not be considered to be in a readily deliverable form. If TCE does possess such FIPPA Records in a readily deliverable form, it shall provide the same within a reasonable time after being directed to do so by the OPA. The OPA acknowledges that FIPPA Records do not include any**

**document or information provided to the OPA or its representatives pursuant to the Acknowledgements. The provisions of this Section 6.2 shall prevail over, and in lieu of, any other applicable provisions in this Agreement.]**

**[NTD: The foregoing provision to be discussed with the OPA.]**

- 6.3 No press release, public statement, announcement or other public disclosure (a "Public Statement") with respect to this Agreement, the Contract or the transactions contemplated in this Agreement may be made by either Party unless with the prior written consent and joint approval of the other Party except as may be required by law or a governmental entity. Where the Public Statement is required by law or by a governmental entity, the Party required to make the Public Statement will use its best effort to obtain the approval of the other Party as to the form, nature and extent of the disclosure.
- 6.4 Either Party shall be free to communicate, or initiate any discussions or exchanges of information, with the Ministry of Energy (Ontario) ("OME") or any other ministry of the Province of Ontario regarding any role the OME or such other ministry may have with respect to the Potential Project, including in respect of any required regulatory approvals.

#### **ARTICLE VII MISCELLANEOUS**

- 7.1 Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile, along with a copy by electronic mail, and addressed:

to the OPA at:

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

Attention: ●

Telephone: ●

Facsimile: ●

e-mail: ●

with a copy to:

Osier, Hoskin & Harcourt LLP P.O. Box 50, 61st Floor  
1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Rocco Sebastiano

Telephone: 416-862-5859

Facsimile: 416-862-6666

e-mail: rsebastiano@osler.com

to TCE at:

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, ON M5J 2J1

Attention: Terry Bennett, Vice-President, Power Generation Development

Telephone: 416-869-21330

Facsimile: 416-869-2056

e-mail: terry\_bennett@transcanada.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (ii) if sent by same-day courier service, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice by electronic mail or to legal counsel does not invalidate delivery of that Notice to a Party.

- 7.2 Time is of the essence in this Agreement.
- 7.3 The Parties intend that this Agreement will not benefit or create any right or cause of action in favour of, any person or entity, other than the Parties to this Agreement. The Parties acknowledge and agree that at the conclusion of good faith negotiations of a Contract, the approval of their respective boards of directors (in such boards' sole discretion) will be required for execution and delivery of such Contract.
- 7.4 Except as otherwise expressly provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this Agreement and the Contract.
- 7.5 This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties. Subject to Section 1.3, if the Contract is executed and delivered by the Parties, the terms of the Contract shall supersede and govern over the terms of this Agreement.
- 7.6 No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

- 7.7 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns. TCE shall be entitled to assign this Agreement, in whole or in part, with notice to the OPA, to one or more corporations, limited or general partnerships and/or other entities of which TCE or its affiliates retain control. Upon TCE giving notice to the OPA of any such assignment, all references herein to TCE shall to the extent appropriate be deemed to be and include such assignee or assignees. For the purposes hereof "**control**" shall have the meaning given thereto in the *Business Corporations Act* (Ontario).
- 7.8 If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
- 7.9 This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 7.10 For purposes of this Agreement, "**Business Day**" means any day of the year other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.
- 7.11 This Agreement may be executed in any number of counterparts (including counterparts by electronic mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.
- 7.12 This Agreement, along with Exhibits I, II, III, and IV and Schedules A, B, C and D hereto, together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. Any conflict or inconsistency between the Agreement and the Exhibits or Schedules shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely: **[NTD: To be confirmed.]**
- (i) the Agreement;
  - (ii) Exhibit II;
  - (iii) Exhibit III;
  - (iv) Exhibit IV;
  - (v) Exhibit I;
  - (vi) Schedule D;
  - (vii) Schedule B;
  - (viii) Schedule C; and
  - (ix) Schedule A.

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

IN WITNESS WHEREOF, the Parties have executed this Implementation Agreement

**TRANSCANADA ENERGY LTD.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT I**  
**CONFIDENTIALITY AGREEMENT**

**EXHIBIT II**  
**ACKNOWLEDGEMENTS**

**EXHIBIT III**  
**MOU**



**EXHIBIT IV**  
**MINISTER'S DIRECTIVE**

## **SCHEDULE A**

### **TECHNICAL DESIGN REQUIREMENTS**

**[NTD: Further discussion required.]**

#### **Potential Project**

The Potential Project will:

- (a) be a dispatchable facility.
- (b) be a simple cycle configuration generating facility.
- (c) utilize gas (which has been defined as natural gas supplied by pipeline) as the fuel.
- (d) have a minimum Ramp Rate, over a single five minute interval, of a least 20 MW/minute, and will be capable of responding to market prices at its specified Ramp Rate, both increasing and decreasing output.

#### **Contract Capacity**

The Potential Project will be a single generating facility and will

- (a) be able to provide a minimum of 125 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Potential Project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of [450] MW at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of no less than 250 MW; and
- (d) have a Contract Capacity of no more than [550] MW in any Season.

#### **Electrical Connection**

The Potential Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. The Potential Project will have a direct connection to the Hydro One circuits M20D and M21D with a connection point located at or near the Preston TS.

#### **Emissions Requirements**

The Potential Project will not emit:

- (i) Nitrogen Oxides (NO<sub>x</sub>) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O<sub>2</sub> in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; or
- (ii) Carbon Monoxide (CO) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O<sub>2</sub> in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract.

The Contract will require that the emission limits for NO<sub>x</sub> and CO pursuant to this Section, be (i) incorporated into the Potential Project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the Potential Project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

The emission limits for NO<sub>x</sub> and CO stated in the Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the Potential Project must comply with the NO<sub>x</sub> and CO limits set out above

**Fuel Supply**

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

**Equipment**

The Potential Project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment as purchased under Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010 November 19, 2010 and December 31, 2010 and as may be further amended from time to time. Each Generator shall be nominally rated at [250] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

**SCHEDULE B**  
**ADDITIONAL CONTACT TERMS**

[NTD: details to follow.]

**NRR**

**Permits and Approvals**

**Gas Delivery and Management Services Costs**

**Interconnection Costs**

**Operating Reserve**

**Option to Extend Term**

**Future Changes – Risk Mitigation**

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**SCHEDULE C  
PROCESS**

**[NTD: to be provided separately.]**

**SCHEDULE D**  
**PROJECTED COSTS AND EXPENSES**  
**DURING THE TERM**

[NTD: The following is preliminary and subject to change.]

	Cancellation Schedule	January 2011	February 2011	March 2011	April 2011	May 2011	June 2011
		Values are in millions and are cumulative month to month					
	Non-Recoverable costs for the Facility	\$33.6	\$33.6	\$33.6	\$33.6	\$33.6	\$33.6
	MPS Canada, Inc. ESA US\$	\$108.5	\$130.2	\$137.5	\$143.3	\$144.7	\$144.7
	Hedging Costs US\$ to Cdn\$	\$12.4	\$12.4	\$12.4	\$12.4	\$12.4	\$12.4
	MPS Canada, Inc. ESA f/s Option	\$34.6	\$34.6	\$34.6	\$34.6	\$34.6	\$34.6
	MPS Canada, Inc. LTSA	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1	\$4.1
	MPS Canada, Inc. TRA	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5
	TransCanada Business Development		\$0.1	\$0.1	\$0.2	\$0.3	\$0.3
	TransCanada Development Engineering	\$0.2	\$0.3	\$0.6	\$0.7	\$1.0	\$1.1
	External Detailed Design Engineering	\$-	\$0.8	\$1.7	\$2.6	\$3.3	\$4.0
	Other Engineering Consulting	\$0.1	\$0.3	\$0.5	\$0.7	\$0.8	\$0.9
	Consultant Environmental		\$0.1	\$0.2	\$0.3	\$0.4	\$0.5
	Land Options Costs and Real Estate			\$0.5	\$0.5	\$0.5	\$0.5

	Community and Public Relations		\$0.0	\$0.1	\$0.1	\$0.1	\$0.1
	External Legal		\$0.0	\$0.0	\$0.0	\$0.0	\$0.1
	Union Gas		\$0.0	\$0.0	\$0.0	\$0.0	\$0.1
	Other		\$0.1	\$0.1	\$0.2	\$0.2	\$0.3
	<b>Total</b>	<b>\$200.9</b>	<b>\$224.1</b>	<b>\$233.4</b>	<b>\$240.7</b>	<b>\$243.5</b>	<b>\$244.7</b>

TCE Draft – January 24, 2011

WITH PREJUDICE

## IMPLEMENTATION AGREEMENT

between

PORTLANDSTRANS CANADA ENERGY CENTRE L.P. LTD.

and

ONTARIO POWER AUTHORITY

This IMPLEMENTATION AGREEMENT (the "Agreement"), effective as of February 10, 2006, ~~2011~~, is by and between (a) Portlands Energy Centre L.P. ("PEC"), a limited partnership consisting of TransCanada Energy Ltd., Ontario Power Generation Inc., and Portlands Energy Centre Inc. ("PECI"), as general partner for PEC ("TCE"), a Canadian corporation, and (b) the Ontario Power Authority, a statutory corporation established under Part II.1 and Part II.2 of the Electricity Act, 1998 (Ontario) (the "OPA"), which are sometimes collectively referred to herein as the "Parties" or singularly as a "Party".

WHEREAS, PEC has commenced development of a 550 megawatt (nominal) natural gas fuelled "combined cycle" electric generating station (the "Portlands Project") at a brownfield site located on the eastern portion of the lands formerly used by the R.L. Hearn Generating Station, in the City of Toronto; the OPA and TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the "Original Contract") dated October 9, 2009 for a power generation facility (the "Facility") to be built and operated by TCE in Oakville, Ontario;

AND WHEREAS TCE had entered into contracts and expended funds to develop the Facility;

AND WHEREAS by letter dated October 7, 2010, the OPA advised TCE that it would not proceed with the Original Contract and directed TCE to cease all further work and activities in connection with the Facility;

AND WHEREAS the OPA and TCE entered into a Confidentiality Agreement dated effective as of October 8, 2010 (the "Confidentiality Agreement") (a copy of which is attached as Exhibit I);

AND WHEREAS in accordance with the OPA's letter of October 7, 2010, the OPA and TCE have been working cooperatively to identify other generation projects;

AND WHEREAS, in its two most recent 18-month Outlook reports of Update (December 22, 2005 and February 2, 2006, 3, 2010), the Independent Electricity System Operator (the "IESO") identified") confirmed the critical need for at least 250 MW of new supply of electricity in downtown Toronto by the summer of 2008, and at least a further 250 MW by 2010 a peaking natural gas-fired power plant in the Kitchener-Waterloo-Cambridge area;



~~WHEREAS, the Portlands Project has obtained connection approval and these approvals and easements required to connect the facility to Hydro One Networks Inc.'s circuits located at the 115 kV bus at the Hearn SS, although the IESO is currently considering such approvals to determine if any changes are required;~~

~~AND WHEREAS the OPA and TCE have been discussing the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area having an approximate Season 3 (as defined in the Original Contract) contract capacity of 450 MW (the "Potential Project");~~

~~AND WHEREAS the OPA has delivered to TCE and MPS Canada Inc. an Acknowledgement dated December 17, 2010 and has delivered to TCE an Acknowledgement dated • (copies of which are attached as Exhibit II), and may at a future date designate specified information as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act* and provide additional acknowledgements of such designations (existing and future acknowledgements collectively referred to as the "Acknowledgements");~~

~~WHEREAS, the Ontario Ministry of Energy (the "OME") has determined that the Portlands Project is best able to meet the critical need for new supply in downtown Toronto — Leaside Sector; AND WHEREAS the OPA and TCE\* entered into a letter agreement dated \*December 21, 2010 regarding the Potential Project (the "MOU") (a copy of which is attached as Exhibit III);~~

~~AND WHEREAS, on February 10, 2006, •, 2011, the Minister of Energy of Ontario issued a directive (the "Directive") to the OPA (a copy of which is attached as Exhibit IV) to continue negotiations with PECTCE related to the PortlandsPotential Project, with the view to concluding and executing a definitive contract for the PortlandsPotential Project by May 2006, June, 2011, which will address the critical-system needs described above;~~

~~WHEREAS, as referred to in the Directive, PEC and the OPA have\* entered into a letter agreement dated \*February 9, 2006 (the "Process Letter") (a copy of which is attached as Exhibit II) setting out the process for negotiation and execution of a definitive contract for the Portlands Project;~~

~~WHEREAS, the OPA has entered into an Accelerated Clean Energy Supply Contract with the Goreway Station Partnership dated as of December 31, 2005 (the "Goreway ACES Contract") in connection with\* the development, construction and operation of \*a natural gas fuelled electric generating station on Goreway Drive, City of Brampton (the "Goreway Project");~~

~~[INTD: TCE and the OPA to discuss what the expectation is vis a vis the timing and content of the Directive.]~~

~~AND WHEREAS; the OPA and PECTCE desire to enter into an agreement setting forth the process for expediting PECTCE's development and construction of the PortlandsPotential Project prior to finalizing the Portlands ACES Contract (as defined herein);~~

~~NOW, THEREFORE, in consideration of the agreements, premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), PECTCE and the OPA agree as follows:~~

## ARTICLE I

## ARTICLE I TERM OF AGREEMENT

- 1.1 ~~1.1. Unless extended by mutual written agreement of the Parties, and subject to earlier termination as set forth in Sections 1.2, the term of this Agreement (the "Term") shall be from the effective date hereof until the earlier of (i) 5:00 PM (Toronto time) on May 1, 2006 June 30, 2011 and (ii) execution and delivery by the Parties of the Portlands ACES Contract. Notwithstanding the foregoing, the OPA shall be entitled, at its sole option and upon delivery of written notice to PEC\* prior to the end of the Term\* or extended Term, as the case may be, to extend the Term for two thirty day periods, provided that Schedule A attached hereto shall be amended in accordance with Article III to reflect the additional costs and expenses which may be incurred by PEC during such extension periods.~~ Contract.
- 1.2 ~~1.2. This Agreement may be terminated at any time by mutual agreement of the Parties.~~
- 1.3 ~~1.3. Notwithstanding termination of this Agreement by effluxion of time or otherwise as provided herein, the provisions of Sections 2.3, 2.4, 3.3-12.5, 3.3(a), 3.3(b), 6.1 and 3.3-26.2 and Articles V and VII shall survive if the Portlands ACES Contract is not executed and delivered by the Parties; whereas if the Portlands ACES Contract is executed and delivered by the Parties, only Article VI Sections 6.1 and 6.2 shall survive, unless otherwise set forth in the Portlands ACES Contract.~~

## ARTICLE II

### ARTICLE II COMMITMENTS

- 2.1 ~~2.1. — PECTCE hereby covenants and agrees to proceed during the Term with the development of the Portlands Potential Project, with a view to (i) target of achieving commercial operation in "simple cycle" mode by June 1, 2008 by [December 31, 2015] and being registered and available as a dispatchable facility with the IESO in "simple cycle" mode between June 1, 2008 and October 1, 2008, and (ii) achieving commercial operation in "combined cycle" mode and being registered and available as a dispatchable facility with the IESO in "combined cycle" mode by June 1, 2009 by [December 31, 2015]. [NTD: to be discussed re permit risk.]~~
- 2.2 ~~2.2. During the Term, the Parties covenant and agree to negotiate in good faith and to use their commercially reasonable best efforts to execute an agreement (the "Portlands ACES Contract") on the basis described in the Directive, the MOU and the Process Letter for the scheduling and delivery of power from the Portlands Project to the IESO-controlled grid this Agreement for \* the development, construction and operation of \* the Potential Project and on terms and conditions acceptable to each of the Parties, acting reasonably. The Parties further covenant and agree that upon the execution and delivery of the Contract, they will terminate the Original Contract. For greater certainty and without limiting the generality of the foregoing, the Parties acknowledge and agree that:~~
- (a) The Potential Project shall meet the Technical Design Requirements set out in Schedule A:

(b) ~~(a) if, after negotiating in good faith, the Parties cannot agree on the material differences between The Contract shall be based on the form of the Northern York Region Peaking Generation Contract (the Goreway Project and the Portlands Project, "NYR Contract") and shall include the Parties shall be deemed to have negotiated the terms of the Portlands ACES Contract in good faith; and additional terms set out in Schedule B and such other terms as may be required by this Agreement;~~

(c) The process for the good faith negotiations is set out in Schedule C;

~~(b) provided that if, after negotiating in good faith, the Parties cannot agree on the appropriate adjustment amount to be the "Net Revenue Requirement", the O&M payment or any other variable listed to be included in Exhibit B to of the Goreway ACES Contract to reflect any material difference between the Goreway Project and the Portlands Project Contract or any changes that should be made to the NYR Contract, the Parties shall be deemed to have negotiated the terms of the Portlands ACES Contract in good faith and used commercially reasonable efforts.~~

2.3 ~~2.3-~~In the event that the Parties do not enter into the Portlands ACES Contract prior to the end of the Term, unless such event is the result of PECTCE not having negotiated the terms of the Portlands ACES Contract in good faith or PECTCE not having used its commercially reasonable best efforts to execute and deliver a Portlands ACES Contract in the form that was negotiated and agreed by the Parties<sup>2</sup>, respective negotiating teams, subject to Section 3.1.1, 3.1(a), the OPA hereby indemnifies and holds TCE harmless PEG for against, and agrees to reimburse TCE for, all costs and expenses PECTCE reasonably incurs in undertaking its obligations pursuant to this Agreement as set forth in Schedule A~~D~~ hereto (as such Schedule may be revised from time to time in accordance with Section 3.1, all as more particularly described in Article III hereof), except to the extent that PEG has not used its reasonable best efforts to mitigate that TCE shall not be entitled to indemnification for any particular costs and expenses incurred in terminating any commitments included in Schedule A; and provided that, at D to the extent that TCE has not used its commercially reasonable efforts to mitigate such costs and expenses following the end of the Term. At the request of the OPA, PECTCE shall,

- (a) provide copies of all work product, the cost and expense for which the OPA has reimbursed PECTCE or its affiliates pursuant to the indemnity herein (the "**Indemnified Work Product**<sup>22</sup>");
- (b) grant to the OPA a license to use that portion of the Indemnified Work Product that does not constitute confidential information of PECTCE or any third party or is not otherwise proprietary with respect to the Portlands Potential Project;
- (c) upon the future productive use by PECTCE of any portion of the Indemnified Work Product, reimburse the OPA for the indemnified cost related to that portion of the Indemnified Work Product; and
- (d) to the extent that Indemnified Tangible Goods (as defined below) are assignable, transfer, assign or deliver Indemnified Tangible Goods to the OPA, without further liability of the OPA save and except for its assumption of any liabilities associated with such Indemnified Tangible Goods after the date of such transfer, assignment or delivery; "**for the purposes hereof Indemnified Tangible Goods**<sup>22</sup>" includes PEG<sup>2</sup> TCE's or its affiliates<sup>2</sup>, right, title

and interest in and to any tangible goods, materials and equipment, the costs and expenses relating to which the OPA has reimbursed PECTCE or its affiliates pursuant to the indemnity herein.

For greater certainty, the Parties acknowledge and agree that (A) there is no intention that pursuant hereto PECTCE would transfer to the OPA any real property, intellectual property, processes, copyright, licences, permits or approvals or confidential proprietary information and work product; and (B) the OPA's obligation to indemnify PECTCE shall not exceed the aggregate of the amounts set forth in Schedule A hereto, as revised from time to time. Cap Amount, as hereafter defined.

The OPA also acknowledges that the Indemnified Work Product and Indemnified Tangible Goods are being prepared specifically for PECTCE as part of the Portland's Potential Project, and that they are not intended or represented to be suitable for reuse by the OPA in respect of any other project. Any reuse by the OPA in respect of any other project or for any other purpose. The transfer, assignment or delivery of the Indemnified Work Product and Indemnified Tangible Goods is made without any representation or warranty by TCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods, including as to fitness for use, accuracy, quality or merchantability. Any use thereof by the OPA will be without any representation or warranty by PECTCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods and at the OPA's sole risk and without liability or legal exposure to PECTCE or the provider of the Indemnified Work Product or Indemnified Tangible Goods.

2.4 If for any reason the Parties do not enter into the Contract\* prior to the end of the Term\*, then TCE shall be entitled to pursue all of its legal remedies against the OPA for claims arising out of the decision by the OPA not to proceed with the Original Contract, including for the repudiation of the Original Contract.

2.5 2.4.-Notwithstanding any other provision of this Agreement, neither Party shall have any obligation or liability to the other for any indirect, special or consequential damages.—resulting from a breach of this Agreement. For greater certainty, no provision of this Agreement will in any way affect, limit or interfere with TCE's rights and remedies in respect of the Original Contract.

### **ARTICLE III**

#### **ARTICLE III** **BREAK-UP COSTS**

3.1 3.1.1.(a) Schedule AD attached hereto, as it may be revised and replaced from time to time as in accordance with the procedure set forth in this Article III, sets forth the aggregate and the categories of the costs and expenses relating to the Potential Project for which the OPA agrees to indemnify PECTCE. The OPA acknowledges and agrees that the consent or approval of the OPA is not required if the allocations of the aggregate costs amongst the categories are changed by PECTCE provided that the aggregate OPA's obligations to indemnify TCE for its costs and expenses at such point in time do in accordance with the provisions of Section 2.3 at any given point shall not exceed the aggregate dollar amount of the costs and expenses set forth in Schedule AD for that point in time plus \$1,000,000 (the "Cap Amount").

(b) ~~3.1.2.~~ During the Term, with respect to any individual expenditure or commitment to expenditure by PECTCE in excess of \$100,000~~1,000,000~~ for which the OPA may be liable pursuant to Section 2.3, PECTCE shall provide written notice (as provided in Section 7.1 hereof) together with a brief explanation of the nature of the expenditure or commitment within five (5) Business Days of PECTCE having executed a written agreement to incur such expenditure. The OPA acknowledges that TCE has already made the expenditures or commitments identified in Schedule D as non recoverable costs for the Facility or owing to MPS Canada, Inc. and that no written notice of such expenditures or commitments is required.

(c) \*During the Term, if there occurs \*

~~3.1.3.~~ ~~\*During the Term, if there occurs \*~~ (i) ~~(i)~~ any change in an expenditure or commitment provided for on Schedule AD, or

(ii) any new expenditure not included on Schedule AD which PECTCE would intend to claim pursuant to Section 2.3,

which change or new expenditure would cause the total potential liability of the OPA under Section 2.3 to exceed the aggregate amount set forth in Schedule AD at that point in time by an amount greater than \$100,000~~1,000,000~~ and provided that such change or new expenditure is reasonably required to maintain the schedule to achieve the commercial operation milestone dates set forth in Section 2.1, PECTCE shall seek the consent of the OPA to such change or new expenditure, as set forth in Section ~~3.1.4~~3.1(d) hereof.

(d) ~~3.1.4.~~ In case of the occurrence of any event described in Section ~~3.1.3~~3.1(c), TCE shall propose a revised Schedule AD reflecting such expenditure or commitment or change in expenditure or commitment, together with a brief explanation thereof, including an explanation as to the impact on achieving the commercial operation milestone dates set forth in Section 2.1 if such expenditure, commitment or change is not made, and obtain the OPA's written consent to the revision prior to incurring such expenditure or making such commitment. In the event that the OPA does not respond to such proposed revision within five (5) Business Days of receipt of notice thereof from PECTCE as provided above, the OPA shall be deemed to have refused its consent. If the OPA provides its written consent to such revisions, then the revised Schedule D proposed by TCE and accepted by the OPA shall become the operative Schedule D for the purposes hereof until replaced in accordance with the terms hereof.

3.2 ~~3.2.~~ In the event the OPA does not consent to a revision to Schedule AD proposed by PECTCE within five (5) Business Days of receipt of notice thereof from PECTCE, or is deemed not to have consented, the commercial operation milestone dates set forth in Section 2.1 may be adjusted by mutual agreement of the Parties. ~~If within five (5) Business Days of the date the OPA does not consent to the proposed revision (or is deemed not to have consented), the Parties cannot agree on the appropriate adjustment of the commercial operation dates as a result of the failure of PEC to incur the expenditure or make the commitment which PEC proposed to add to Schedule A, either Party may submit the dispute to Mike Noga, Principal and Senior Director, R.W. Beck Inc. (the "Independent Expert") upon providing notice to the other Party. The Independent Expert, acting as an expert and not as an arbitrator, shall investigate the dispute and make his decision in accordance with the following:~~

~~(a) the Independent Expert shall observe the principle of procedural fairness and natural justice;~~

~~(b) each Party may deliver information to the Independent Expert provided that a copy of any such information is also concurrently provided to the other Party;~~

~~(c) the Parties shall at all times do all things which the Independent Expert reasonably requires to permit an equitable decision to be made, including making available any documents he reasonably requests to inspect or any employee he reasonably requests to interview; the Parties shall not act so as to delay or prevent a timely decision from being made;~~

~~(d) the Independent Expert shall make his determination within ten (10) Business Days of the dispute being submitted to the Independent Expert;~~

~~(e) the Independent Expert's determination shall be in writing and include in it a statement of the reasons for making his decision;~~

~~(f) the Independent Expert's investigation and decision shall be kept confidential between the Parties and the Independent Expert;~~

~~(g) the Independent Expert's determination shall be final and binding on the Parties, with the following exception:~~

~~(i) — the Independent Expert may, at his own initiative or where requested by one or both Parties, correct his determination where in his opinion it contains a clerical mistake, a material miscalculation or a material mistake in the description of any matter or issue referred to in the determination, provided that any such correction must be made and promulgated to the Parties within five (5) business days, or such other period agreed to by the Parties, of his initial written determination being issued to the Parties; and~~

~~(h) each Party shall bear its own costs relating to the expert determination process and any expenses relating to the engagement of the Independent Expert shall be shared equally between the Parties.~~

~~Article V shall not apply to any disputes submitted to the Independent Expert.~~

3.3     3.3.1.(a)     In the event that (i) this Agreement is terminated as provided in Section 1.2, or (ii) the Parties have not executed the Portland ACES Contract and terminated the Original Contract prior to the end of the Term, PECTCE shall, within thirty (30) Business Days of such termination or the end of the Term, as the case may be, submit to the OPA an invoice for the amounts for which it claims indemnification pursuant to Section 2.3, together with such reasonable documentation in support of the invoice as the. The OPA may, acting reasonably, request additional supporting documentation. The OPA shall notify PECTCE of any dispute with any amounts so claimed within fifteen (15) Business Days of receipt thereof, in which case the provisions of Article V shall apply.

- (b) ~~3.3.2.~~—All amounts not subject to dispute shall be paid by the OPA to PECTCE within thirty (30) calendar days of the date of the invoice and all amounts settled pursuant to the dispute resolution provisions hereof shall be paid within ten (10) Business Days of their resolution. All amounts not paid when due shall bear interest from the date due hereunder to the date of payment at a rate equal to the annual rate of interest quoted by, published and commonly known as the “prime rate” of the Royal Bank of Canada at its main office in Toronto Ontario as the reference rate then in effect for interest rates on commercial demand loans made by it in Canadian dollars to its Canadian borrowers plus four percent (4%) per annum.

#### ARTICLE IV

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 ~~4.1.~~—PECTCE represents and warrants to the OPA and acknowledges and confirms that the OPA is relying on such representations and warranties in connection with the transactions contemplated herein:
- (a) ~~4.1.1.~~—~~PEC is a limited partnership formed and existing under the laws of the Province of Ontario. PECTCE is a corporation incorporated under the laws of the Province of Ontario and as the general partner of PEC Canada and has the corporate power and authority to enter into and perform the its obligations of PEC under this Agreement.~~
- (b) ~~4.1.2.~~—The execution and delivery and performance by PECTCE of this Agreement ~~on behalf of PEC~~ and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of PECTCE.
- (c) ~~4.1.3.~~—~~The Execution and delivery of and performance by PECTCE of this Agreement on behalf of PEC:~~
- (i) ~~4.1.3.1.~~—do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of the constating documents or by-laws of ~~PEC~~ or PECTCE, as applicable;
- (ii) ~~4.1.3.2.~~—do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which PECTCE is a party; and
- (iii) ~~4.1.3.3.~~—do not and will not result in the violation of any applicable ~~(ix)~~ laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or ~~(iiy)~~ judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting PECTCE.

(d) 4.1.4.—This Agreement has been duly executed and delivered by ~~PECI~~ on behalf of ~~PECTCE~~ and constitutes legal, valid and binding agreements of ~~PECTCE~~ (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

4.2 4.2.—The OPA represents and warrants to ~~PECTCE~~ and acknowledges and confirms that ~~PECTCE~~ is relying on such representations and warranties in connection with the transactions contemplated herein:

(a) 4.2.1.—The OPA is a statutory corporation incorporated and existing under Parts II.1 and II.2 of the *Electricity Act, 1998 (Ontario)* and has the corporate power and authority to enter into and perform its obligations under this Agreement.

(b) 4.2.2.—The execution and delivery of and performance by the OPA of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the OPA.

(c) 4.2.3.—~~The~~ Execution and delivery of and performance by the OPA of this Agreement:

(i) 4.2.3.1.—do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) constitute or result in a violation or breach of, or conflict with any of the terms or provisions of its constating documents or by-laws;

(ii) 4.2.3.2.—do not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other person or entity to exercise any rights under, any of the terms or provisions of any contract, agreement or instrument to which it is a party; and

(iii) 4.2.3.3.—do not and will not result in the violation of any applicable ~~(ix)~~ laws, statutes, codes, ordinances, principles of common law and equity, orders, decrees, rules and regulations or ~~(iiy)~~ judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, and awards of any governmental entity, in each case binding on or affecting the OPA.

(d) 4.2.4.—This Agreement has been duly executed and delivered by the OPA and constitutes legal, valid and binding agreements of the OPA (excluding any agreements to agree set forth in this Agreement), enforceable against it in accordance with their respective terms subject only to any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.



~~4.2.5. The terms and conditions contained in the Goreway ACES Contract are in all material respects equal to the terms and conditions contained in the draft Accelerated Clean Energy Supply Contract provided by the OPA to PEC on January 24, 2006.~~

**ARTICLE V**

**[NTD: OPA to confirm that this is a "procurement contract" for the purposes of the *Electricity Act, 1998.*]**

(e) This Agreement is a "procurement contract" for the purposes of Section 25.31 of the *Electricity Act, 1998* (Ontario).

**ARTICLE V**

**DISPUTE RESOLUTION**

5.1 ~~5.1. Subject to Section 3.2, if~~ any dispute, claim, question or difference (each a "**Dispute**") arises with respect to this Agreement, including Schedule ~~AD~~ and the amounts owing by the OPA to ~~PECTCE~~ pursuant to Section 2.3 hereof, ~~two~~ one senior executives of ~~PECTCE~~ and one from the OPA will use their reasonable best efforts to settle the Dispute. Notwithstanding the foregoing, the Parties agree that the provisions of this Article V shall not apply to any disputes relating to the negotiation of the terms and conditions of the ~~Portlands ACES~~ Contract.

5.2 ~~5.2.~~ If the Parties do not reach a solution pursuant to Section 5.1 within five (5) Business Days following receipt of the notice of the Dispute by either Party to the other, then either Party can deliver a written notice to the other Party requiring the Dispute to be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) and the national arbitration rules of the ADR Institute of Canada, based upon the following:

(a) ~~5.2.1.~~ The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties. In the event of failure to agree within three (3) Business Days following delivery of the written notice to arbitrate, each of the Parties to the Dispute shall designate an ~~arm's~~ <sup>2</sup>-length third party within a further three (3) Business Days who together shall agree upon and appoint an arbitrator. In the event such third parties fail to appoint the arbitrator within three (3) Business Days after their appointment, either Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator.

(b) ~~5.2.2.~~ The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within fifteen (15) Business Days after the arbitrator has been appointed.

**[NTD: These timelines are extremely tight. This may be limiting the pool of arbitrators to people who do not get a lot of arbitration work.]**

(c) ~~5.2.3.~~ The arbitration shall take place in Toronto, Ontario and shall be conducted in English.

(d) ~~5.2.4.~~ The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal (other than those limited rights of appeal set forth in the *Arbitration Act, 1991* (Ontario)), and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators<sup>21</sup> fees and expenses, the

provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation of the Parties.

- (e) 5.2.5.—Judgment upon any award may be entered in any Court having jurisdiction or application may be made to the Court for a judicial recognition of the award or an order of enforcement, as the case may be.

- 5.3 5.3.—After written notice is given to refer any Dispute to arbitration, the Parties will meet within five (5) Business Days of delivery of the notice and will negotiate in good faith any changes to these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.

## ARTICLE VI

### ARTICLE VI CONFIDENTIALITY, ANNOUNCEMENTS AND DEALING WITH THE OPA

- 6.1 ~~6.1.—Each Party shall keep confidential and will not use for any improper purpose or disclose to any other person or entity any information obtained from the other Party or its agents and representatives, unless such information (i) is or becomes generally available to the public other than as a result of a disclosure in violation of this Agreement, (ii) becomes available to the Party on a non-confidential basis from a source other than the other Party or its agents and representatives, unless the Party knows that such source is prohibited from disclosing the information to it by a contractual, fiduciary or other legal obligation to the other Party, or (iii) was known to the Party on a non-confidential basis before its disclosure to the Party by the other Party or its agents and representatives. In the event that either Party is required by any law, by law, rule or policy of any governmental entity to disclose any confidential information, it will, to the extent not prohibited by any law, by law, rule or policy of any governmental entity, provide the other Party with prompt notice of such requirements so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section 6.1. Notwithstanding the foregoing, but subject to Section 6.4, either Party shall be permitted to disclose any such information to the OME or any other ministry of the Province of Ontario to the extent required in connection with the Portlands Project. The Parties acknowledge that this Agreement is confidential and is subject to the terms of the Confidentiality Agreement.~~
- 6.2 6.2.—PECTTCE acknowledges 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. PECTTCE agrees to provide a copy of any FIPPA Records that it previously provided to the OPA if PECTTCE continues to possess such FIPPA Records in a readily deliverable form at the time of the OPA's request. Information stored in any computer archive shall not be considered to be in a readily deliverable form. If PECTTCE does possess such FIPPA Records in a readily deliverable form, it shall provide the same within a reasonable time after being

directed to do so by the OPA. The OPA acknowledges that FIPPA Records do not include any document or information provided to the OPA or its representatives pursuant to the Acknowledgements. The provisions of this Section 6.2 shall prevail over, and in lieu of, any other applicable provisions in this Agreement.]

[INTD: The foregoing provision to be discussed with the OPA.]

6.3 6.3.—No press release, public statement, announcement or other public disclosure (a “Public Statement”) with respect to this Agreement, the ~~Portlands ACES~~ Contract or the transactions contemplated in this Agreement may be made by either Party unless with the prior written consent and joint approval of the other Party except as may be required by law or a governmental entity. Where the Public Statement is required by law or by a governmental entity, the Party required to make the Public Statement will use its best effort to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

6.4

6.5 6.4.—Each Party ~~specifically acknowledges and agrees that it will negotiate the Portlands ACES Contract solely with the other Party hereto and will not indirectly negotiate the Portland ACES Contract through the Government of Ontario, including the OME or any other ministry of the Province of Ontario.~~

6.6 6.5.—Either Party shall be free to communicate, or initiate any discussions or exchanges of information, with the ~~OME~~ Ministry of Energy (Ontario) (“OME”) or any other ministry of the Province of Ontario regarding any role the OME or such other ministry may have with respect to the ~~Portlands~~ Potential Project, including in respect of any required regulatory approvals.

## **ARTICLE VII**

### **ARTICLE VII MISCELLANEOUS**

7.1 7.1.—Any notice, direction or other communication (each a “Notice”) given regarding the matters contemplated by this Agreement must be in writing, sent by personal delivery, courier or facsimile, along with a copy by electronic mail, and addressed:

to the OPA at:

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

Attention:—~~Paul J. Bradley, Vice President, Generation Development~~ ●

Telephone:—416-969-6005 ●

Facsimile: 416-967-1947 ●

e-mail: ~~paul.bradley@powerauthority.on.ca~~ ●

with a copy to:

Osler, Hoskin & Harcourt LLP P.O. Box 50, 61st Floor  
1 First Canadian Place  
Toronto, ON M5X 1B8

Attention: Rocco Sebastiano

Telephone: 416-862-5859

Facsimile: 416-862-6666

e-mail: rsebastiano@osler.com

to PECTCE at:

~~700 University Avenue  
Toronto, ON M5G 1X6~~

~~Attention: James D. Burpee, Chairman~~

~~Telephone: 416-592-5130~~

~~Facsimile: 416-592-5662~~

~~e-mail: j.r.burpee@opg.com~~

with copies to:

~~Ontario Power Generation Inc.~~

~~700 University Avenue~~

~~Toronto, ON M5G 1X6~~

~~Attention: Chris Young, Vice President Projects, Business Development~~

~~Telephone: 416-592-3619~~

~~Facsimile: 416-592-3511~~

~~e-mail: chris.young@opg.com~~

and

~~TransCanada Energy~~

~~8 Royal Bank Plaza~~

~~200 Bay Street~~

~~24th Floor, 55 Yonge Street South Tower~~

~~Toronto, ON M5E 1J1J4~~

Attention: Finn Greflund, Terry Bennett, Vice President, Power Generation Development

Telephone: 416-869-2162/21330  
Facsimile: 416-869-2056  
e-mail: ~~finn\_greflund~~ terry\_bennett@transcanada.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (ii) if sent by same-day ~~service-courier~~ service, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice by electronic mail or to legal counsel does not invalidate delivery of that Notice to a Party.

- 7.2 7.2.—Time is of the essence in this Agreement.
- 7.3 7.3.—The Parties intend that this Agreement will not benefit or create any right or cause of action in favour of, any person or entity, other than the Parties to this Agreement. The Parties acknowledge and agree that at the conclusion of good faith negotiations of a ~~Portlands ACES~~ Contract, the approval of their respective boards of directors (in such boards' sole discretion) will be required for execution and delivery of such ~~Portlands ACES~~ Contract.
- 7.4 7.4.—Except as otherwise expressly provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this Agreement and the ~~Portlands ACES~~ Contract.
- 7.5 7.5.—This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Parties. Subject to Section 1.3, if the ~~Portlands ACES~~ Contract is executed and delivered by the Parties, the terms of the ~~Portlands ACES~~ Contract shall supersede and govern over the terms of this Agreement.
- 7.6 7.6.—No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.
- 7.7 7.7.—This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns. PECTCE shall be entitled to assign this Agreement, in whole or in part, with notice to the OPA, to one or more corporations, limited or general partnerships and/or other entities of which ~~the limited partners of PECTCE or its affiliates~~ retain control. Upon PECTCE giving notice to the OPA of any such assignment, all references herein to PECTCE shall to the extent appropriate be deemed to be and include such assignee or assignees.

For the purposes hereof "control" shall have the meaning given thereto in the *Business Corporations Act* (Ontario).

7.8 7.8.—If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

7.9 7.9.—This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7.10 7.10.—For purposes of this Agreement, "Business Day" means any day of the year other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

7.11 7.11.—This Agreement may be executed in any number of counterparts (including counterparts by ~~facsimile~~electronic mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.

7.12

7.13 7.12.—This Agreement, along with Exhibits I ~~and H, II, III, and IV~~ and Schedules A, B, C and D hereto, together constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. Any conflict or inconsistency between the Agreement and the Exhibits or Schedules shall be resolved by interpreting such documents in the following order, from highest to lowest priority, namely: [NTD: To be confirmed.]

7.14

(i) ————— (i) — the Agreement;

(ii) ————— (ii) — Exhibit II; and

(iii) Exhibit III;

(iv) Exhibit IV;

(v) ————— (iii) — Exhibit I;

(vi)

(vii) Schedule D;

(viii) Schedule B;

(ix) Schedule C; and

(x) Schedule A.

where a document of a higher priority shall govern over a document of a lower priority to the extent of any conflict or inconsistency.

IN WITNESS WHEREOF, the Parties have executed this Implementation Agreement:

**PORTLANDSTRANSCANADA ENERGY**  
**CENTRE INC., as general partner for**  
**PORTLANDS ENERGY CENTRE L.P.**  
**LTD.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

~~Title:~~ \_\_\_\_\_

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT I**  
**DIRECTIVECONFIDENTIALITY AGREEMENT**



**EXHIBIT II**  
**ACKNOWLEDGEMENTS**

**~~PROCESS LETTER~~**

**EXHIBIT III**  
**MOU**

**EXHIBIT IV**  
**MINISTER'S DIRECTIVE**

## **SCHEDULE A**

### **TECHNICAL DESIGN REQUIREMENTS**

**INTD: Further discussion required.]**

#### **Potential Project**

The Potential Project will:

- (a) be a dispatchable facility.
- (b) be a simple cycle configuration generating facility.
- (c) utilize gas (which has been defined as natural gas supplied by pipeline) as the fuel.
- (d) have a minimum Ramp Rate, over a single five minute interval, of a least 20 MW/minute, and will be capable of responding to market prices at its specified Ramp Rate, both increasing and decreasing output.

#### **Contract Capacity**

The Potential Project will be a single generating facility and will

- (a) be able to provide a minimum of 125 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Potential Project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;
- (b) be able to provide a minimum of [450] MW at 35 °C under N-2 System Conditions;
- (c) have a Season 3 Contract Capacity of no less than 250 MW; and
- (d) have a Contract Capacity of no more than [550] MW in any Season.

#### **Electrical Connection**

The Potential Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. The Potential Project will have a direct connection to the Hydro One circuits M20D and M21D with a connection point located at or near the Preston TS.

#### **Emissions Requirements**

The Potential Project will not emit:

- (i) Nitrogen Oxides (NOx) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; or
- (ii) Carbon Monoxide (CO) in a concentration that exceeds 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract.

The Contract will require that the emission limits for NOx and CO pursuant to this Section, be (i) incorporated into the Potential Project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the Potential Project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

The emission limits for NOx and CO stated in the Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the Potential Project must comply with the NOx and CO limits set out above

**Fuel Supply**

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

**Equipment**

The Potential Project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment as purchased under Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010 November 19, 2010 and December 31, 2010 and as may be further amended from time to time. Each Generator shall be nominally rated at [250] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

**SCHEDULE B**  
**ADDITIONAL CONTACT TERMS**

**[INTD: details to follow.]**

**NRR**

**Permits and Approvals**

**Gas Delivery and Management Services Costs**

**Interconnection Costs**

**Operating Reserve**

**Option to Extend Term**

**Future Changes – Risk Mitigation**

1

**SCHEDULE C**  
**PROCESS**

**[NTD: to be provided separately.]**

**SCHEDULE D**  
**PROJECTED COSTS AND EXPENSES**  
**DURING THE TERM**

**[NTD: The following is preliminary and subject to change.]**

<u>Cancellation Schedule</u>	<u>January 2011</u>	<u>February 2011</u>	<u>March 2011</u>	<u>April 2011</u>	<u>May 2011</u>	<u>June 2011</u>
	<u>Values are in millions and are cumulative month to month</u>					
<u>Non-Recoverable costs for the Facility</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>	<u>\$33.6</u>
<u>MPS Canada, Inc. ESA US\$</u>	<u>\$108.5</u>	<u>\$130.2</u>	<u>\$137.5</u>	<u>\$143.3</u>	<u>\$144.7</u>	<u>\$144.7</u>
<u>Hedging Costs US\$ to Cdn\$</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>	<u>\$12.4</u>
<u>MPS Canada, Inc. ESA f/s Option</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>	<u>\$34.6</u>
<u>MPS Canada, Inc. LTSA</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>	<u>\$4.1</u>
<u>MPS Canada, Inc. TRA</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>	<u>\$7.5</u>
<u>TransCanada Business Development</u>		<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.3</u>
<u>TransCanada Development Engineering</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.6</u>	<u>\$0.7</u>	<u>\$1.0</u>	<u>\$1.1</u>
<u>External Detailed Design Engineering</u>	<u>\$-</u>	<u>\$0.8</u>	<u>\$1.7</u>	<u>\$2.6</u>	<u>\$3.3</u>	<u>\$4.0</u>
<u>Other Engineering Consulting</u>	<u>\$0.1</u>	<u>\$0.3</u>	<u>\$0.5</u>	<u>\$0.7</u>	<u>\$0.8</u>	<u>\$0.9</u>
<u>Consultant Environmental</u>		<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.3</u>	<u>\$0.4</u>	<u>\$0.5</u>
<u>Land Options Costs and Real Estate</u>			<u>\$0.5</u>	<u>\$0.5</u>	<u>\$0.5</u>	<u>\$0.5</u>



	<u>Community and Public Relations</u>		<u>\$0.0</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.1</u>
	<u>External Legal</u>		<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.1</u>
	<u>Union Gas</u>		<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.0</u>	<u>\$0.1</u>
	<u>Other</u>		<u>\$0.1</u>	<u>\$0.1</u>	<u>\$0.2</u>	<u>\$0.2</u>	<u>\$0.2</u>	<u>\$0.3</u>
	<u>Total</u>	<u>\$200.9</u>	<u>\$224.1</u>	<u>\$233.4</u>	<u>\$240.7</u>	<u>\$243.5</u>	<u>\$244.7</u>	

## Aleksandar Kojic

---

**From:** Sebastiano, Rocco [RSebastiano@osler.com]  
**Sent:** January 25, 2011 1:13 PM  
**To:** Deborah Langelaan; Michael Killeavy  
**Cc:** Smith, Elliot  
**Subject:** Revised MPS Fast Start Letter Agreement  
**Attachments:** MPS Fast Start Letter Agmt (OPA Revisions - Jan 24, 2011).doc

Further to our discussion with TCE last Thursday, please find enclosed a revised draft of the TCE-MPS Fast Start Letter Agreement for your review and consideration. If this looks OK to you, then it can be forwarded to TCE for their review.

Regards, Rocco



**Rocco Sebastiano**  
Partner

416.862.5859 DIRECT  
416.862.6666 FACSIMILE  
[rsebastiano@osler.com](mailto:rsebastiano@osler.com)

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



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[December 31, 2010]

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MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "Contract"), the Letter Agreement dated October 29, 2010 (the "Original Letter Agreement") and the Letter Agreement dated November 19, 2010 (together, the "Previous Letter Agreements").

Dear Mr. Ueki,

This letter (this "Letter Agreement") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("Purchaser") and MPS Canada, Inc. (the "Supplier") regarding the Contract and the Previous Letter Agreements.

Background. Purchaser was informed by the Ontario Power Authority (the "OPA") that the Project will not proceed forward based on the current site location designated in the Contract. OPA requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. In the Original Letter Agreement, Purchaser suspended Supplier's Work effective October 29, 2010 until November 30, 2010 in order to have time to pursue potential alternative project(s) and configuration(s) with the OPA. The OPA indicated its interest in a potential alternative project(s) and configuration(s), and therefore the Supplier and Purchaser agreed to continue to suspend Supplier's Work until December 31, 2010 in the Second Letter Agreement.

During such time, Supplier provided information to Purchaser to support its efforts to negotiate with the OPA. Purchaser and the OPA have agreed to work together in good faith to negotiate a definitive form of agreement for develop and construct an alternate project to be sited in or around Cambridge, Ontario which will and employ two M501 GAC Fast Start gas turbines in simple cycle configuration. On December 16, 2010, Supplier provided Purchaser a budgetary commercial proposal and budgetary technical proposal No. MP-A2335 for such alternate project with the new delivery dates, including Electrical Output, Heat Rate, Ramp Rate and Start Up Time all as set out in Attachment 1 (collectively the "Budgetary Proposal"). The OPA Purchaser has reviewed and indicated its acceptance of the Budgetary Proposal with the OPA. and therefore Supplier and Purchaser agree that the Supplier's Work shall no longer be suspended effective December 31, 2010 and Supplier shall proceed with the Work in accordance with the Budgetary Proposal, subject to the terms and conditions set out herein.

1. Commitment. The Parties agree to amend the Contract to provide for the furnishing, design, fabrication and supply of two 501 GAS Fast Start gas turbines (the "New Equipment") which meet the Budgetary Proposal together with all other services, equipment and materials required for the supply of such equipment as the Parties may agree.

Supplier agrees to propose a revised Contract Price based upon such New Equipment on or before February 10, 2011. Such proposed Contract Price shall include ~~any amounts determined under in accordance with Articles 4 and 14~~ as needing to be paid as a result of the suspensions described in the Previous Letter Agreements. Supplier agrees that the additional amount for the New Equipment that will be included in the revised Contract Price will not exceed 125% of such amount included in the Budgetary Proposal. However, the Budgetary Proposal was based upon the information and scope of supply and technical information set out in the Budgetary Proposal provided prior to December 16, 2010 and is subject to change depending upon any changes in the scope of supply or new technical information provided by Purchaser after the date of this Letter Agreement, ~~or new information provided by Purchaser or a third party after such date.~~

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2. Formal Contract Amendment. The Parties agree to meet on a regular basis and in good faith to identify, negotiate and agree upon the changes to the Contract as are necessary to amend the Contract and give full effect to this Letter Agreement. It is the intention of the Parties to execute such amendment by March 1, 2011.

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3. Termination. In the event the Contract is terminated after the date of this Letter Agreement, December 31, 2010, Purchaser agrees to pay Supplier based on with the cancellation schedule stipulated in the APPENDIX "VI" and in accordance with the Contract. For purposes of calculating the Termination Payment, the Contract Price shall be determined by including the amounts set forth in the Budgetary Proposal and, upon execution of the Contract amendment referenced in paragraph 23 above, the revised Contract Price shall be used.

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4. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

5. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

6. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

7. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract or Previous Letter Agreements on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

8. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

9. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

10. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA, subject to that certain Acknowledgement by Ontario Power Authority and Osler, Hoskin & Harcourt LLP dated December 17, 2010.

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: \_\_\_\_\_

Name: Terry Bennett

Title: Vice President

By: \_\_\_\_\_

Name: John Cashin

Title: Assistant Corporate Secretary

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

*[Remainder of Page left intentionally blank]*

*[MPS Acceptance on next Page]*

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

| Accepted this 31<sup>st</sup>-day of December, 2011. ~~December 2010.~~

MPS Canada, Inc.

By: \_\_\_\_\_

Name: Shinichi Ueki

Title: President



**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

**Attachment 1**  
**Budgetary Proposal**

## Aleksandar Kojic

---

**From:** Susan Kennedy  
**Sent:** January 26, 2011 1:06 PM  
**To:** Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle  
**Subject:** FW: Direction  
**Attachments:** KWC TransCanada Direction.26 01 2011.cln.docx  
  
**Importance:** High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]  
**Sent:** January 26, 2011 1:02 PM  
**To:** Susan Kennedy  
**Subject:** Direction

Susan,

I have been instructed to send you the attached as a courtesy. You will see significant editing from the version that you sent me. I have conveyed the messages that you conveyed to me about the OPA's requirements.

Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

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

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January , 2011

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the “OPA”) under section 25.32 of the *Electricity Act, 1998* (the “Act”).

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the “KWC Area”). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the “KWC Project”) to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

Pursuant to a direction dated August 18, 2008 (the “2008 Direction”), the OPA procured from TransCanada Energy Ltd. (“TransCanada”) the design, construction and operation of a 900MW natural gas generating station in Oakville (the “Oakville Generating Station”). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station no longer necessary.

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should look for opportunities to reprofile investments already made by TransCanada.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

Brad Duguid  
Minister of Energy

## Aleksandar Kojic

---

**From:** JoAnne Butler  
**Sent:** January 26, 2011 3:33 PM  
**To:** 'Sebastiano, Rocco'; 'Smith, Elliot'  
**Cc:** Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan  
**Subject:** FW: Direction  
**Attachments:** KWC TransCanada Direction.26 01 2011.cln.docx

**Importance:** High

Can we get your comments on this one? Colin is trying to buy us some time....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](mailto:joanne.butler@powerauthority.on.ca)

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**From:** Susan Kennedy  
**Sent:** Miércoles, 26 de Enero de 2011 01:06 p.m.  
**To:** Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle  
**Subject:** FW: Direction  
**Importance:** High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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**From:** Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]  
**Sent:** January 26, 2011 1:02 PM  
**To:** Susan Kennedy  
**Subject:** Direction

Susan,

I have been instructed to send you the attached as a courtesy. You will see significant editing from the version that you sent me. I have conveyed the messages that you conveyed to me about the OPA's requirements.

Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

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

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

January , 2011

Mr. Colin Andersen  
Chief Executive Officer  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Andersen,

**Re: Kitchener-Waterloo-Cambridge Area New Supply**

I write in connection with my authority as the Minister of Energy in order to exercise the statutory power of ministerial direction that I have in respect of the Ontario Power Authority (the “OPA”) under section 25.32 of the *Electricity Act, 1998* (the “Act”).

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the “KWC Area”). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the “KWC Project”) to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

Pursuant to a direction dated August 18, 2008 (the “2008 Direction”), the OPA procured from TransCanada Energy Ltd. (“TransCanada”) the design, construction and operation of a 900MW natural gas generating station in Oakville (the “Oakville Generating Station”). On October 7, 2010, I announced that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station no longer necessary.

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including



the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should look for opportunities to reprofile investments already made by TransCanada.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

This direction shall be effective and binding as of the date hereof.

Brad Duguid  
Minister of Energy

## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** January 26, 2011 4:33 PM  
**To:** 'Sebastiano, Rocco'; 'Smith, Elliot'  
**Cc:** Michael Killeavy  
**Subject:** FW: Updated TCS-General/[Letter of Agreement] Release from suspension  
**Attachments:** Redline\_MPS Fast Start Letter Agmt (OPA and MPSA Revisions - Jan 26 2011) (2).doc;  
Redline\_MPS Fast Start Letter Agmt (OPA and MPSA Revisions - Jan 26 2011) (3).pdf

Gentlemen;

Attached please see black-lined version of the Letter Agreement. Based on yesterday's discussions with TEC and the subsequent internal discussions today it's highly unlikely that we will give TCE the green light to lift the suspension in the near term.

Deb

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

---

**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 26, 2011 4:28 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy  
**Subject:** FW: Updated TCS-General/[Letter of Agreement] Release from suspension

Dear Deborah,

Attached please find a blackline version of the MPS Letter Agreement in response to the proposed changes provided by your counsel on Tuesday. Could you please review and acknowledge your agreement to the form of the letter agreement at your earliest convenience.

Thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

**TransCanada**

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

---

**From:** Terri Steeves  
**Sent:** Wednesday, January 26, 2011 4:14 PM  
**To:** John Mikkelsen  
**Subject:** FW: Updated TCS-General/[Letter of Agreement] Release from suspension

Please send to OPA. Note typo from previous version.

I believe this is reasonable.

Thanks,  
Terri

---

**From:** Prigge, Phil [mailto:Phil.Prigge@mpshq.com]  
**Sent:** Wednesday, January 26, 2011 1:48 PM  
**To:** Terri Steeves  
**Cc:** Prigge, Phil  
**Subject:** FW: TCS-General/[Letter of Agreement] Release from suspension

Terri,

One mistake;

On the top of page 2, it should read "501 GAC Fast Start", not "501 GAS Fast Start."

Thanks,

Phil

---

**From:** PPrigge@mpshq.com [mailto:PPrigge@mpshq.com]  
**Sent:** Wednesday, January 26, 2011 3:33 PM  
**To:** terri\_steeves@transcanada.com; JPM-TEC@comcast.net; mark\_brache@transcanada.com  
**Cc:** isamu\_matsumi@mhi.co.jp; F\_Transc@mhi.co.jp; MASUDA, SOSUKE; Schwartz, Thangyah; Southwest GTA; Namba, Kotaro; Watanabe, Airo; Prigge, Phil; Yoshi, Kazuo; Yoshida, Minoru; Hiura, Daisuke; Ishikura, Kazuki; Muyama, Akimasa; Hasegawa, Koji; Ueki, Shinichi; McDeed, David; Pyros, George; Mulligan, George; Takasugi, Shigeki; Koeneke, Carlos; Newsom, Bill; Southwest GTA; F\_hcommon  
**Subject:** TCS-General/[Letter of Agreement] Release from suspension

Date : January 26,2011

Ref. No : MPS/TCS-General-11-E-0003

To : Attention : Terri Steeves,Joseph P. Miller,Mark Brache  
: Company : TransCanada/SW GTA PJ - TransCanada Team Member,TransCanada/SW GTA PJ -  
TransCanada Team Member,TransCanada/SW GTA PJ - TransCanada Team Member  
CopyTo : Isamu Matsumi(TransCanada/SW GTA PJ - MHI TGO Team Member),MHI Takasago  
Mailbox(TransCanada/SW GTA PJ - MHI TGO Team Member),Sosuke Masuda(TransCanada/SW GTA PJ -  
MHI TGO Team Member ),Schwartz Thangyah(TransCanada/SW GTA PJ - MPSA Team  
Member),TransCanada/SW GTA PJ - MPSA General Mailbox(TransCanada/SW GTA PJ - MPSA Team  
Member),Kotaro Namba(TransCanada/SW GTA PJ - MPSA Team Member),Airo Watanabe(TransCanada/SW  
GTA PJ - MPSA Team Member),Phil Prigge(TransCanada/SW GTA PJ - MPSA Team Member),Kazuo  
Yoshi(),Minoru Yoshida(),Daisuke Hiura(Lake Mary Headquaters),Kazuki Ishikura(),Akimasa Muyama(),Koji  
Hasegawa(Lake Mary Headquaters),Shinichi Ueki(),David Mcdeed(Lake Mary Headquaters),George  
Pyros(Lake Mary),George Mulligan(Lake Mary Headquaters),Shigeki Takasugi(),Carlos Koeneke(Orlando

Service Center),Bill Newsom()

From : Phil Prigge,Project Manager  
MPSA Headquarters  
Person in Charge : phil prigge (pprigge@mpshq.com)  
Phone No. : 407-688-6351 Fax No. : 407-688-6132

Project : TransCanada/Southwest-General  
Subject : [Letter of Agreement] Release from suspension

Approved by :  
p.prigge ,k.namba ,p.prigge  
-----

Dear Terri,

Please see our reply to your proposed changes to the Letter of Agreement to release MPS Canada from suspension. The doc and pdf are the same but the pdf file shows MPS Canada replies in a different color that the TCE proposed changes.

*(See attached file: Redline\_MPS Fast Start Letter Agmt (OPA and MPSA Revisions - Jan 26 2011) (2).doc)(See attached file: Redline\_MPS Fast Start Letter Agmt (OPA and MPSA Revisions - Jan 26 2011) (3).pdf)*

Please let us know if you have any questions or concerns,

Phil Prigge  
Project Manager

\*\*\*\*\*

MPS Canada, Inc.  
200 Bay Street, Suite No.3220, Toronto, Ontario  
M5J 2J1, Canada

\*\*\*\*\*

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~~December 31~~ January 28, 2011

MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "**Contract**"), the Letter Agreement dated October 29, 2010 (the "**Original Letter Agreement**") and the Letter Agreement dated November 19, 2010 (together, the "**Previous Letter Agreements**").

Dear Mr. Ueki,

This letter (this "**Letter Agreement**") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("**Purchaser**") and MPS Canada, Inc. (the "**Supplier**") regarding the Contract and the Previous Letter Agreements.

Background. Purchaser was informed by the Ontario Power Authority (the "**OPA**") that the Project will not proceed forward based on the current site location designated in the Contract. OPA requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. In the Original Letter Agreement, Purchaser suspended Supplier's Work effective October 29, 2010 until November 30, 2010 in order to have time to pursue potential alternative project(s) and configuration(s) with the OPA. The OPA indicated its interest in a potential alternative project(s) and configuration(s), and therefore the Supplier and Purchaser agreed to continue to suspend Supplier's Work until December 31, 2010 in the Second Letter Agreement.

During such time, Supplier provided information to Purchaser to support its efforts to negotiate with the OPA. Purchaser and the OPA have agreed to work together in good faith to negotiate a definitive form of agreement for -develop and construct an alternate project to be sited in or around Cambridge, Ontario which will and employ two M501 GAC Fast Start gas turbines in simple cycle configuration. On December 16, 2010, Supplier provided Purchaser a budgetary commercial proposal and budgetary technical proposal No. MP-A2335 for such alternate project with the new delivery dates, including Electrical Output, Heat Rate, Ramp Rate and Start Up Time all as set out in Attachment 1 (collectively the "**Budgetary Proposal**"). The OPA Purchaser has reviewed and indicated its acceptance of the Budgetary Proposal with the OPA. and therefore Supplier and Purchaser agree that the Supplier's Work shall no longer be suspended effective December 31, 2010 and Supplier shall proceed with the Work in accordance with the Budgetary Proposal, subject to the terms and conditions set out herein.

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CONFIDENTIAL

Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.

1. Commitment. The Parties agree to amend the Contract to provide for the furnishing, design, fabrication and supply of two 501 GAS Fast Start gas turbines (the "New Equipment") which meet the Budgetary Proposal together with all other services, equipment and materials required for the supply of such equipment as the Parties may agree.

Supplier agrees to propose a revised Contract Price based upon such New Equipment on or before ~~February 1028, 2011~~. Such proposed Contract Price shall include any amounts determined ~~under in accordance with Articles 4 and 14~~ as needing to be paid as a result of the suspensions described in the Previous Letter Agreements. Supplier agrees that the additional amount for the New Equipment that will be included in the revised Contract Price will not exceed 125% of such amount included in the Budgetary Proposal. However, the Budgetary Proposal was based upon ~~the information and scope of supply and technical information set out in the Budgetary Proposal provided prior to December 16, 2010~~ and is subject to change depending upon any changes in the scope of supply ~~or new technical information~~ provided by Purchaser ~~or changes in law or mandatory engineering standards after the date of this Letter Agreement~~ ~~December 16, 2010~~, or new information provided by Purchaser or a third party after such date.

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2. Formal Contract Amendment. The Parties agree to meet on a regular basis and in good faith to identify, negotiate and agree upon the changes to the Contract as are necessary to amend the Contract and give full effect to this Letter Agreement. It is the intention of the Parties to execute such amendment by ~~March 15, 2011~~.

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3. Termination. In the event the Contract is terminated after ~~the date of this Letter Agreement, December 31, 2010~~, Purchaser agrees to pay Supplier based on with the cancellation schedule stipulated in the APPENDIX "VI" and in accordance with the Contract. For purposes of calculating the Termination Payment, the Contract Price shall be determined by including the amounts set forth in the Budgetary Proposal and, upon execution of the Contract amendment referenced in paragraph 23 above, the revised Contract Price shall be used.

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4. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

5. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

6. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

Field Code Changed

CONFIDENTIAL

Letter Agreement  
between TransCanada Energy Ltd.,  
and MPS Canada, Inc.

7. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract or Previous Letter Agreements on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

8. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

9. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

10. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA, subject to that certain Acknowledgement by Ontario Power Authority and Osler, Hoskin & Harcourt LLP dated December 17, 2010.

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: \_\_\_\_\_

Name: Terry Bennett

Title: Vice President

By: \_\_\_\_\_

Name: John Cashin

Title: Assistant Corporate Secretary

Field Code Changed



**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd..  
and MPS Canada, Inc.*

*[Remainder of Page left intentionally blank]*

*[MPS Acceptance on next Page]*

Field Code Changed

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

| Accepted this ~~28th~~<sup>31<sup>st</sup></sup> day of ~~January, 2011, December 2010.~~

MPS Canada, Inc.

By: \_\_\_\_\_

Name: Shinichi Ueki

Title: President

Field Code Changed

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

**Attachment 1**  
**Budgetary Proposal**

**CONFIDENTIAL**

~~December 31~~ January 28, 2011

MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

**Attention: Shinichi Ueki**

**Subject:** Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "**Contract**"), the Letter Agreement dated October 29, 2010 (the "**Original Letter Agreement**") and the Letter Agreement dated November 19, 2010 (together, the "**Previous Letter Agreements**").

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**Background.** Purchaser was informed by the Ontario Power Authority (the "**OPA**") that the Project will not proceed forward based on the current site location designated in the Contract. OPA requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. In the Original Letter Agreement, Purchaser suspended Supplier's Work effective October 29, 2010 until November 30, 2010 in order to have time to pursue potential alternative project(s) and configuration(s) with the OPA. The OPA indicated its interest in a potential alternative project(s) and configuration(s), and therefore the Supplier and Purchaser agreed to continue to suspend Supplier's Work until December 31, 2010 in the Second Letter Agreement.

During such time, Supplier provided information to Purchaser to support its efforts to negotiate with the OPA. Purchaser and the OPA have agreed to work together in good faith to negotiate a definitive form of agreement for -develop-and-construct an alternate project to be sited in or around Cambridge, Ontario which will and-employ two M501 GAC Fast Start gas turbines in simple cycle configuration. On December 16, 2010, Supplier provided Purchaser a budgetary commercial proposal and budgetary technical proposal No. MP-A2335 for such alternate project with the new delivery dates, including Electrical Output, Heat Rate, Ramp Rate and Start Up Time all as set out in Attachment 1 (collectively the "**Budgetary Proposal**"). The OPA Purchaser has reviewed and indicated its acceptance of the Budgetary Proposal with the OPA. ~~and therefore~~ Supplier and Purchaser agree that the Supplier's Work shall no longer be suspended effective December 31, 2010 and Supplier shall proceed with the Work in accordance with the Budgetary Proposal, subject to the terms and conditions set out herein.

1. Commitment. The Parties agree to amend the Contract to provide for the furnishing, design, fabrication and supply of two 501 GAS Fast Start gas turbines (the "New Equipment") which meet the Budgetary Proposal together with all other services, equipment and materials required for the supply of such equipment as the Parties may agree.

Supplier agrees to propose a revised Contract Price based upon such New Equipment on or before ~~{February 1028, 2011}~~. Such proposed Contract Price shall include any amounts determined ~~under in accordance with Articles 4 and 14~~ as needing to be paid as a result of the suspensions described in the Previous Letter Agreements. Supplier agrees that the additional amount for the New Equipment that will be included in the revised Contract Price will not exceed 125% of such amount included in the Budgetary Proposal. However, the Budgetary Proposal was based upon the information and scope of supply and technical information set out in the Budgetary Proposal provided prior to December 16, 2010 and is subject to change depending upon any changes in the scope of supply or new technical information provided by Purchaser or changes in law or mandatory engineering standards after the date of this Letter Agreement ~~December 16, 2010, or new information provided by Purchaser or a third party after such date.~~

2. Formal Contract Amendment. The Parties agree to meet on a regular basis and in good faith to identify, negotiate and agree upon the changes to the Contract as are necessary to amend the Contract and give full effect to this Letter Agreement. It is the intention of the Parties to execute such amendment by ~~{March 15, 2011}~~.

3. Termination. In the event the Contract is terminated after the date of this Letter Agreement, December 31, 2010, Purchaser agrees to pay Supplier based on with the cancellation schedule stipulated in the APPENDIX "VI" and in accordance with the Contract. For purposes of calculating the Termination Payment, the Contract Price shall be determined by including the amounts set forth in the Budgetary Proposal and, upon execution of the Contract amendment referenced in paragraph ~~23~~ above, the revised Contract Price shall be used.

4. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

5. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

6. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

7. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract or Previous Letter Agreements on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

8. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

9. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

10. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA, subject to that certain Acknowledgement by Ontario Power Authority and Osler, Hoskin & Harcourt LLP dated December 17, 2010.

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: \_\_\_\_\_

Name: Terry Bennett

Title: Vice President

By: \_\_\_\_\_

Name: John Cashin

Title: Assistant Corporate Secretary

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.,  
and MPS Canada, Inc.*

*[Remainder of Page left intentionally blank]*

*[MPS Acceptance on next Page]*

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.,  
and MPS Canada, Inc.*

| Accepted this 28th~~31<sup>st</sup>~~-day of January, 2011. ~~December 2010.~~

MPS Canada, Inc.

By: \_\_\_\_\_

Name: Shinichi Ueki

Title: President



***CONFIDENTIAL***

*Letter Agreement  
between TransCanada Energy Ltd..  
and MPS Canada, Inc.*

**Attachment 1**  
**Budgetary Proposal**

## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** January 28, 2011 2:14 PM  
**To:** 'Rocco Sebastiano (rsebastiano@osler.com)'; 'Safouh Soufi (safouh@smsenergy-engineering.com)'  
**Cc:** Susan Kennedy; 'Smith, Elliot'; Michael Killeavy; Anshul Mathur  
**Subject:** FW: MPS Letter Agreement Dec. 2010  
**Attachments:** 6519-Letter Agreement-December.pdf

Please find attached TCE's Letter Agreement with MPS extending the suspension of the contract to the end of January 2011.

Deb

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

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**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 28, 2011 1:48 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy  
**Subject:** RE: MPS Letter Agreement Dec. 2010

Dear Deborah,

Attached please find a copy of the December 31, 2010 letter agreement between TransCanada Energy Ltd. and MPS Canada, Inc.  
My apologies for the delay.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

### TransCanada

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

**From:** Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]  
**Sent:** Friday, January 28, 2011 8:38 AM  
**To:** John Mikkelsen  
**Subject:** MPS Letter Agreement Dec. 2010

Hi John;

During yesterday's meeting you agreed to provide the OPA with a copy of the Letter Agreement between MPS and TCE that extended the suspension until the end of January. Would you please provide me with a copy of the letter at your earliest convenience?

Thanks,  
Deb

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

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December 31, 2010

MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

**Attention: Shinichi Ueki**

**Subject:** Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "**Contract**"), the Letter Agreement dated October 29, 2010 (the "**Original Letter Agreement**") and the Letter Agreement dated November 19, 2010 (together, the "**Previous Letter Agreements**").

Dear Mr. Ueki,

This letter (this "**Letter Agreement**") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("**Purchaser**") and MPS Canada, Inc. (the "**Supplier**") regarding the Contract and the Previous Letter Agreements.

Background. Purchaser has been informed by the Ontario Power Authority (the "**OPA**") that the Project will not proceed forward based on the current site location designated in the Contract. OPA has requested Purchaser's continued cooperation to seek a viable alternative site in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. In the Previous Letter Agreements, Purchaser suspended Supplier's Work effective October 29, 2010 until December 31, 2010. As the OPA has indicated interest in an alternate project to be sited in or around Cambridge, Ontario and employ two M501 GAC Fast Start gas turbines in simple cycle mode as a potentially viable alternative project and configuration, the Supplier and Purchaser agree to continue to suspend Supplier's Work until January 31, 2011, subject to the terms and conditions set out herein.

1. Commitment. Supplier and Purchaser hereby agree to continue to suspend Supplier's Work in accordance with Article 14 of the Contract until January 31, 2011. The Parties acknowledge that the amount of the termination payment included in the Cancellation Schedule in Appendix VI, "Payment and Cancellation Schedule" for the date that corresponds to "Month 17" or January 2011 is "75%." The Parties also acknowledge that Supplier has provided budgetary commercial proposal and budgetary technical proposal No. MP-A2335 for such alternate project with the new delivery dates, including Electrical Output, Heat Rate, Ramp Rate and Start Up Time as set out in Attachment 1 (collectively the "**Budgetary Proposal**"). The Parties agree to continue to cooperate with each other and use all reasonable good faith efforts to further scope out the alternative project. The Parties shall provide updated information to each

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other regarding the progress on that alternative project and meet as may be required to further discuss the ongoing status of such project.

2. No Termination by Supplier. For greater clarity, Supplier acknowledges that it has agreed to the suspension contemplated in the Previous Letter Agreements and continued in this Letter Agreement and to extend the Delivery Dates by more than twelve (12) months. Supplier therefore is not entitled to the right set out in Article 15.1(d) of the Contract only as such right relates to the suspension in the Previous Letter Agreements and this Letter Agreement.

3. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

4. Other Terms and Conditions: Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

5. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

6. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract or Previous Letter Agreements on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

7. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

8. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

9. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA, subject to that certain Acknowledgement by Ontario Power Authority and Osler, Hoskin & Harcourt LLP dated December 17, 2010.

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: 

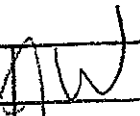
Name: Terry Bennett

Title: Vice President

By: 

Name: John Cashin

Title: Assistant Corporate Secretary

LEGAL	
CONTENT	1

*[Remainder of Page left intentionally blank]*

*[MPS Acceptance on next Page]*

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd..  
and MPS Canada, Inc.*

Accepted this 31<sup>st</sup> day of December, 2010.

MPS Canada, Inc.

By: 

Name: Shinichi Ueki

Title: President

CONFIDENTIAL

Letter Agreement  
between TransCanada Energy Ltd.,  
and MPS Canada, Inc.

Attachment 1  
Budgetary Proposal





# **MPS Canada**

Mitsubishi Power Systems group

---

MPS Canada, Inc. 200 Bay Street, Suite No.3220, Toronto, Ontario M5J 2J1, Canada

## **MPS Canada, Inc.**

### **Indicative budgetary non-binding proposal**

**For**

**Project schedule change and specification/scope  
change in the EQUIPMENT SUPPLY  
CONTRACT #6519 BETWEEN TransCanada  
Energy Ltd. AND MPS Canada, Inc FOR GAS  
TURBINE EQUIPMENT**

**December, 2010**

# MPS Canada

Mitsubishi Power Systems group

MPS Canada, Inc. 200 Bay Street, Suite No.3220, Toronto, Ontario M5J 2J1, Canada

## 1. Basis of the quotation

### (1) Change in project schedule

Unit 1		Original	New (informed by TCE)
	FOB port of export	July 1, 2011	March 1, 2013
	DDP Job Site	N/A (had not agreed)	June 1, 2013 *reference only
	Substantial Completion	December 31, 2013	December 31, 2014

Unit 2		Original	New (informed by TCE)
	FOB port of export	August 1, 2011	April 1, 2013
	DDP Job Site	N/A (had not agreed)	July 1, 2013 *reference only
	Substantial Completion	December 31, 2013	December 31, 2014

\* New DDP Job Site date is expected only and shall be changed subject to transportation study which will be done once official Change Order is concluded by Parties.

### (2) Change in specification/scope

- (a) Site condition is changed as separately informed by TCE.
- (b) Plant configuration is changed from "2 on 1 combined cycle" to "2 on 0 simple cycle".
- (c) Gas turbine type is changed from "M501GAC" to "M501GAC Fast".
- (d) Due to the above changes (a) through (c), the following components are added as a scope of supply of MPS Canada.

- (i) closed cooling water cooler
- (ii) closed cooling water pump
- (iii) closed cooling water piping
- (iv) closed cooling water make-up tank
- (v) closed cooling water instrumentation and valve(s)
- (vi) 100 ft stack with applicable expansion joints

- (e) In addition to above new scope of supply, some of existing components require changes in their specification due to the above change (a) through (c).

## 2. Indicative budgetary non-binding price for this change

US\$ 33,000,000.00 for two (2) Units

(Note)

As same as original Contract condition, the above price includes import duty of Canada but does NOT include ocean transportation, inland transportation and any necessary insurance in connection with ocean and inland transportation.

## 3. Terms and conditions

- (1) Payment schedule of original Contract Price shall be amended as shown below. The amended payment schedule shall be applied to the above additional US\$ 33,000,000 also.

# MPS Canada

Mitsubishi Power Systems group

MPS Canada, Inc. 200 Bay Street, Suite No.3220, Toronto, Ontario M5J 2J1, Canada

	Original Contract Price (US\$ 144,698,480.00)	Price for this Change (US\$ 33,000,000.00)
Milestone event or calendar dates	Payment percentage	Payment percentage
Issuance of NTP (milestone payment)	7.5% Already paid	N/A
March 15, 2011 (calendar date payment)	10%	10% + 7.5% (7.5% is catch up of NTP payment)
September 1, 2011 (calendar date payment)	16.25%	16.25%
Mach 1, 2012 (calendar date payment)	16.25%	16.25%
September 1, 2012 (calendar date payment)	16.25%	16.25%
March 1, 2013 (calendar date payment)	16.25%	16.25%
Delivery to the site (milestone payment)	12.5%	12.5%
Substantial Completion (milestone payment)	5%	5%
TOTAL	100%	100%

- (2) The following sections of the Contract (#6519) shall need to be modified due to this changes in project schedule and specification/scope.

Section Number	Section Item
1	Definitions
2.2	Schedule
2.4	Options
3.1	Price
5.1	Equipment Warranty
6.1	Performance Guarantee
6.2	General Requirement for Performance Tests
7.1 / 7.2	Substantial Completion
8.6	Final Completion
9.1	Performance Liquidated Damages/Offsets
9.2	Liquidated Damages for Delivery and Schedule Delay
11	Delivery

(Note)

This is preliminary only and MPS Canada does not guarantee that above listed sections are only the sections which need to be modified. Sections not listed above may need to be modified and new sections may need to be added. Appendixes has not been checked.

- (3) The detail of the modification of the terms and conditions as well as additional terms and conditions shall be mutually discussed and agreed at a later stage.

# MPS Canada

Mitsubishi Power Systems group

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MPS Canada, Inc. 200 Bay Street, Suite No.3220, Toronto, Ontario M5J 2J1, Canada

- (4) In reply to question from Terri (TCE) how MPS Canada can modify one of the warranty condition which is "(iii) Thirty-six (36) months after the date that such Unit, or any part thereof, is initially placed in storage under Purchaser's direction" in case MPS Canada is planning to complete the manufacturing of components much before the scheduled shipping dates, this condition can be modified by stipulating that storage after the scheduled shipping date. This is one example and TCE and MPS Canada will work together to finalize this condition.
- (5) Once TCE decide to apply this change, the following agreements shall be discussed by both Parties.
  - (a) Letter of Agreement No.7188 for the Technology Risk Support
  - (b) Long Term Service Agreement No.7011
- (6) This quotation is an estimate, and is for information use only. This is not a binding obligation or commitment on the part of MPS Canada.

-End of Sheet-

*This document and any attachments contain proprietary information and are the sole and exclusive property of MPS Canada, Inc., "MPSC". Your receipt of this information is an acknowledgement of a confidential relationship between you and MPSC. This information is to be used solely by you for the purpose for which it is furnished. Neither these documents, nor any information obtained there from is to be reproduced, transmitted, disclosed, discussed with any third party, or used otherwise, in whole or in part, without first receiving the express written authorization of MPSC.*

# **BUDGETARY TECHNICAL PROPOSAL**

**FOR**

**TransCanada**

**FOR**

**SOUTHWEST GTA CLEAN ENERGY SUPPLY (CES)**

**WITH A**

**2 x M501GAC-Fast Gas Turbine & Generator**

**MP-A2335**

**December 2010**



**MITSUBISHI POWER SYSTEMS AMERICAS, INC.**

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## Executive Summary

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MITSUBISHI POWER SYSTEMS, INC.

Project No.6865W01  
Specification No. MP-A2335

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2 x M501GAC-Fast Project





## Executive Summary

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# **1. EXECUTIVE SUMMARY**

## **1.1 Preface**

Mitsubishi Power Systems, Inc. (MPS), a wholly owned subsidiary of Mitsubishi Heavy Industries in charge of power industry sales and service in the Americas is pleased to present this proposal for our model M501GAC-Fast indoor simple cycle power plant for your gas turbine generator units.

"MPS" in this document means Supplier.

## **1.2 Scope**

This proposal contains the scope of supply and the technical information for the simple cycle power plant equipment.

### **1.2.1 Project Information**

Project Name: TBD

Project Location: Cambridge Area, Ontario, Canada

### **1.2.2 Main Equipment**

Below is a list of the major equipment included in this proposal.

The Mitsubishi packaged gas turbine generator unit is a compact and self-contained electric power generating plant. It is a pre-designed, completely integrated power plant consisting of the following major components:

- Gas turbine package
- Generator package
- SFC type starting device
- GT Control package
- Inlet air system
- Exhaust gas system
- Cooling system
- Fuel system

Due to shipping limitations, all components are shipped to the site separately. At the site, only final assembly and connections are needed before the plant can generate power. Once the plant is assembled at the site, it is ready for final

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## Executive Summary

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connections to the Purchaser's electric utility grid. After this is done, the plant can be started using the Purchaser's electric power supply, utility supply, and fuel supply.

### 1.2.3 Environmental Impact

The plant configuration has a minimal impact on the environment, with its high efficiency and minimal emissions generated equipment: a high efficiency gas turbine and a dry, low NOx combustion process. In this way, the Mitsubishi plant configuration minimizes the environmental impact of generating electricity.

### 1.3 Proven Record

Since 1963 Mitsubishi has been a leader in the power industry. Over 552 Mitsubishi gas turbine generators ranging from 6 MW to 334 MW in both industrial and utility applications produce more than 53,000 MW of power. The large capacity and high efficiency M501G gas turbine evolved from the long-term operating experiences Mitsubishi has with the highly reliable M501/701 foundation. The first field operation on the G-class machine was conducted in 1997.

The Mitsubishi M501GAC-Fast gas turbine generator unit consists of a M501GAC-Fast industrial type heavy duty gas turbine with air cooled combustor, a hydrogen cooled synchronous generator, and auxiliary equipment as described in this detailed specification.

### 1.4 Background

The information included in this proposal has been prepared in accordance with Mitsubishi Power Systems (MPS) as well as industry accepted engineering standards and is based on experience gained by Mitsubishi Heavy Industries, Ltd. (MHI) during the completion of power plants throughout the world. Mitsubishi is now serving the American market from Central Florida where both its corporate headquarters and service headquarters are based.

On July 2, 2001, the Power Systems Division of Mitsubishi Heavy Industries America (MHIA) became Mitsubishi Power Systems, Inc. (MPS) – a full-fledged, dedicated operating company headquartered in Central Florida. The new company is chartered to oversee sales and engineering for Mitsubishi turbines, SCRs and gas-, steam- and combined-cycle generating projects in North America, as well as to provide responsive service and replacement parts for our installed fleet throughout the Western Hemisphere.

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2 x M501GAC-Fast Project



## Executive Summary

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**Americas Headquarters:** Our new Lake Mary, FL headquarters offices are home to a growing, multicultural professionals in all facets of sales, engineering, project management, customer support and administration, with total access to the global manufacturing and technology resources of Mitsubishi Heavy Industries.

**Orlando Service & Manufacturing Center:** Began operations in late 2001, our dedicated OEM service facility offers state-of-the-art repair and manufacturing capabilities for critical turbine components, as well as remote plant monitoring and engineering response services.

### 1.5 Summary

The reliable simple-cycle system described here is a direct result of Mitsubishi's international experience and conservative design philosophy. The high reliability is a result of Mitsubishi's conservative approach to step-by-step technology advancements and optimizing on prudent methodologies. These methodologies are utilized to assure each facility is well above the requirements set for it. The Gas Turbine (GT) engine has design enhancements that are developed and proven prior to inclusion in the plant.

Mitsubishi Power Systems looks forward to being your equipment supplier for this state-of-the-art simple cycle power plant.

A majority of the components of the gas turbine including, but not limited to, the rotor disks, casings, and blades, have already been designed and the gas turbine will be assembled utilizing such components at the factory in accordance with the original equipment manufacturer's practices and procedures prior to delivery of the gas turbine to the site.

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MITSUBISHI POWER SYSTEMS, INC.

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2 x M501GAC-Fast Project



## Performance

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2 x M501GAC-Fast Project



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Project No.6865W01

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2 x M501GAC-Fast Project



## Performance

## 2.0 PERFORMANCE

Mitsubishi agrees to guarantee the items listed as guaranteed in Table 2.2.1 and Table 2.2.2 in Section 2.2, based on the conditions listed in Section 2.3.

### 2.1 Warranty

Please refer to the commercial proposal.

### 2.2 Guarantees & Expectation.

The values which Supplier guarantees are as follows and are based on the conditions stated in Section 2.3.

#### 2.2.1 Performance

Table 2.2.1 Guaranteed Performance on Natural Gas firing

Parameter	Value	Units
Ambient Temperature	69.44	°F
Relative Humidity	53.1	%
Barometric Pressure (Site Elevation)	14.159 (1025)	Psia (Feet above MSL)
Guaranteed Net Power Output	242,220	kW
Guaranteed Net Heat Rate	8,927	Btu/kWh (LHV)

#### Note

The guaranteed performance for Net Power Output and Net Heat Rate as stated here in are valid only under the following conditions and those stated in Section 2.3 :

1. Actual heating values of the fuel used during the tests shall be verified by laboratory analysis acceptable to both parties.
2. The guaranteed values are based on the equipment being in a new and clean condition. New and clean condition means that the actual operating hours are within 200 hours from the initial firing. The deterioration curve is utilized during the acceptance test when the test is delayed beyond 200 hours. In the event of any plant trips, load rejections and rapid load changes which are caused due to reasons not attributable to Supplier, such event shall be included in the calculation of EDH per IBP-08012 for degradation correction factor even if the fired hours are below 200 hours.
3. The listed performance is based on the gas turbine at base load.

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2 x M501GAC-Fast Project

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## Performance

### 2.2.2 Emissions

The emission guarantees are listed below and are subject to the design ambient condition specified in Section 2.3.1, when burning the specified fuel in Section 2.3.2 in accordance with the fuel quality specification in Section 5.

Table 2.2.2 Guaranteed Emissions on Natural Gas Firing

Fuel	Natural Gas	
Pollutant <sup>(1)</sup>	ppmvd <sup>(2)</sup>	mg/Nm <sup>3</sup> <sup>(3)</sup>
NOx <sup>(4)(5)</sup>	15	---
CO	10	---
PM10 <sup>(6)(7)</sup>	---	1
Note (1) - Short-term GT exhaust emission data specified in this table are based on following conditions. <ul style="list-style-type: none"><li>• 3-hour rolling average.</li><li>• Gas turbine load : steady state between 60% and 100% load*</li><li>• Ambient temperature range:-24.3°F to 100.9°F.</li></ul> * Definition of the gas turbine load is referred to Section 2.3.4.		
Note (2) - Values given are @ 15% O <sub>2</sub> , dry volume conditions.		
Note (3) - Values given are @ actual O <sub>2</sub> , dry volume conditions.		
Note (4) - Values given are based on no Fuel Bound Nitrogen in the Natural Gas.		
Note (5) - Fuel gas temperature at FGH outlet shall be equal to or greater than 392°F.		
Note (6) - PM emissions shall be the sum of non-condensable emissions determined using Method 201 or 201A.		
Note (7) - Values given are front half only not including sulfur mist.		
Note (8) - Values given are as measured at the GT exhaust flange.		

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MITSUBISHI POWER SYSTEMS, INC.

Project No.6865W01

Specification No. MP-A2335

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2 x M501GAC-Fast Project



## Performance

### 2.2.3 Sound Pressure Level

The Sound Pressure Level guarantee is listed below and is subject to the design ambient condition in Section 2.3.1 when burning the specified fuel in Section 2.3.2.

**Table 2.2.3 Guaranteed Sound Pressure Level**

Parameter	DBA (A wgt)
General Near Field Guarantee <sup>1-9</sup>	85
<b>Notes</b>	
1 – The Reference Sound Data in IBO-10297 and exceptions as noted.	
2 – This is based on our supplied equipment without any background noise contribution, in the areas normally occupied by site personnel. Equipment locations inside enclosures are not included in this guarantee.	
3 – Sound readings shall only be taken while the plant is operated at steady state, the rated capacity with the auxiliary equipment needed for normal operation in service. Intermittent operations such as pulse air filter cleaning and etc. are not included.	
4 – Enclosure doors and access panels shall remain closed during the demonstration.	
5 – The sound level demonstration procedure will be based upon the relevant ANSI demonstration procedures [ e.g. ISO 1996-1:82 and ISO 1996-2:83].	
6 – The demonstration will be conducted during times of average background noise levels and mathematically removing it from the measurement per ISO 3746 (1995 edition).	
7 – No external disturbing influences shall be permitted to interfere with the microphone. Some of these are: Air currents Vibrations Electric or magnetic fields Nearby structures Paved or hard surface roads	
8 – Additional requirements for the measurement equipment and procedures will be detailed at the time of the Procedure Development.	
9 – Near Field is at Approx. 3ft away from the surface and 5ft above the ground.	

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Project No.6865W01

2 x M501GAC-Fast Project

Specification No. MP-A2335

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## Performance

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### 2.2.4 Start-Up Time

The Start-Up Time guarantee is listed below and is subject to the design ambient condition in Section 2.3.1 when burning the specified fuel in Section 2.3.2.

**Table 2.2.4 Guaranteed Start-Up Time**

Parameter	Minute
Start-Up Time Guarantee <sup>1-4</sup>	16
<b>Notes</b> 1 – The definition of start-up time is from start PB to 60% GT Load. 2 – The time for synchronization is assumed as 1 minute and is not guaranteed. 3 – The time for GT fuel gas purge is considered, provided that new NFPA 85 will be issued in January 2011 and the requirement of minimum 5 minutes for purging as specified in the current NFPA 85 will not be applicable to simple cycle plant. 4 – The Typical Start-up and Shutdown Curve (IBO-10292) is attached in section 5.	

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MITSUBISHI POWER SYSTEMS, INC.

Project No.6865W01  
Specification No. MP-A2335

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2 x M501GAC-Fast Project



## Performance

### 2.3 Basis for Guarantees

#### 2.3.1 Guarantee Basis Conditions

Table 2.3.1 Ambient and flange conditions

Parameter	Value
Factor	NET Power Output NET Heat Rate
Fuel	Natural gas as per Section 2.3.2
Ambient temperature	69.44°F (dry bulb)
Relative humidity	53.1 %
Barometric pressure	14.159 psia (1025ft above MSL)
Frequency	60 Hz
Power factor	0.9 Lagging at generator terminal
Fuel gas temperature at FGH outlet	392°F
Min. fuel gas pressure	600 psig at Fuel Gas Unit inlet
Test Condition	New & Clean
Tolerance	0.5 % (power output) 1.0 % (heat rate)
Generator	Hydrogen-cooled, static exciter
Generator hydrogen purity	99%
Steam Injection	N/A
Evaporative Cooler	OFF
Anti Icing Operation	OFF

\*Performance offset credit should be determined by change order signing.

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### 2.3.2 Basis Fuel Properties

Table 2.3.2 Natural Gas Conditions

Parameter	Units	Guarantee Basis Value	Site Operational range	
			Min Value	Max Value
Methane	% Vol	96.05	TBD	TBD
Ethane	% Vol	1.59	TBD	TBD
Propane	% Vol	0.14	TBD	TBD
I-butane	% Vol	0.03	TBD	TBD
N-butane	% Vol	0.02	TBD	TBD
I-pentane	% Vol	0.02	TBD	TBD
N-pentane	% Vol	0.02	TBD	TBD
N-hexanes	% Vol	0.00	TBD	TBD
N <sub>2</sub>	% Vol	1.57	TBD	TBD
CO <sub>2</sub>	% Vol	0.56	TBD	TBD
Fuel gas pressure at GT Enclosure	Psig	600	600	642
Lower Heating Value	Btu/lb	20,581	TBD	TBD
Sulfur Contents, Max	mg/Nm <sup>3</sup>	7.48	TBD	TBD
<b>Notes</b> 1 - GT performance and emissions guarantees are based on the above fuel properties and compliance with the fuel specification "E00-05139 (R-1)" in Section 5. In the case that any of the above fuel properties are changed, performance and emissions guarantees will be corrected. 2 - No Fuel Bound Nitrogen (FBN) is considered in the fuel. If FBN is present in the fuel the emissions will be compensated per CFR 40.				

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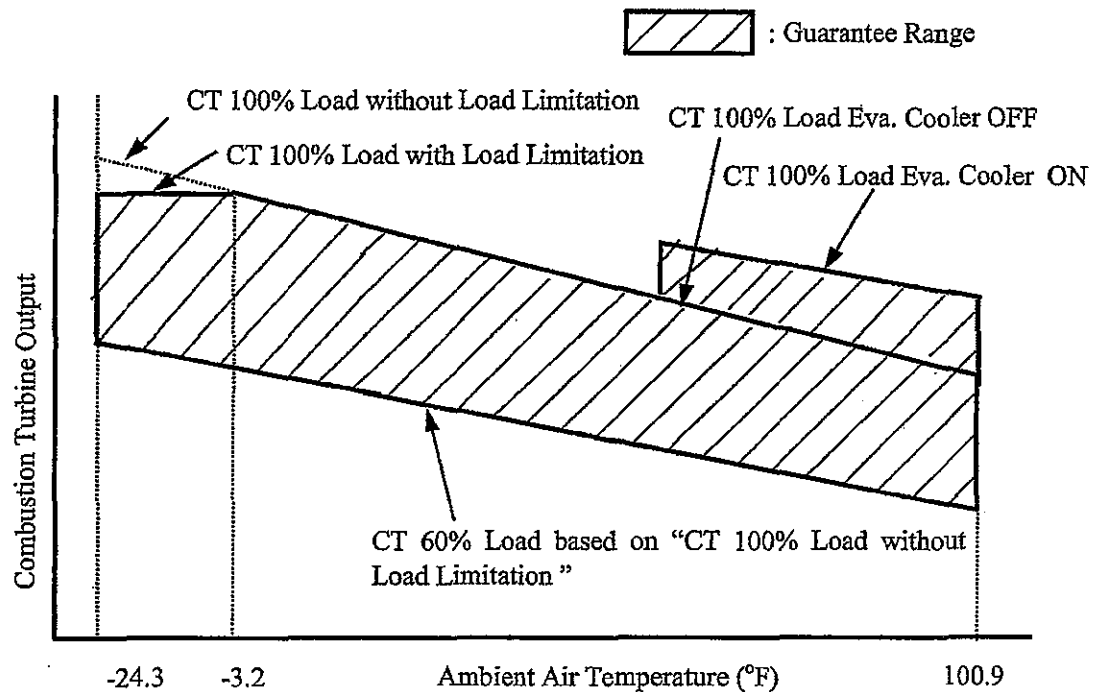


### 2.3.4 Emissions Performance Basis

#### GT Exhaust Flange Air Emission Range

The Applicable Gas Turbine operation range for the GT exhaust flange air emission guarantee is specified as follows.

Figure 2.3.4 Emission Operation Range



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### 2.4 Expected GT Performance

The expected performance data sheet is attached in the following;

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## Performance

### 2.3.3 Auxiliary Power Consumption

Table 2.3.3 Supplier's Equipment Auxiliary Power Consumers

O : In Service

Major Item	Description	Natural Gas Firing
GT	Main Lubricating Oil Pump	O
	Vapor Extractor	O
	GT Package Vent Fan	O
	Main Control Oil Pump	O
	GT CO <sub>2</sub> Fire Fighting System	O
	HVAC in Local Control Package	O
	Control Power	O
	GT Fuel Gas Unit Vent Fan	O
	TCA Cooler Fan	O
	GT Cooling Water Pump	O
	GT Cooling Water Cooler Fan	O
GT GEN	Seal Oil Pump	O
	Vapor Extractor	O
	Excitation Cubicle	O
	AVR Cubicle	O
	GEN Control Panel	O
	Protection Relay Cubicle	O
	H <sub>2</sub> Gas and Seal Oil Control Panel	O
	PT/SA Cubicle	N.A.
	GEN Vacuum Pump	O
	H <sub>2</sub> Gas Pressure / Purity Monitoring Unit	O
Total (kW)		800

\* - To account for the minor loads during the performance testing their design values will be used, with the values to be mutually agreed upon with the Purchaser.

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## Design Conditions

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Elevation = 1025 Ft. (312 m) AMSL											
Case	1	2	3	4	5	6	7	8	9	10	11
Case Description	Extreme Max. Ambient Temp. On	ISO Summer Temp. On	OPA Season 3 Temp. On	Typical Summer Day Temp. On	Typical Summer Day Temp. Off	ISO Winter Temp. On	Annual Average Ambient Temp. On	Annual Average Ambient Temp. On	Annual Average Ambient Temp. On	Typical Winter Day Temp. On	MF3 CONTRACT
Ambient Dry Bulb Temperature, F	101	95	86	87.5	87.5	50	45.5	45.5	45.5	20.5	59.44
Ambient Wet Bulb Temperature, F	51	74	72	58	58	45.5	45	45	45	19	56.7 (53.1% RH)
Load Level	Base	Base	Base	Base	Base	Base	Base	Base	Base	Base	Base
Engine Coolant Status	On	On	On	On	On	On	On	On	On	On	On
Ambient Air Status	On	On	On	On	On	On	On	On	On	On	On
Generator Power Factor	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging	0.95 lagging
Static Exhaust Pressure Loss, in. water	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included
Total Inlet Pressure Loss, in. water	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included
Fuel Gas Temperature, F	392	392	392	392	392	392	392	392	392	392	392
Compressor Inlet Temperature, F	84.2	77.18	79.7	58.54	87.5	50	45.5	45.5	45.5	20.5	59.44
Combustion Turbine Performance											
Gross Power Output, kW	232000	221670	235700	251120	244000	263320	201330	182430	156400	275100	243820
Gross Heat Rate, Btu/kWh (LHV)	9017	9597	8849	8456	8844	8602	8769	8681	8893	8735	8937
Gross Heat Rate, Btu/kWh (HHV)	10073	9541	9873	9530	9870	9771	9755	10524	11064	9665	9874
Auxiliary Power, kW	800	800	800	800	800	800	800	800	800	800	800
Net Power Output, kW	231200	220870	234900	250320	243200	262520	200530	181630	155600	274300	243020
Net Heat Rate, Btu/kWh (LHV)	91240	96840	89590	85600	89500	87020	88790	87810	89930	87460	89480
Net Heat Rate, Btu/kWh (HHV)	101800	96400	100260	96800	100200	99210	99050	106700	112100	98060	100120
Fuel Flow, lb/hr	10250	10340	11160	12580	12580	12580	12580	12580	12580	12580	12580
Heat Input, Btu/kWh (LHV)	2092	2128	2118	2235	2176	2274	2268	2330	2364	2436	2460
Heat Input, Btu/kWh (HHV)	2313	2369	2361	2468	2418	2524	2520	2585	2620	2700	2740
Heat Input, mmHg (LHV)	1150	1144	1147	1132	1155	1127	1124	1165	1195	1218	1240
Exhaust Temperature, F	4897	4897	4854	4878	4897	4778	4825	4847	4801	4863	4889
Exhaust Flow, 1000lb/hr	4402	4197	4454	4678	4667						
Rotor Air Cooler Inlet Temp. multipliers											
Exhaust Gas Concentration (by vol)											
Oxygen	13.32	13.48	13.35	13.61	13.72	13.88	13.73	14.63	14.59	13.88	13.74
Carbon Dioxide	8.13	6.11	6.12	6.12	6.08	6.13	6.13	6.51	6.58	6.21	6.07
Water	7.17	6.66	6.56	6.55	6.71	6.58	6.58	4.84	4.9	5.17	5.7
Nitrogen	72.1	72.27	72.03	72.03	72.18	72.34	72.48	73.84	73.81	73.84	73.18
Average	1.29	1.3	1.29	1.21	1.31	1.31	1.31	1.32	1.32	1.32	1.31
Molecular Weights											
Engine Emissions (ppm) (dry)											
NOx (ppm) @ 15% O2	16	16	16	15	15	15	16	15	15	15	15
NOx (ppm) @ 15% O2	16	16	16	15	15	15	16	15	15	15	15
CO (ppm) @ 15% O2	40	10	10	10	10	10	10	10	10	10	10
CO (ppm) @ 15% O2	59	59	59	59	59	59	59	59	59	59	59
SO2 (ppm) @ 15% O2	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
VOC (ppm) @ 15% O2 as CH4	4	4	4	4	4	4	4	4	4	4	4
VOC (ppm) @ 15% O2 as CH4	14	14	14	15	14	15	15	12	10	16	14
Particulates, lb/hr	3.8	3.7	3.7	3.9	3.9	4	4.1	3.4	3.1	4.3	3.9
Notes:											
1. Performance based on new and clean engine condition.											
2. If fuel gas is heated please identify energy source.											

Notes:  
1. Performance based on new and clean engine condition.  
2. If fuel gas is heated please identify energy source.

Notes:  
1. Performance based on new and clean engine condition.  
2. If fuel gas is heated please identify energy source.

Notes:

Use composition and heating value in calculating Contract

Notes:  
1. Performance based on new and clean engine condition.  
2. If fuel gas is heated please identify energy source.



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### 3. DESIGN CONDITIONS

The equipment and systems included in this proposal are designed based on the design conditions described herein and MPS's standard design practice.

In the event the design conditions and assumptions as stated in this section are changed in a substantive manner, MPS reserves the right to modify the design, guarantees, and/or pricing accordingly.

#### 3.1 Site Design Conditions

##### 3.1.1 Atmospheric Data and site design conditions

Table 3.1.1-A Atmospheric Data

Parameter	Value	Units
Barometer	14.159	psia
Ambient Air Design Temperature	69.44	°F (Dry bulb)
Ambient Air Temperature Range	Min. -24.3 / Max. 100.9	°F (Dry bulb) / °F (Dry bulb)
Relative Humidity	53.1	%
Relative Humidity Range	Min. 10/ Max. 90	%
Location	Indoor	-

#### Seismic Performance Category

Gas Turbine, GTG Auxiliaries, Generator and Generator Auxiliaries shall be designed per Section 4.1.8 of the OBC 2006; where more severe, the National Building Code 2005 shall also be considered. The peak ground acceleration (PGA) and 5% damped spectral response acceleration values shall be based on a 2% probability of exceedance in 50 years per the *User's Guide - NBC 2005, Structural Commentaries*. The following table summarizes site-specific seismic hazard data for use with OBC design guidelines:

#### National Building Code interpolated seismic hazard values

2%/50 years (0.000404 per annum) probability:

$S_a(0.2)$	$S_a(0.5)$	$S_a(1.0)$	$S_a(2.0)$	PGA
0.349	0.171	0.062	0.021	0.258 x g

#### Wind Loading for outdoor equipment

Exposed portions of each Gas Turbine, GTG Auxiliary, Generator and Generator Auxiliary shall be designed per Section 4.1.7 of the OBC 2006; where more severe, the National Building Code 2005 shall also be considered. The reference velocity pressure shall be based on mean hourly wind speed and determined based on the probability of being exceeded in any one year of 1-in-50 per the *User's Guide - NBC 2005, Structural Commentaries*.

For exposed components within Supplier's scope of supply shall be designed for a

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reference wind velocity pressure ( $q$ ) of 0.50 kPa shall be utilized. Any special construction may require more detailed analysis per OBC Section 4.1.7.2.

### Snowfall/Frost for outdoor equipment

Snow/Rain: Specified load due to snow or rain on Supplier's equipment shall be per Section 4.1.6 of the OBC 2006, with 1-in-50 year ground snow and rain loads derived from the *User's Guide - NBC 2005, Structural Commentaries*. For the Oakville site and closeness to Lake Ontario, a ground snow load ( $S_g$ ) of 2.1 kPa and associated rain load ( $S_r$ ) of 0.4 kPa shall be utilized.

Frost: 1.2 m depth below existing grade for exposed foundations (primarily associated with intake filter house loads only).

### 3.1.2 Electricity Conditions

The maximum generator output corresponds to the maximum output of the gas turbine, which is at an ambient temperature of approximately  $-3.2^{\circ}\text{F}$ . When the ambient temperature is lower, the generator output will remain constant due to the gas turbine low temperature characteristic.

Gas Turbine Generator will be in compliance with IESO's Market Rules for the Ontario Electricity Market, Chapter 4 : Grid Connection Requirements.

Table 3.1.2-A Electrical Conditions

	Design	
Generator line	AC-21kV	60 Hz 3Phase
Auxiliary power Sources		
a. Auxiliaries	AC-21 kV	60 Hz 3Phase
	AC-4,160 V	60 Hz 3Phase
	AC-600 V	60 Hz 3Phase
	AC-120 V	60 Hz single phase(vital & non Vital)
	DC-125 V	
b. Control and Instruments	AC-120 V	60 Hz single phase(vital & non Vital)
	DC-125 V	

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### 3.1.3 Fuel Gas

The plant is designed to burn Natural Gas per the Mitsubishi Fuel Gas Specification E00-05139 (R-1) in Section 5, and as specified in Section 2.3.2. The Fuel gas delivery system should be designed for the following pressure regulation scenario.

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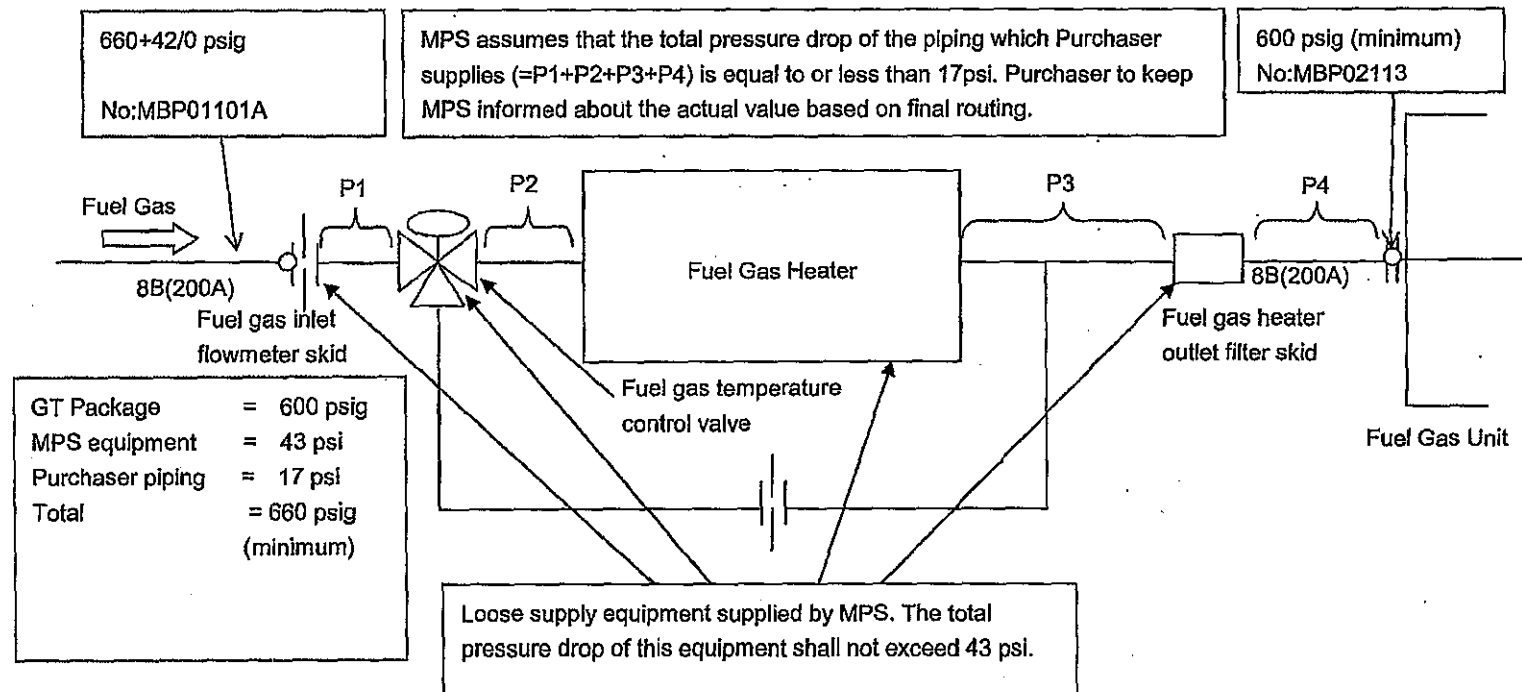


## Design Conditions

**Figure 3.1.3-A** Illustration of the recommended design of the fuel delivery system

MPS recommends Purchaser to provide the fuel gas at 660+42/-0 psig at the inlet of fuel gas flow meter.

**Note:** This is a standard illustration of the system. The actual values may change during project execution.



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### 3.1.4 Painting

The plant is prepared and painted in accordance with MPS's standardized painting specification.

### 3.1.5 Pipe Material

The unit piping will be made of the following material:

**Table 3.1.5-A Pipe Material**

Component	Description
Lube oil line	
-Supply line (upstream of supply filter)	Carbon steel pipe ASTM A106Gr.B or equiv.
-Supply line (downstream of supply filter)	Stainless steel pipe ASTM A312 Gr.TP304 or equiv.
-Return line Lube Oil Line (Upstream of supply filter)	Carbon steel pipe ASTM A106Gr.B or equiv.
Compressor bleed line	Carbon and low alloy steel pipe, ASTM A106Gr.B or equiv.
Turbine cooling air piping	ASTM A515Gr.60
Fuel gas line	
- Up to unit fuel gas strainer	Carbon steel pipe ASTM A106Gr.B or equiv.
- Downstream of unit fuel gas strainer	Stainless steel pipe ASTM A312Gr.TP304 or equiv.
Control oil line	Stainless steel pipe ASTM A312Gr.TP304 or equiv.
Instrument air line	Stainless steel pipe ASTM A312Gr.TP304 or equiv.
Fire protection system line (CO2 line)	Carbon steel pipe ASTM A106Gr.B or equiv.
Water washing line	Stainless steel pipe ASTM A312Gr.TP304 or equiv.
Vent and drain line for all line	Carbon steel pipe ASTM A106Gr.B or equiv.

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### 3.1.6 Motor

Rating and specification of the motor for turbine and generator auxiliaries are as follows.

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## Design Conditions

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Type of AC motor	Induction
Type of AC motor rotor	Cage
Rated Voltage	
- AC motor (MV)	Not in the scope
- AC motor (LV)	575V, 60Hz
- DC motor	125V
Insulation class	Class F (temperature rise B) Note:
Some	small motors may be of Class E
Enclosure Protection	Generally TE or TEFC
Method of starting ;	
- AC motor	DOL (Direct on Line)
- DC motor	Resistor
Starting current of Motor ;	
- MV motor	Not Applicable
- LV motor	According to manufacture's standard
Running duty	Continuous
Service factor	1.0

Note 1: Alternating current Motors will generally comply to high efficiency requirements of CSA C390 standard. Refer to Note 2 for exceptions.

Note 2: Explosion proof motors, motors specially designed for the driving machine, motors supplied with machines and DC motors will be according to manufacturers' standard

Note 3: Some minor motors may have different specifications from above, and it will be indicated on detailed specifications submitted during design stage after contract award.

Note 4: Motors purchased from other countries will comply with the originating country standard.

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## Design Conditions

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### 3.1.7 Utility

Our utility list is submitted later..

### 3.1.8 Sound Data

Our preliminary sound generation data is provided in Section 5.

## 3.2 Gas Turbine & Auxiliary Standards

MPS has developed its design and manufacturing standards and procedures by incorporating many years of operation and design experience. The following table lists the major groups of US, ISO and Japanese codes and standards that are generally applicable. Good engineering practice calls for these codes to be generally followed in the design and manufacture of the equipment to the extent they are applicable to an electric utility generating station.

It is the Owner's responsibility to verify and communicate to the Supplier requirements for additional or different codes and standards. If the Owner desires additional or different codes and standards to be applied to and or incorporated in the equipment, such changes will be subject to negotiation.

**Table 3.2-A Codes & Standards**

No.	Description
1	International Electrotechnical Commission (IEC)
2	The Institute of Electrical and Electronics Engineers (IEEE)
3	American National Standards Institute (ANSI)
4	Japan Industrial Standards (JIS)
5	Standard of The Japanese Electrotechnical Committee (JEC)
6	Japan Electrotechnical Manufacturer's Association (JEM)
7	National Fire Protection Association/National Electric Code (NFPA/NEC)
8	American Society of Mechanical Engineers (ASME)
9	Manufacturer's Standards
The codes and standards applicable to individual pieces of equipment will be available in detailed specification drawings, which will be issued at a later stage.	

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## Design Conditions

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### 3.3 Language and Measurement

#### 3.3.1 Language

Throughout the Contract, all letters, instructions, leaflets, descriptions, invoices, certificates and documents of any kind are in English.

#### 3.3.2 Units of Measurement

In all correspondence, on all drawings, specifications, or any document, the US standard system is employed. All instrument dial face and scale is calibrated to give direct readings in US standard units.

NOTE: Upon request of the Purchaser, the SI unit system can be utilized.

### 3.4 Factory Tests

#### 3.4.1 Gas Turbine

Factory tests are performed according to the following schedule:

- 1) The interlock test of the gas turbine control system.
- 2) The gas turbine rotor assemblies are mechanically balanced.
- 3) The gas turbine assembly is not fired or load tested due to the reliability of the production facility.

#### 3.4.2 Generator

Factory tests are performed according to the following schedule:

- 1) Electrical measurement and test for generator
  - a) Measurement of coil resistance
  - b) Measurement of insulation resistance
  - c) Dielectric test
- 2) Mechanical inspection and test for generator
  - a) Outline and layout check
  - b) Measurement of rotor vibration
  - c) Overspeed test of rotor

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### 3.5 IESO test

Supplier shall assist Purchaser with conducting all IESO demonstration tests as per IESO market rules.

### 3.6 Canadian/Local regulations

Supplier shall comply with Canadian/Local regulations which are required by law as of the Effective Date. If such regulations are changed after the Effective Date, price/schedule adjustment, if required, shall be applied.

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## 4. BILL OF MATERIAL

This Mitsubishi proposal includes the design, manufacture, supply, testing, packing, insurance, shipment, site testing, and warranty of the model M501GAC-Fast package Gas turbine generator units. These units are coordinated as part of 2 x simple cycle plants.

The Gas turbine and mechanical auxiliaries are made up of the major equipment listed below.

This is the standard/expected plant equipment/design. MPS reserves the right to modify and change the equipment as needed to optimize the plant for the intended site, service and operational conditions as they develop in the detailed design, provided that such changes do not reduce the redundancy without Purchaser's prior consent. If significant deviations are required the customer will be notified.

### 4.1 Gas Turbine and Mechanical Equipment

For the Simple Cycle power generation system the following equipment and systems are typically provided in the package. These ratings, material and data are preliminary for tender purpose only and are subject to change during the detailed design.

#### 4.1.1 Gas Turbine

No.	Item	Quantity	Comment
1	Gas Turbine	One (1) x 2	M501GAC-Fast
2	Combustor	Sixteen (16) x 2	DLN, equipped to burn Natural Gas
3	Igniter	Two (2) x 2	Electrical spark Type
4	Inlet Guide Vane Actuator	One (1) x 2	Hydraulic Type
5	Not Used		
6	GT Turning Gear	One (1) x 2	
7	GT Turning Motor (AC)	One (1) x 2	15HP (11kW) 1800rpm, AC 460V
8	GT Rotor Grounding Device	One (1) x 2	
9	GT Base Plate	One (1) x 2	
10	Gas Turbine Enclosure	One (1) x 2	Steel Structure
11	Explosion-proof Ventilating Fan	Three (3) x 2 (1 for standby)	GT Enclosure
12	Explosion-proof Ventilating Fan Motor	Three (3) x 2 (1 for standby)	30HP (22kW) 900rpm, AC 460V
13	GT Bolt Heater	One (1) set x 2	

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

14	GT Bolt Heater Distribution Board	One (1) x 2	
15	GT Turning Gear Motor Jog Switch	One (1) set x 2	

### 4.1.2 Inlet Air System

No.	Item	Quantity	Comment
1	GT Inlet Air Filter	One (1) x 2	Pulse Air Self-Cleaning Type
2	GT Inlet Air Silencer	One (1) x 2	Splitter Type
3	Evaporative Cooler	One (1) x 2	Recirculation Type Using demineralized water
4	GT Inlet Air Duct	One (1) x 2	Carbon Steel
5	Anti-Icing System for GT Inlet Air	One (1) x 2	Compressor Air Extraction
6	Expansion Joint for GT Inlet Air Duct	One (1) x 2	

### 4.1.3 Air and Flue Gas System

No.	Item	Quantity	Comment
1	Turbine Cooling Air Cooler with Fuel Gas Heater	One (1) x 2	Radiator Type
2	Cooling Air Filter	One (1) x 2	Inertia Type 1.66m3
3	Bearing Seal Air Filter	One (1) x 2	Inertia Type
4	Bearing Seal Air Drain Separator	One (1) x 2	
5	Compressor High Pressure Bleed Valve	One (1) x 2	Pneumatic Valve (On - Off Valve)
6	Compressor High Pressure Bleed Drain Valve	One (1) x 2	Pneumatic Valve (On - Off Valve)
7	Compressor Middle Pressure Bleed Valve(with Chamber Tank)	One (1) x 2	Pneumatic Valve (On - Off Valve)
8	Compressor Middle Pressure Bleed Drain Valve	One (1) x 2	Pneumatic Valve (On - Off Valve)
9	Compressor Low Pressure Bleed Valve (with Chamber Tank)	One (1) x 2	Pneumatic Valve (On - Off Valve)
10	Compressor Low Pressure Bleed Drain Valve	One (1) x 2	Pneumatic Valve (On - Off Valve)

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

### 4.1.4 GT Lubrication System

No.	Item	Quantity	Comment
1	GT Lube Oil Reservoir with Strainer	One (1) x 2	26m3
2	GT Main Lube Oil Pump (A),(B)	Two (2) x 2 (1 for standby)	Centrifugal Type 713gal/min
3	GT Main Lube Oil Pump Motor (A),(B)	Two (2) x 2 (1 for standby)	100HP (75kW) 3600rpm, AC460V
4	GT Emergency Lube Oil Pump	One (1) x 2	Centrifugal Type 581gal/min
5	GT Emergency Lube Oil Pump Motor	One (1) x 2	30HP (22kW) 1800rpm, DC 125V
6	GT Lube Oil Cooler	One (1) x 2	Water cooled Plate Type
7	GT Lube Oil Heater	Two (2) x 2	15HP (11kW) AC 460V
8	GT Lube Oil Vapor Extractor	Two (2) x 2 (1 for standby)	Centrifugal Type
9	GT Lube Oil Vapor Extractor Motor	Two (2) x 2 (1 for standby)	15HP (11.2kW) 3600rpm, AC460V
10	GT Lube Oil Mist Separator	One (1) x 2	Coalescent Type
11	GT Lube Oil Filter	One (1) x 2	10μ Duplex Type
12	GT O.S.T. Oil Filter	One (1) x 2	
13	GT Lube Oil Accumulator	Three (3) x 2	183 L x 3 Bladder Type
14	GT Lube Oil Temperature Control Valve	One (1) x 2	Pneumatic Type 3-way Valve
15	GT Lube Oil Pressure Regulating Valve	One (1) x 2	

### 4.1.5 GT Control Oil System

No.	Item	Quantity	Comment
1	GT Control Oil Reservoir	One (1) x 2	1000L
2	GT Control Oil Pump (A),(B)	Two (2) x 2 (1 for standby)	Axial Piston Type
3	GT Control Oil Pump Motor (A),(B)	Two (2) x 2 (1 for standby)	60HP (45kW) 1200rpm, AC 460V
4	GT Control Oil Supply Filter (A),(B)	Two (2) x 2 (1 for standby)	3μ

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

No.	Item	Quantity	Comment
5	GT Control Oil Return Filter (A),(B)	Two (2) x 2 (1 for standby)	3μ
6	GT Control Oil Cooler	One (1) x 2	Water Cooled Shell & Tube with stainless steel tube
7	GT Control Oil Heater	One (1) x 2	5.4HP (4kW) AC 460V
8	GT Control Oil Accumulator (A),(B),(C)	Three (3) x 2	Piston Type 10L x 3
9	GT Control Oil Cleaning Unit	One (1) set x 2	

### 4.1.6 GT Fuel Gas System

No.	Item	Quantity	Comment
1	Fuel Gas Heater Outlet Strainer Skid	One (1) x 2	200mesh(100 um) Y Type
2	Fuel Gas Flow Meter Skid	One (1) x 2	Turbine Type
3	GT Fuel Gas Unit	One (1) x 2	
4	Explosion-proof Ventilating Fan	Two (2) x 2 (1 for standby)	GT Fuel Gas Unit
5	Explosion-proof Ventilating Fan Motor	Two (2) x 2 (1 for standby)	3HP (2.2kW) 1800rpm, AC 460V
6	Fuel Gas Supply Pressure Control Valve (A)	One (1) x 2	Hydraulic Type
7	Fuel Gas Supply Pressure Control Valve (B)	One (1) x 2	Hydraulic Type
8	Fuel Gas Main (A) Flow Control Valve	One (1) x 2	Hydraulic Type
9	Fuel Gas Main (B) Flow Control Valve	One (1) x 2	Hydraulic Type
10	Fuel Gas Pilot Flow Control Valve	One (1) x 2	Hydraulic Type
11	Fuel Gas Top Hat Flow Control Valve	One (1) x 2	Hydraulic Type
12	Fuel Gas Shut Off Valve	One (1) x 2	Hydraulic Type
13	Fuel Gas Vent Valve	One (1) x 2	Hydraulic Type
14	Fuel Gas Temp. Control Valve	One (1) x 2	Pneumatic Type
15	Fuel Gas Emergency Shut Off Valve	One (1) x 2	Pneumatic Type
16	Fuel Gas Emergency Vent Valve	One (1) x 2	Pneumatic Type

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

### 4.1.7 Fuel Gas Nozzle Purge Air System

No.	Item	Quantity	Comment
1	Purge Air Unit	One (1) x 2	
2	GT Purge Air Shut Off Valve	One (1) x 2	Pneumatic Type
3	GT Purge Air Vent Valve	One (1) x 2	Pneumatic Type
4	Pilot Nozzle Purge Air Supply Valve	One (1) x 2	Pneumatic Type
5	Main (A) Nozzle Purge Air Supply Valve	One (1) x 2	Pneumatic Type
6	Main (B) Nozzle Purge Air Supply Valve	One (1) x 2	Pneumatic Type
7	Tophat Nozzle Purge Air Supply Valve	One (1) x 2	Pneumatic Type

### 4.1.8 Exhaust System

No.	Item	Quantity	Comment
1	GT Exhaust Duct (External Insulation)	One (1) x 2	Stainless Steel, EB01
2	GT Exhaust Duct (Internal Insulation)	One (1) x 2	Carbon Steel, EB02
3	GT Exhaust Stack	One (1) x 2	100ft
4	Exhaust stack silencer	One (1) x 2	
5	Expansion Joint for GT Exhaust Duct	One (1) x 2	Between EB01 and EB02
6	Expansion Joint for GT Exhaust Duct	One (1) x 2	Between EB02 and Stack

### 4.1.9 Fire Fighting System

No.	Item	Quantity	Comment
1	CO2 Tank	One (1) x 2	Low pressure type
2	CO2 Local Control Panel	One (1) x 2	

### 4.1.10 Compressor Blade Water washing System

No.	Item	Quantity	Comment
1	Compressor Blade Washing Nozzle & Piping	Total One (1) sets	Manual Wet Type Common for 2 GTs
2	Compressor Blade Washing Water Tank	Total One (1) sets	Low pressure Tank Type
3	Compressor Blade Washing Pump	Total One (1) sets	39.6gal/min (150L/min)
4	Compressor Blade Washing Pump Motor	Total One (1) sets	20HP (15kW) 3600rpm, AC 460V

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

### 4.1.11 Casing Cooling Air System

No.	Item	Quantity	Comment
1	GT Casing Cooling Fan	One (1) x 2	Centrifugal type
2	GT Casing Cooling Air Shut Off Valve	One (1) x 2	Pneumatic Type
3	GT Casing Cooling Air Supply Valve	One (1) x 2	Pneumatic Type

### 4.1.12 Maintenance Support Equipment

No.	Item	Quantity	Comment
1	Special tool	Total One (1) set	Common for 2 GTs

### 4.1.13 GT cooling water system

No.	Item	Quantity	Comment
1	GT cooling water radiator cooler	One (1) x 2	
2	GT cooling water pump	Two (2) x 2	
3	Make up tank	One (1) x 2	

## 4.2 Generators and Auxiliaries

For the Simple Cycle power generation system the following equipment and systems are typically provided in the package. These ratings, material and data are preliminary for tender purpose only and are subject to change during the detailed design.

### 4.2.1 Gas Turbine Generator and Auxiliaries

No.	Item	Quantity	Comment
1	GT Generator	One (1) x 2	Hydrogen Cooled Turbine Generator
2	GTG Vapor Extractor	One (1) x 2	Fan & Motor
3	GTG Gas Dryer	One (1) x 2	Reactivating Type
4	GTG Gas Pressure/Purity Monitoring Unit	One (1) x 2	Panel Type
5	GTG Seal Oil Supply Unit	One (1) x 2	Vacuum Treating Type
6	GTG H <sub>2</sub> Supply Unit	One (1) x 2	Stainless Steel Piping
7	GTG Water Detector	Two (2) x 2	Reed Switch Type
8	GTG Loop Seal Oil Tank	One (1) x 2	Carbon Steel
9	GTG Seal Oil Control Panel	One (1) x 2	

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## Bill of Material -M501GAC-Fast Gas Turbine & Generator

No.	Item	Quantity	Comment
10	GTG NGR Cubicle	One (1) x 2	Grounding Resistor Type
11	GTG AVR Cubicle	One (1) x 2	
12	GTG Excitation Cubicle	One (1) x 2	
13	GTG Excitation Transformer	One (1) x 2	3 $\phi$ , 60Hz
14	GTG Protection Relay Panel	One (1) x 2	
15	GTG Control Panel	One (1) x 2	
16	(GT Start Up Device) Converter Cubicle for SFC	Two(2) per 2GTs	7MW
17	Inverter Cubicle for SFC	Two(2) per 2GTs	
18	SFC Start Up Switch Board	One(1) per 2GTs	
19	Control panel for SFC Start Up Switch Circuit	One(1) per 2GTs	
20	Control Cubicle for SFC	Two(2) per 2GTs	
21	DC Reactor for SFC	Two(2) per 2GTs	
22	Transformer for SFC	Two(2) per 2GTs	
23	H2 Regulating Valve Unit	One (1) x 2	
24	CO2 Supply Unit	One (1) x 2	

### 4.3 Electrical and I&C Systems

For the Simple Cycle power generation system the following equipment and systems are typically provided in the package. These ratings, material and data are preliminary for tender purpose only and are subject to change during the detailed design.

#### 4.3.1 GT Electrical & Control System

No.	Item	Quantity	Comment
1	GT Control Package - A	One (1) set x 2	
2	GT Control Package - B	One (1) set x 2	
3	GT Control System	One (1) set x 2	
4	GT Supervisory Instrument Panel	One (1) set x 2	
5	GT Interlock Panel	One (1) set x 2	
6	GT Local Operator Station	One (1) set x 2	
7	GT 600V AC MCC	One (1) set x 2	
8	GT 600V AC Essential MCC	One (1) set x 2	
9	GT 600/208V-120V AC Distribution Transformer	One (1) set x 2	

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## Bill of Material –M501GAC-Fast Gas Turbine & Generator

No.	Item	Quantity	Comment
10	GT 600/208V-120V AC Essential Distribution Transformer	One (1) set x 2	
11	GT 208-120V AC Distribution Panel	One (1) set x 2	
12	GT 208-120V AC Essential Distribution Panel	One (1) set x 2	
13	GT 125V DC Battery	One (1) set x 2	
14	GT 125V DC Battery Charger	One (1) set x 2	
15	GT 125V DC Starter Panel	One (1) set x 2	
16	GT 125V DC Distribution Panel	One (1) set x 2	
17	GT 125V DC Battery Fuse Box	One (1) set x 2	
18	Operator Station (GT-OPS)	One (1) set x 2	Remote stations for GT in CCR
19	Combustion Pressure Fluctuation Analyzer system (CPFA) monitor	One (1) set x 2	To be installed in CCR
20	Accessory Station (ACS)	One (1) set x 1	Data logger for GT in CCR
21	Data Management PC (DMPC)	One (1) set x 1	To be installed in CCR
22	OPC Server (DA2.0)	One (1) set x 1	Gateway for interface with DCS in CCR

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## Additional Engineering Information

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**Additional Engineering Information**

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**5. ADDITIONAL ENGINEERING INFORMATION**

**5.1 Fuel Gas Specification**

**E00-05139 R1**

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**GAS FUEL SPECIFICATION**  
**( for DLN Combustor Application)**

Historically, high BTU natural gas has been the primary gaseous fuel burned in gas turbines. Its clean burning characteristic, coupled with ready availability, made it an ideal fuel for such service.

MTSUBISHI DLN Combustor is designed to suit Natural Gas firing with low NO<sub>x</sub> emission without water/steam injection. Many kind of natural gas with widely varying chemical content have been successfully used in gas turbines.

However, certain restrictions should be mentioned so that the best application can be made for the user. The most important restrictions are as follows:

**Component**

In order to maintain a stable combustion, components in natural gas is preferable restricted as follows.

**A. Methane**

Methane content in the natural gas with subtraction of inert gases is within the range from 80 to 98 mol. % preferably.

However, once a gas is defined for a specific application and combustor is tuned, the variations of Methane content in the natural gas with subtraction of inert gases should not exceed +/- 9%.

Methane content effects the location of the combustion flame and the characteristics of combustion may be changed. So it is necessary to adjust the combustion tuning without the range from 80% to 98 mol% with subtraction of inert gases.

**B. Inert gases**

Inert gas including Nitrogen and Carbon dioxide content in the natural gas is not more than 4 mol.% preferably.

Combustion fluctuation tends to occur during the combustion of high content of inert gas. So the combustion ratio of the diffusion type may be increased and tuned in order to combust stably. As the results, NO<sub>x</sub> emission may be increased.

Beyond the limits specified above, consult Mitsubishi Heavy Industries, LTD.



## Heat Content

In order to determine system handling capability, heating value and specific gravity are the characteristics of natural gases which must be considered.

They are combined in a convenient term called "GAS INDEX (i.e. GI equivalent to Wobbe Index)".

GI is defined by the ratio of the LHV of the fuel to the square root of specific gravity.

$$\text{GAS INDEX (GI)} = \frac{\text{LHV}_{\text{vol}}}{\sqrt{\text{S.G.}}}$$

where :  $\text{LHV}_{\text{vol}}$  = Actual lower heating value in Btu/Scf (kJ/Nm<sup>3</sup>)

and  $\text{S.G.} = \frac{\text{Density of Gas (Standard Conditions)}}{\text{Density of Air (Standard Conditions)}}$

As an example for standard gas  $\text{LHV}_{\text{vol}} = 900 \text{ Btu/Scf} (35,500 \text{ kJ/Nm}^3)$ ,  $\text{S.G.} = 0.6$  and  $\text{GI} = 1161.9(45,830)$ .

Most common gases having a GI of 1,200(47,300) +/- 15% from a design point can be handled with standard fuel gas equipment. However, once a gas is defined for a specific application, the variations from a control point of view should not exceed +/- 5%.

GI change rate shall not exceed 5% per minutes.

Beyond the limits specified above, the fuel supply system must be reviewed.

## Pressure

Depending upon unit frame size, minimum ambient temperature, elevation and applied fuels, the approximately required pressure level is 400 to 660 psig(2.8 to 4.6MPa(g)) at the inlet of GT package. For specific pressure requirements, consult Mitsubishi.

Once the pressure at the terminal point is determined, the following conditions shall be complied in the event of the various gas turbine operation modes specified in Figure 2.

- Pressure fluctuation range shall be restricted within +/-21 psi(0.14MPa).
- Speed of pressure variation shall not exceed 11 psi(0.08MPa) per second.
- Peak to peak amplitude of pressure vibration with more than 10Hz frequency shall not exceed 0.14 psi(0.001MPa) continuously for 2 seconds. This limit may require reciprocating gas compressor with minute pressure vibration.

When gas compressor will be installed, centrifugal type or screw type are recommendable.

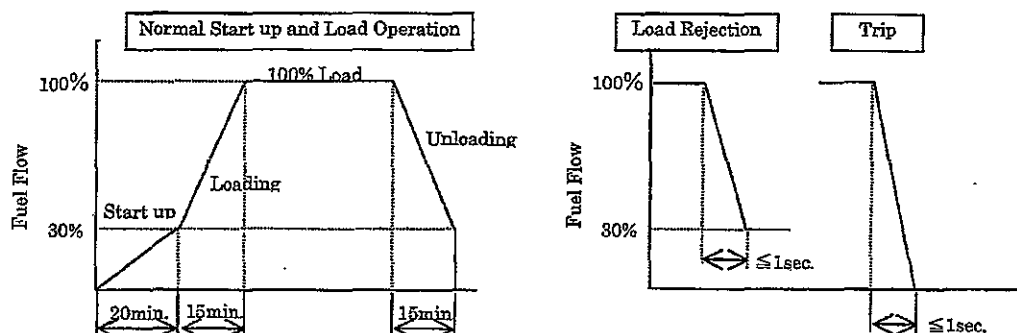


Figure 2 Gas Turbine Operation Modes

### Condensable Liquids in the Gas

The fuel gas as fed to the nozzles of the combustion system must contain no constituents in the liquid state. This means that the constituent having the highest saturation temperature must have at least 20 degrees F(11 degree C) superheat. Minor traces of heavier liquid hydrocarbons that might be carried over from the source of fuel supply should be excluded from the fuel system. This carryover of liquid can usually be prevented by traps and heaters in the fuel supply line.

Minimum fuel gas supply temperature is recommended higher than 41 degrees F(5 degree C) to prevent icing of fuel gas piping and equipments.

It is the customer's responsibility to insure that no liquid hydrocarbons are present in the gas as it is delivered to the combustion turbine. Liquid carry-over can be detrimental to engine parts life. Liquids can be removed by KNOCK OUT SCRUBBERS followed by SEPARATORS & HEATERS. Where long runs of pipes exist between the gas conditioning equipment and the physical arrangement can allow pockets of liquid to collect, a "LAST CHANCE" SEPARATOR near the combustion turbine is also recommended. Proper liquid level alarm and shutdown protection are also recommended.

### Solid Particle in the Gas

Solid Particle should be limited to prevent erosion, deposition, plugging of fuel gas nozzle.

Solid Particle in the fuel gas as fed to the nozzles of the combustion system shall be limited to 30ppmw. maximum up to size of 5microns( $\mu m$ ) and the size of all solid particle shall not exceed 5microns( $\mu m$ ).

For this requirement, typically, 99.5wt% of all particles and 100% of all particles larger than 5 microns shall be removed by the filters supplied by the Owner before delivery to the gas turbine.

It is important that total particle content of fuel gas should be summed and satisfy the





limits specified. Solid particle are typically composed of sand, rust, tar, iron and silica( $\text{SiO}_2$ ), etc.

If the content of the total particle into the gas turbine beyond the above limit, consult Mitsubishi Heavy Industries, Ltd.

Total Particle (Maximum)	30ppmwt (on fuel wt basis)
Maximum Particle Size	5 microns( $\mu\text{m}$ )

### Nitrogen (FBN) Content

Nitrogen content (fuel bound nitrogen FBN) causes to increase  $\text{NO}_x$  formation in addition to the standard (thermal)  $\text{NO}_x$  formed by the reaction between oxygen and nitrogen in the flame zone. Therefore, the guaranteed  $\text{NO}_x$  level is increased in case that there is FBN content in fuel gas. FBN content in fuel gas is none preferably.

### Oil Mist and Vapor Content

Total amount of oil mist and vapor in the fuel gas shall not exceed 0.5 ppmwt. to prevent fuel nozzle clogging and unstable firing. This limit usually requires reciprocating gas compressor and screw type gas compressor.

### Sulfur Content

For peaking applications sulfur in the form of hydrogen sulfide ( $\text{H}_2\text{S}$ ) is limited to 5% (mole percent) max. This is done to limit the detrimental effects of  $\text{H}_2\text{S}$  to the fuel system.  $\text{H}_2\text{S}$  levels in excess of 5% (mole) can be tolerated with special fuel system components. In heat recovery applications, the total sulfur in the fuel (from  $\text{H}_2\text{S}$  plus other sulfur compounds) is recommended to limit 0.5% (mole) due to the low temperature corrosion on HRSG and if the sulfur is contained, MITSUBISHI should be consulted.

### Composition Factor in Gum Products

There are some kind of gas fuel composition which will make gum and cause the nozzle clogging problem. MITSUBISHI knows the compositions which will cause the clogging problem but it is very difficult to define the specific limitation.

So MITSUBISHI makes the guide line of the limitation of the composition which will cause the clogging problem based on our experience.

#### Limitation of the Fuel Gas composition

$\text{C}_4\text{H}_6$ (Butadiene)	< 1 ppmv
$\text{C}_6\text{H}_5\text{CH}=\text{CH}_2$ (Styrene)	< 1 ppmv



NOx*	< 0.5 ppmv
Inden	< 1 ppmv
C <sub>5</sub> H <sub>10</sub> (Cyclopentane)	< 1 ppmv
C <sub>6</sub> H <sub>6</sub> (Benzene)	< 1 ppmv
C <sub>10</sub> H <sub>8</sub> (Naphthalene)	< 50 mg/Nm <sup>3</sup>
Tar	< 1 mg/Nm <sup>3</sup>
BTX(Benzene/Toluene/Xylene)	< 1 mg/Nm <sup>3</sup>

\*Generally, above compositions are not included in natural gas and LNG.

### Trace Metals

Total trace elements in fuel, water and inlet air flow shall not exceed MITSUBISHI fuel specification requirements.

Specifically, the combined total quantity of elements in fuel, water and air must not exceed the following on a fuel weight basis :

<u>Trace Metals</u>	<u>Per Million Parts of Fuel by Weight</u>	<u>Notes</u>
Sodium & Potassium	0.5 ppm	Consult MITSUBISHI for 0.5ppm
Vanadium	0.5 ppm	
Lead	2.0 ppm	
Calcium	10 ppm	
Other trace metals	2.0 ppm	



### Inlet Air Contaminants

The compressor inlet air can greatly increase the level of impurities entering the hot gas path. To determine the extent of contamination, the air to fuel mass flow ratio is multiplied by the air contaminant level in ppm(wt.) to obtain the contaminant concentration on an assumed liquid fuel equivalent basis. For example 10ppb of Na in the inlet air is equivalent to approximately 0.5ppm sodium in the fuel on a weight basis.

### Water-Borne Contaminants

Water employed for emissions control(i.e. water injection) and/or compressor cleaning can also increase the level of impurities entering the hot gas path. Calculation of waterborne contaminants on a liquid fuel equivalent basis is accomplished in the same manner as illustrated for air borne contaminants. In general, water injection quality standards for MITSUBISHI gas turbines are stated as follows. If levels of impurities exceed these limits, MITSUBISHI should be consulted with regard to water purification systems.

#### 1)Reactive Dissolved Solids

Silicon	18 ppm
Chlorides	6 ppm
Iron & Copper	0.1 ppm
Oxygen	2 to 9 ppm
(as determined by O <sub>2</sub> saturated water)	
pH	7.5 to 8.0

Note) Demineralized water is required.

#### 2)Total Dissolved Solids

Other solids not detected and present on the analysis above are assumed to turn to oxides in the combustion process and results in added emissions in the exhaust stack. The quantity of dissolved solids is considered to be doubled due to oxidation in the combustion process and are exhausted as particulate. The quantity of solids in water and fuel is thus limited by local regulations.

Approximate Total	
Dissolved Solids	90 ppm



### Fuel, Air and Water Evaluation

Prior to burning gaseous fuels in MITSUBISHI gas turbines, it is recommended that the customers submit gas fuel analysis to MITSUBISHI for review and recommendation. The fuel, air and water analysis should cover all requirements as specified in this specification. Where analytical services are not available to the customer, services can be purchased from MITSUBISHI.

The following will be reported ;

- A. Water Analysis - See Appendix I
- B. Fuel Analysis - See Appendix II
- C. Air Analysis - See Appendix III



## APPENDIX I

### WATER ANALYSIS

<u>Contaminants</u>	<u>ppt wt.</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt.)	_____
 <u>Reactive Dissolved Solids</u>	
Silicon	_____
Chlorides	_____
Iron & Copper	_____
Oxygen	_____
(as determined by O <sub>2</sub> saturated water)	
 <u>Total Dissolved Solids</u>	
Dissolved Solids	_____



## APPENDIX II

### GAS FUEL ANALYSIS

#### I Chemical Analysis

As per ASTM D-1137 or ASTM D-1945

Component		Mole fraction of mole percent
Hydrogen	H <sub>2</sub>	_____
Helium	He	_____
Nitrogen	N <sub>2</sub>	_____
Carbondioxide	CO <sub>2</sub>	_____
Methane	CH <sub>4</sub>	_____
Ethane	C <sub>2</sub> H <sub>6</sub>	_____
Propane	C <sub>3</sub> H <sub>8</sub>	_____
Butane	C <sub>4</sub> H <sub>10</sub>	_____
Pentane	C <sub>5</sub> H <sub>12</sub>	_____
Carbon Monoxide	CO	_____
Water Vapor	H <sub>2</sub> O (per ASTM D-1142)	_____
Total Sulfur		_____
Other		_____
Molecular Weight		_____

#### II Heating Value

Gross Heating Value	kJ/Nm <sup>3</sup>	_____
Lower Heating Value	kJ/Nm <sup>3</sup>	_____
Gross Heating Value	kJ/kg	_____
Lower Heating Value	kJ/kg	_____

**III Contaminants**

Mole Fraction

Hydrogen Sulfide H<sub>2</sub>SAmmonia NH<sub>3</sub>

Carbonyl Sulfide COS

Condensable Liquids

Solids

Amount

Particle Size Range

Alkali

Other

**IV Operating Conditions**

Pressure Range Max.

MPa(g)

Min.

MPa(g)

Temperature Max.

°C

Min.

°C

**V Physical Properties**

Specific Gravity

@ 15°C

Critical Pressure

MPa(g)

Critical Temperature

°C

Dew Point

°C

APPENDIX IIICOMPRESSOR INLET AIR ANALYSIS

<u>Contaminants</u>	<u>ppt wt.</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt.)	_____





## 5.2 Start-up/Shut-down Curve for G/T

IBO-10292

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---

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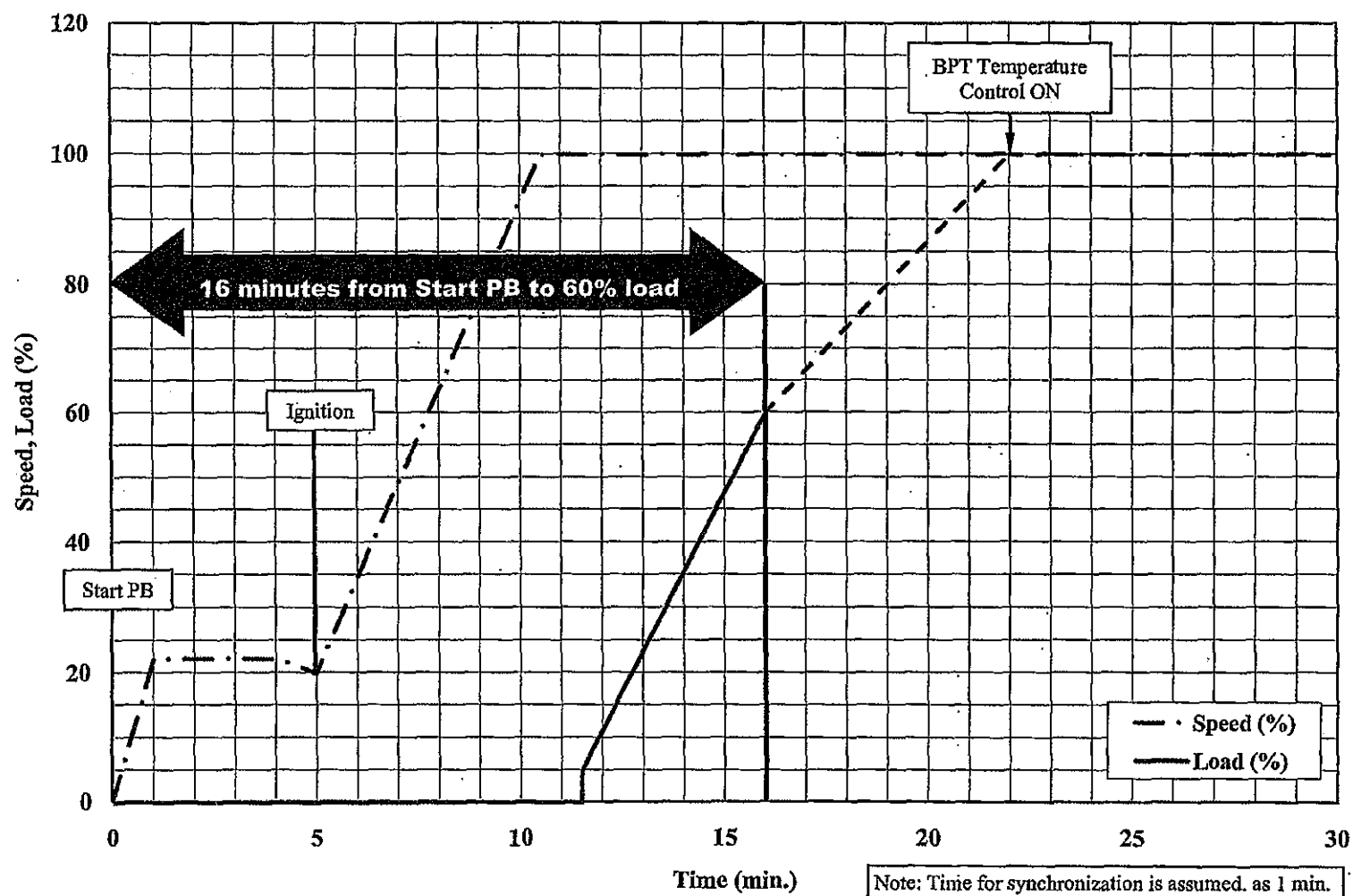
Project No.6865W01

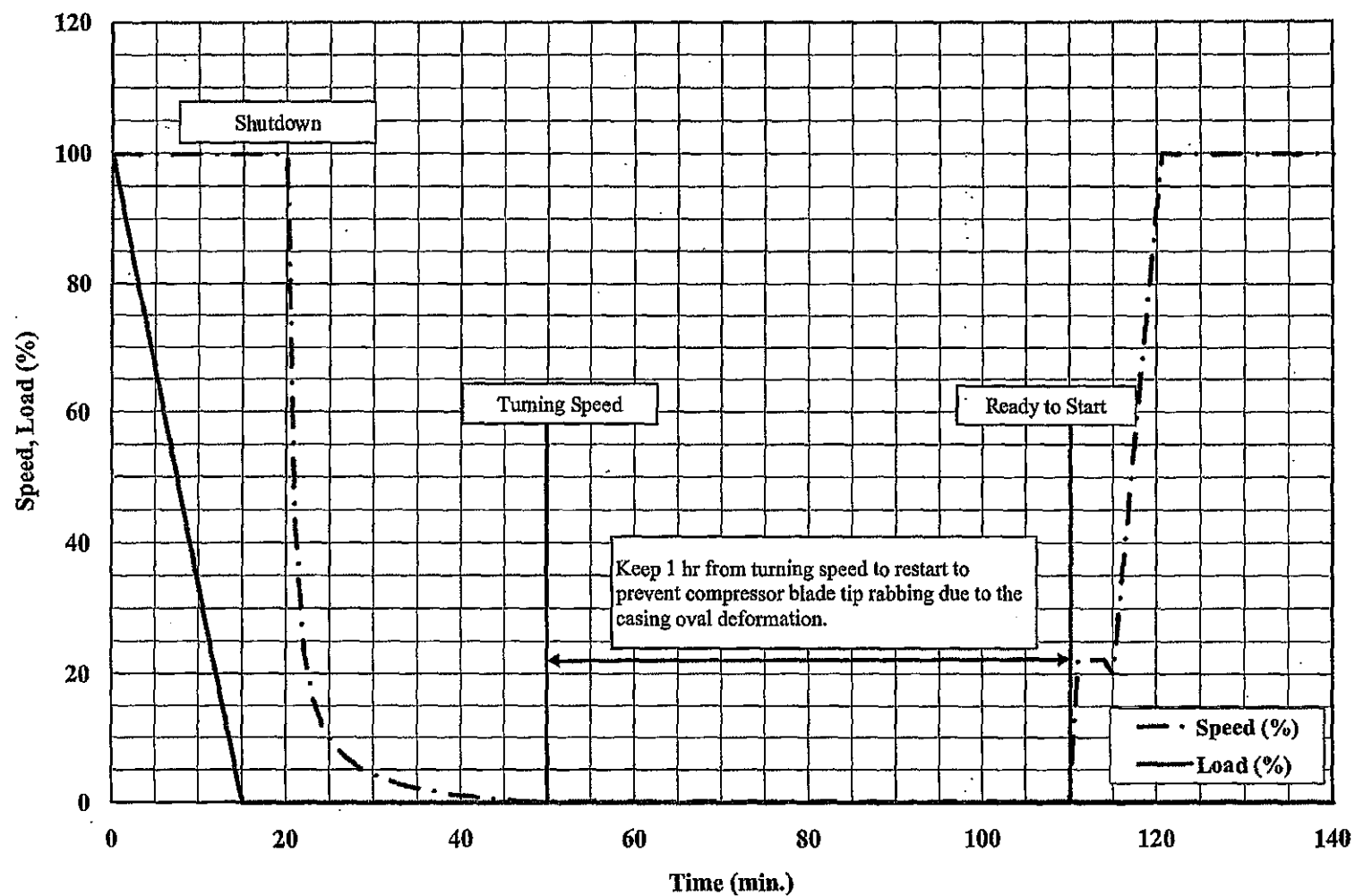
Specification No. MP-A2335

Tab 5-2

2 x M501GAC-Fast Project

M501GAC-Fast / Typical Start Up Curve on gas firing



**M501GAC-Fast / Typical Shutdown & Re-Starting Curve on gas firing**



## Additional Engineering Information

---

### 5.3 Noise Simulation Data

IBO-10297

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---

MITSUBISHI POWER SYSTEMS, INC

Project No.6865W01

Specification No. MP-A2335

Tab 5-3

2 x M501GAC-Fast Project

PRELIMINARY

## M501GAC-Fast GT NOISE SIMULATION DATA

Location No.	Equipment	SPL	Noise Source Dimension			Octave Band Level (dB as ref 10 <sup>-12</sup> watts)										Overall dB(A)	Remark
			W (m)	L (m)	H (m)	31.5 Hz	63 Hz	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	8000 Hz			
G-1	GT Inlet Air Filter	SPL	15.4	9.2	9.7	95.3	85.2	87.6	78.4	76.7	80.2	79.0	76.1	66.6	85.0		
G-2	GT Air Inlet Duct - I	SPL	10.3	0.5	6.3	95.3	85.2	87.6	78.4	76.7	80.2	79.0	76.1	66.6	85.0		
G-3	Inlet Air Silencer	SPL	10.3	4.1	6.3	95.3	85.2	87.6	78.4	76.7	80.2	79.0	76.1	66.6	85.0		
G-4	GT Air Inlet Duct - II	SPL	10.3	3.6	6.3	95.3	85.2	87.6	78.4	76.7	80.2	79.0	76.1	66.6	85.0		
G-5	GT Air Inlet Duct - III	SPL	9.5	3.7	10.8	90.1	90.5	91.1	83.4	82.2	84.5	83.8	79.9	70.8	89.0		
G-6	Gas Turbine Enclosure	SPL	11.8	17.0	10.0	90.3	93.6	83.4	81.1	77.7	80.8	78.1	75.5	67.2	85.0		
G-6'	Gas Turbine Enclosure(during start-up)	SPL	11.8	17.0	10.0	98.4	96.2	91.1	90.6	93.2	91.0	85.8	80.0	72.1	95.0		
G-7	GT Generator	SPL	4.3	8.6	4.4	106.3	94.0	88.0	81.5	81.1	79.9	76.7	74.9	68.0	85.0		
G-8	GT Generator Slip Ring House	SPL	2.3	2.5	2.5	104.5	93.2	85.2	85.7	84.3	75.1	77.9	63.1	65.2	85.0		
G-9	GT Exhaust Duct A	SPL	7.0	1.0	7.0	88.0	85.6	84.4	85.1	78.6	78.5	78.5	76.9	65.9	85.0		
G-9'	GT Exhaust Duct A(during start-up)	SPL	7.0	1.0	7.0	108.4	106.2	101.1	100.6	103.2	101.0	95.8	90.0	82.1	105.0		
G-9A	GT Exhaust Expansion Joint	SPL	Φ5.3	0.9	-	92.8	90.0	88.2	88.3	85.4	88.5	89.1	88.8	82.7	95.0		
G-9A'	GT Exhaust Expansion Joint (during start-up)	SPL	Φ5.3	0.9	-	118.4	116.2	111.1	110.6	113.2	111.0	105.8	100.0	92.1	115.0		
G-10	GT Exhaust Duct B	SPL	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
G-10'	GT Exhaust Duct B (during start-up)	SPL	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
G-10A	GT Stack Silencer Duct	SPL	Φ8.0	-	-	110.4	112.2	107.5	97.0	87.8	75.7	74.6	62.9	58.4	95.0		
G-10B	GT Stack Duct	SPL	Φ7.0	-	-	108.9	102.3	98.5	86.7	73.8	52.6	40.6	32.9	38.9	85.0		
G-10C	GT Stack Outlet	PWL	-	-	-	132.6	127.4	127.3	119.2	110.3	92.2	79.7	74.4	83.3	115.0		
G-11	GT Lube Oil Unit	SPL	9.8	12.5	6.2	89.4	81.2	86.1	85.6	82.2	81.0	74.8	65.0	53.2	85.0		
G-12	GT TCA Cooler with FGH	SPL	3.5	8.5	6.5	39.4	92.0	91.0	86.0	83.0	80.0	72.0	68.0	64.0	85.0	Radiator Type	
G-13	GT Closed Cooling Water System	SPL														Later	
	A-Weight Conversion Factor	-	-	-	-	-39.4	-26.2	-16.1	-8.8	-3.2	0.0	1.2	1.0	-1.1			

- Note:)
- Noise level of each octave band level is without A-Weight correction.
  - SPL: Sound Pressure Level / PWL: Sound Power Level
  - The above data is based on free - field condition during normal running of the equipment, and 1m apart from the source and a height of 1.2m.
  - Noise Source Dimension X-Direction: W, Y-Direction: L, Z-Direction: H
  - The Location data will be decided by EPC Contractor.
  - Notwithstanding anything else in this Contract to the contrary, with respect to sound levels requirements for the Noise Guarantee, Supplier shall only be required to cause the Units to comply with the Noise Guarantee specified in APPENDIX "IV" of the Contract.
  - For the avoidance of doubt, each Octave Band Level shown above is for reference only and not as a guarantee.  
Actual sound levels in excess of each level shown in the above Octave Band Level table shall not be considered as a warranty defect.



## 5.4 Typical Layout

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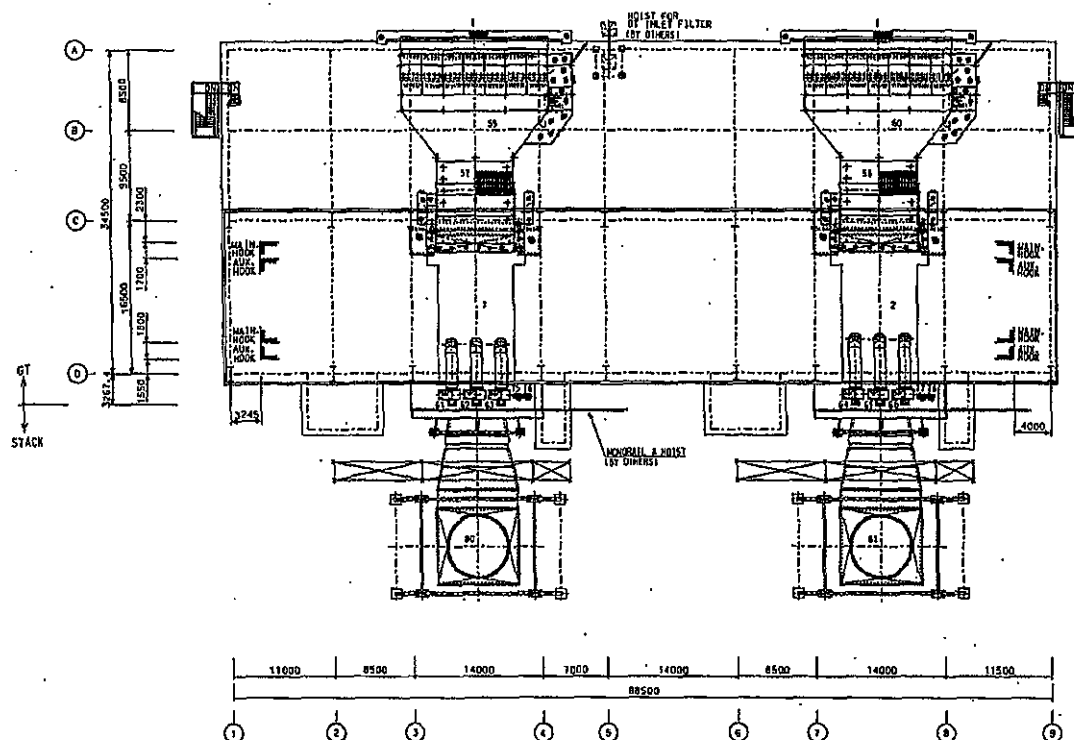
Project No. 6865W01

Specification No. MP-A2335

Tab 5-4

2 x M501GAC-Fast Project





NO.	EQUIPMENT LIST
1	NO.1 GAS TURBINE
2	NO.2 GAS TURBINE
31	NO.1 GT INLET AIR SILENCER
32	NO.2 GT INLET AIR SILENCER
59	NO.1 GT INLET AIR FILTER
60	NO.2 GT INLET AIR FILTER
61	NO.1 GT ENCLOSURE VENTILATION FAN(S)
62	NO.1 GT ENCLOSURE VENTILATION FAN(S)
63	NO.1 GT ENCLOSURE VENTILATION FAN(S)
64	NO.2 GT ENCLOSURE VENTILATION FAN(S)
65	NO.2 GT ENCLOSURE VENTILATION FAN(S)
66	NO.2 GT ENCLOSURE VENTILATION FAN(S)
73	NO.1 GT FUEL GAS UNIT VENTILATION FAN (S)
74	NO.1 GT FUEL GAS UNIT VENTILATION FAN (S)
75	NO.2 GT FUEL GAS UNIT VENTILATION FAN (S)
76	NO.2 GT FUEL GAS UNIT VENTILATION FAN (S)
77	NO.2 GT FUEL GAS UNIT VENTILATION FAN (S)
78	NO.2 GT FUEL GAS UNIT VENTILATION FAN (S)
80	NO.1 GT STACK
81	NO.2 GT STACK

2010/12/17

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TYPICAL LAYOUT (2/3)

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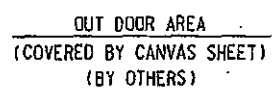
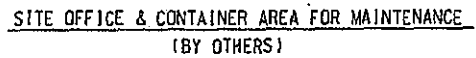
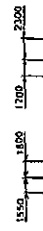
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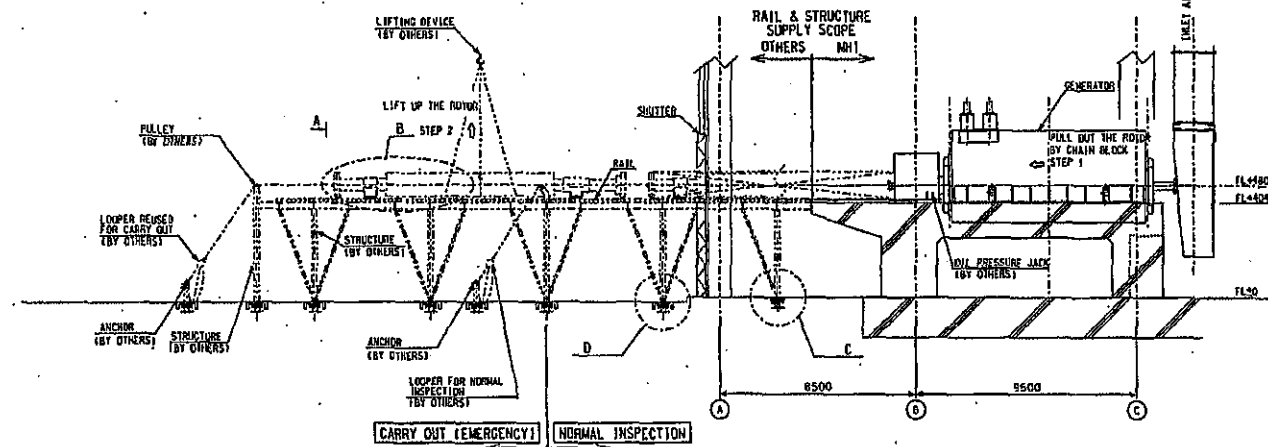
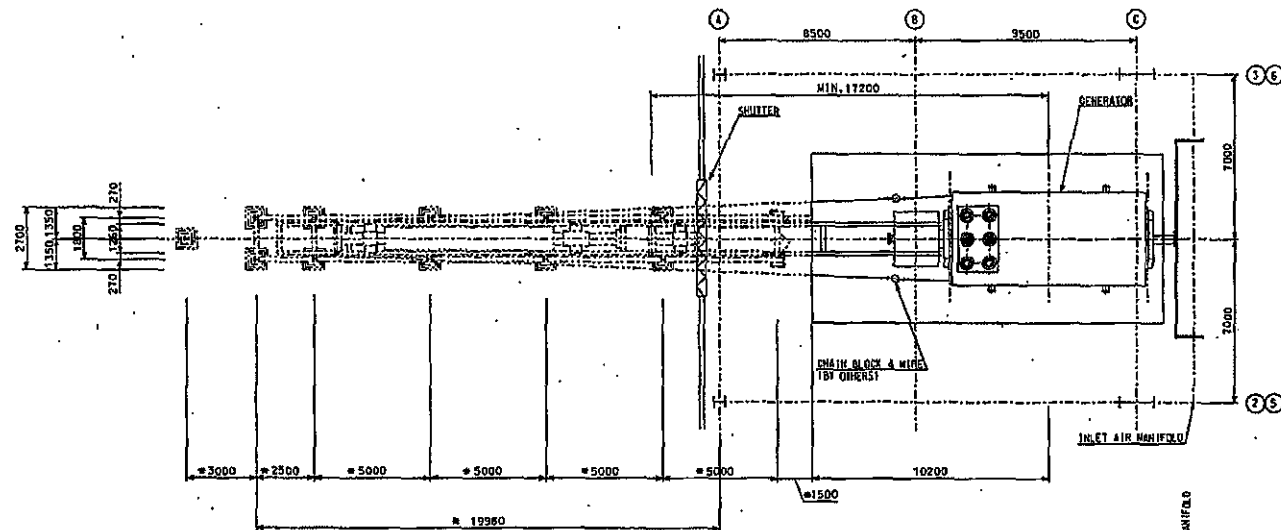
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TRANS CANADA

OVERHAUL PLAN

MITSUBISHI HEAVY INDUSTRIES, LTD.



NOTE

1. WEIGHT

NAME	kg
ROTOR	42000

2. MARK DIMENSION AND DETAIL DESIGN SHALL BE DETERMINED BY OTHERS.

3. SUITABLE LIFTING DEVICE SHALL BE ARRANGED BY OTHERS. CLEARLY INDICATED IN THIS DRAWINGS IS FOR REFERENCE ONLY. ACTUAL DIMENSION TO BE DETERMINED BY OTHERS.

0 10 (m)

SCALE 1/200

2010/12/17

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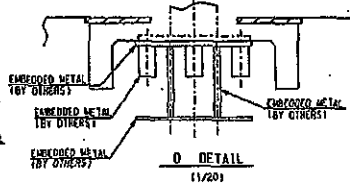
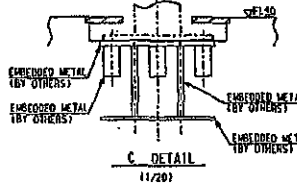
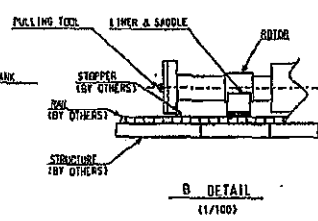
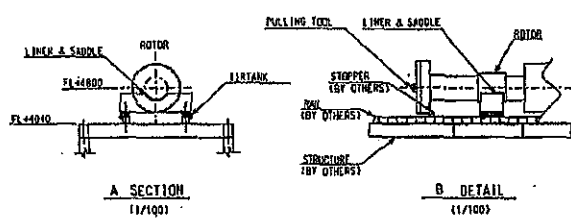
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TRANS CANADA

TYPICAL GT GENERATOR  
ROTOR REMOVAL PLAN

MITSUBISHI HEAVY INDUSTRIES, LTD.

2010/12/17





## Additional Engineering Information

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### 5.5 Terminal Point Diagram

M1-G6249

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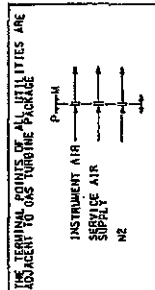
Project No.6865W01

Specification No. MP-A2335

Tab 5-5

2 x M501GAC-Fast Project

49243	 <b>MITSUBISHI HEAVY INDUSTRIES, LTD.</b>	<b>TERMINAL POINT DIAGRAM</b> <b>ISOJICAC-FOST GAS TURBINE GENERATOR</b> <b>Tronix Canada</b>	<b>DATE</b> 01-05-24-95 <b>REV</b> 01-09-00 <b>BY</b> M. J. M.
-------	--	---	--

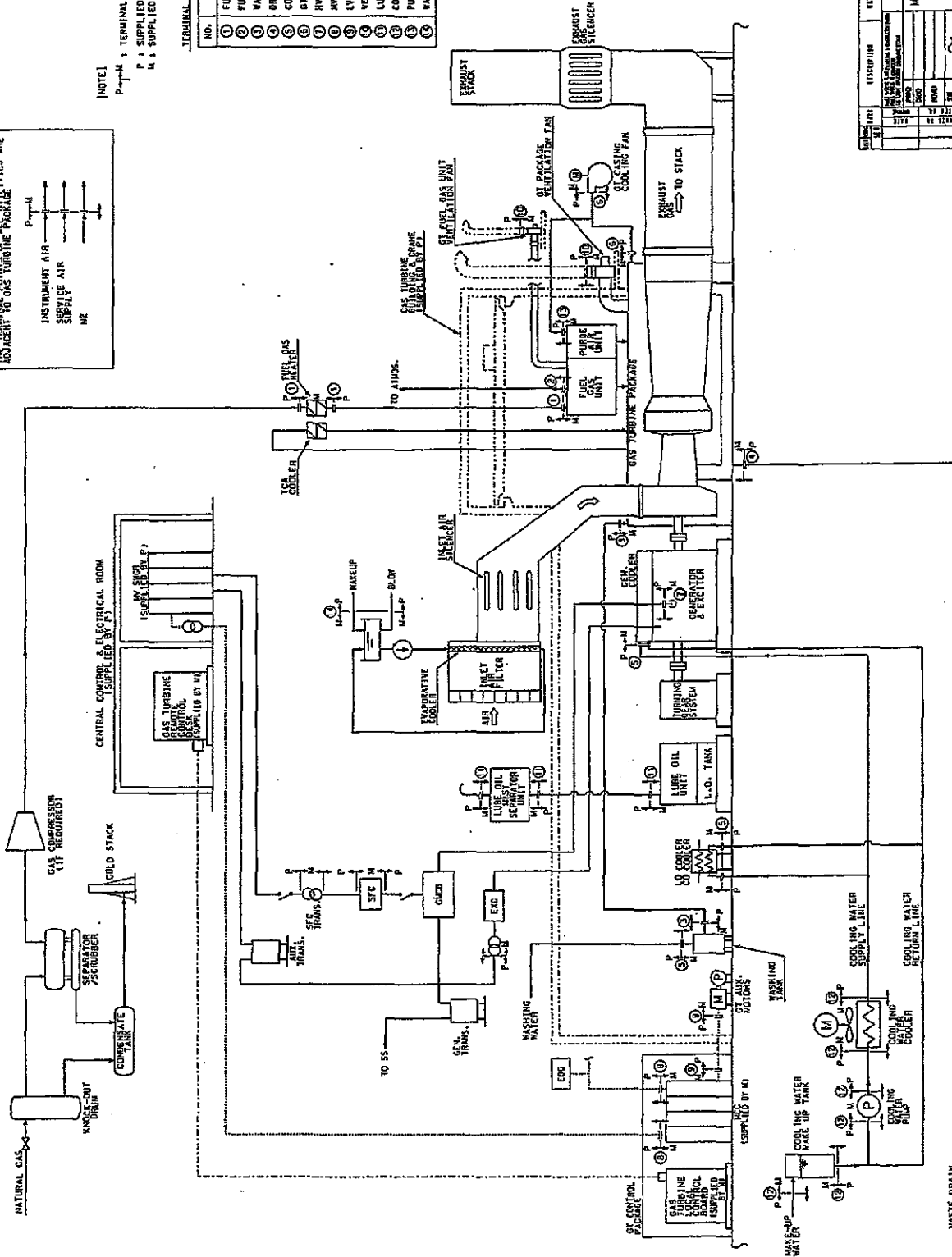


**[NOTE]**

U : TERMINAL POINT  
P : SUPPLIED BY PURCHASER  
U : SUPPLIED BY MP&A

NO.	DESCRIPTION
1	FUEL GAS SUPPLY
2	FUEL GAS VENT
3	WATER SUPPLY FOR COMPRESSOR WASHING
4	DRAIN RETURN
5	COOLING WATER SUPPLY & RETURN
6	DISCHARGING COOLING AIR
7	RY BUS DUCT AT GENERATOR TERMINAL
8	RY INPUT CONNECTION TERMINAL
9	RY CONNECTION FOR CT CONTROL PACKAGE & MOTOR
10	VENTILATION DUCT OUTPUT OF FANS
11	LUBC OIL VAPOUR
12	COOLING WATER
13	PURGE AIR
14	WATER SUPPLY FOR EVAPORATIVE COOLER

**PRELIMINARY**  
 SOME MODIFICATION WILL  
 BE CONSIDERED ON  
 DETAILED DESIGN STAGE.



## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** January 28, 2011 4:00 PM  
**To:** Michael Killeavy; 'Safouh Soufi (safouh@smsenergy-engineering.com)'; 'Rocco Sebastiano (rsebastiano@osler.com)'  
**Cc:** 'Smith, Elliot'; Susan Kennedy; Anshul Mathur  
**Subject:** FW: Draft of the GT Prudency Letter #2  
**Attachments:** OPA Letter re Turbines Jan 28 2011\_BL to Dec 21 10.doc; OPA Letter re Turbines Jan 28 2011\_Draft.doc

Please find attached a black-line and clean version of TCE's proposed GT Prudency Letter (aka OPA Reliance Letter). TCE has requested that we provide our comments and finalize the Letter by Monday. Please review and provide me with your comments.

Thanks,  
Deb

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

---

**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 28, 2011 2:47 PM  
**To:** Deborah Langelaan  
**Cc:** Geoff Murray; John Cashin  
**Subject:** RE: Draft of the GT Prudency Letter #2

On the first – see attached. You may wish to check against the final pdf letter which came from the OPA to be entirely sure that there were no changes from the last version word version that I have. I did a quick check and didn't see anything.

Great news on the second item.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

### TransCanada

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

**From:** Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]  
**Sent:** Friday, January 28, 2011 2:11 PM  
**To:** John Mikkelsen  
**Subject:** RE: Draft of the GT Prudency Letter #2

John;

Would it be possible to receive a black-lined version of this letter compared to the OPA's reliance letter dated December 21, 2010?

Also, we should be in a position to respond to your earlier e-mail regarding "MPS Negotiation – Next Steps" very shortly.

Deb

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

---

**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 28, 2011 1:44 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy; Terri Steeves; Terry Bennett; Geoff Murray; John Cashin  
**Subject:** Draft of the GT Prudency Letter #2

Dear Deborah,

Attached please find our draft of the GT prudency letter that we respectfully request from the OPA which includes our expected conclusion from negotiations with MPS Canada Inc. regarding the release from suspension. Can you please review and provide comments if any?

We require this letter prior to the expiration of suspension on Monday.

Also can you please respond to our request for your acceptance to negotiate the revised release for suspension plan with MPS provided earlier today?

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

## TransCanada

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

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[OPA Letterhead]

Privileged and Confidential

~~December 21, 2010~~

January 28, 2011

Alex Pourbaix

TransCanada Energy Ltd.

450 - 1st Street SW

Calgary, AB

T2P 5H1

Dear Sirs:

Re: Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010 ~~and~~, November 19, 2010 and December 31, 2010, and as may be further amended, modified or supplemented from time to time (the "Contract")

And: Southwest GTA Clean Energy Supply (CES) Contract dated as of October 9, 2009 between TCE and the Ontario Power Authority (the "OPA") (the "SWGTA CES Contract")

The OPA and TCE have entered into a Memorandum of Understanding (the "MOU") dated December 21, 2010 whereby the OPA and TCE agree to work together in good faith to negotiate a Definitive Agreement for a Potential Project as set out in the MOU. It is anticipated that the Potential Project will use the gas turbines sourced under the Contract. Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the MOU.

~~In light of these ongoing negotiations, the OPA acknowledges and agrees that it is~~ On December 21, 2010, the OPA provided a letter to TransCanada stating that it was prudent and reasonable for TCE not to terminate the Contract and to permit the increase in the amount of the termination payment specified in the Cancellation Schedule (as defined and as set out in the Contract) for as long as good faith negotiations towards a Definitive Agreement for a Potential Project continue. The OPA agrees to advise TCE by

On December 17, 2010, MPS provided an indicative budgetary non-binding commercial proposal for conversion of the two gas turbines purchased under the Contract to fast start, including additional scope for cooling system and stacks and the cost of suspension and delay (the "Fast Start Option"). On December 21, 2010, MPS provided the associated budgetary

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Draft & Privileged

technical proposal for the Fast Start Option (the two MPS proposals, collectively referred to as the "Budgetary Proposal").

On December 31, 2010 ~~of whether it wishes~~, the OPA requested TCE to obtain from MPS a fixed price quotation for the M501GAC Fast Start optionOption (in connection with the Potential Project) on or before February 11, 2011. On January 6, 2011, the OPA requested a cost breakdown of the indicative price and asked a number of technical questions.

On January 13, 2011, MPS provided technical responses to questions about the M501GAC gas turbine and the Fast Start Option. On January 19, 2011, JoAnne Butler, Vice President, Electricity Resources, for the OPA, and TCE representatives met with the senior management at Mitsubishi Power Systems in Orlando, Florida to discuss the role of the OPA in the Potential Project and the process of completing due diligence on the M501GAC gas turbines. On January 21, 2011, MPS provided a price breakdown for the Budgetary Proposal and on January 26, 2011, MPS provided further clarification on the price breakdown with respect to delay and suspension costs.

On January [28], 2011, MPS agreed to a modified Fast Start Option that provided for the conversion of the two gas turbines purchased under the Contract to fast start, the cost of suspension and delay and the deferral of a decision to proceed with the additional scope of the cooling system and stacks until a more definitive implementation agreement regarding the Potential Project is executed by the OPA and TCE (the "Revised Fast Start Option").

Given the above information, and in light of these ongoing negotiations and the progress toward the Definitive Agreement, the OPA acknowledges and agrees that it continues to be prudent and reasonable for TCE: (i) not to terminate the Contract; (ii) to permit the increase in the amount of the termination payment specified in the Cancellation Schedule (as defined and as set out in the Contract) for as long as good faith negotiations towards a Definitive Agreement for a Potential Project continue; and (iii) to release MPS from suspension of the Contract, to direct them to begin immediately with the Revised Fast Start Option and to amend the Contract to incorporate the Revised Fast Start Option (collectively, the "TCE Actions").

In the event that:

- (i) the Definitive Agreement is not executed and delivered by the OPA and TCE as contemplated under the terms of the MOU; and
- (ii) TCE commences legal proceedings against the OPA in connection with the SWGTA CES Contract,

the OPA agrees that:

- (a) the OPA will not allege that TCE should have terminated the Contract at any time on or after October 7, 2010 (being the date of the announcement of the Minister, as referred to in the MOU, and the date upon which TCE received the October 7 Letter) for as long as the obligation of TCE and the OPA to work together in good faith to negotiate the Definitive Agreement in accordance with the terms of the MOU subsists; and

--3--  
=

(b) the OPA will not allege that the resulting increase in the amount of the termination payment specified in the Cancellation Schedule ~~was~~were imprudent, improper or unreasonable;

(c) the OPA will not allege that the release of the suspension of the Contract and the implementation of the Revised Fast Start Option and their associated amendment and costs were imprudent, improper or unreasonable; and

(d) the OPA will not allege that TCE has not acted to mitigate its damages as a result of the TCE Actions.

The OPA acknowledges and agrees that despite this letter being marked as "privileged and confidential" and despite the provisions of Section 1.7 of the Confidentiality Agreement dated October 8, 2010 between the OPA and TCE, TCE shall be entitled to use and rely on this letter to defend against the OPA in the event that the OPA makes an allegation in such proceedings that is contrary to any of paragraphs (a) and), (b), (c) or (d) above.

Yours sincerely,

Colin Andersen  
Chief Executive Officer

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[OPA Letterhead]

**Privileged and Confidential**

January 28, 2011

Alex Pourbaix  
TransCanada Energy Ltd.  
450 - 1st Street SW  
Calgary, AB  
T2P 5H1

Dear Sirs:

Re: Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS Canada, Inc. ("MPS") and TransCanada Energy Ltd. ("TCE") as amended by letter agreements dated October 29, 2010, November 19, 2010 and December 31, 2010, and as may be further amended, modified or supplemented from time to time (the "**Contract**")

And: Southwest GTA Clean Energy Supply (CES) Contract dated as of October 9, 2009 between TCE and the Ontario Power Authority (the "**OPA**") (the "**SWGTA CES Contract**")

The OPA and TCE have entered into a Memorandum of Understanding (the "**MOU**") dated December 21, 2010 whereby the OPA and TCE agree to work together in good faith to negotiate a Definitive Agreement for a Potential Project as set out in the MOU. It is anticipated that the Potential Project will use the gas turbines sourced under the Contract. Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the MOU.

On December 21, 2010, the OPA provided a letter to TransCanada stating that it was prudent and reasonable for TCE not to terminate the Contract and to permit the increase in the amount of the termination payment specified in the Cancellation Schedule (as defined and as set out in the Contract) for as long as good faith negotiations towards a Definitive Agreement for a Potential Project continue.

On December 17, 2010, MPS provided an indicative budgetary non-binding commercial proposal for conversion of the two gas turbines purchased under the Contract to fast start, including additional scope for cooling system and stacks and the cost of suspension and delay (the "**Fast Start Option**"). On December 21, 2010, MPS provided the associated budgetary technical proposal for the Fast Start Option (the two MPS proposals, collectively referred to as the "**Budgetary Proposal**").

On December 31, 2010, the OPA requested TCE to obtain from MPS a fixed price quotation for the Fast Start Option (in connection with the Potential Project) on or before February 11, 2011. On January 6, 2011, the OPA requested a cost breakdown of the indicative price and asked a number of technical questions.

On January 13, 2011, MPS provided technical responses to questions about the M501GAC gas turbine and the Fast Start Option. On January 19, 2011, JoAnne Butler, Vice President, Electricity Resources, for the OPA, and TCE representatives met with the senior management at Mitsubishi Power Systems in Orlando, Florida to discuss the role of the OPA in the Potential Project and the process of completing due diligence on the M501GAC gas turbines. On January 21, 2011, MPS provided a price breakdown for the Budgetary Proposal and on January 26, 2011, MPS provided further clarification on the price breakdown with respect to delay and suspension costs.

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Given the above information, and in light of these ongoing negotiations and the progress toward the Definitive Agreement, the OPA acknowledges and agrees that it continues to be prudent and reasonable for TCE: (i) not to terminate the Contract; (ii) to permit the increase in the amount of the termination payment specified in the Cancellation Schedule (as defined and as set out in the Contract) for as long as good faith negotiations towards a Definitive Agreement for a Potential Project continue; and (iii) to release MPS from suspension of the Contract, to direct them to begin immediately with the Revised Fast Start Option and to amend the Contract to incorporate the Revised Fast Start Option (collectively, the "**TCE Actions**").

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the OPA agrees that:

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- (b) the OPA will not allege that the resulting increase in the amount of the termination payment specified in the Cancellation Schedule were imprudent, improper or unreasonable;

(c) the OPA will not allege that the release of the suspension of the Contract and the implementation of the Revised Fast Start Option and their associated amendment and costs were imprudent, improper or unreasonable; and

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Yours sincerely,

Colin Andersen  
Chief Executive Officer

Draft & Privileged





## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** February 2, 2011 4:49 PM  
**To:** JoAnne Butler  
**Cc:** Michael Lyle  
**Subject:** Fw: BOARD STAFF IR I-1-21  
**Attachments:** I-1-21 BOARD STAFF IR.docx

Do you have any thoughts on how to answer this? I don't think we/I can answer (a). I'm not sure what we can say about (b) unless it's "we are awaiting a directive from the Minister", or words to this effect.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Anna LeBourdais  
**Sent:** Wednesday, February 02, 2011 04:44 PM  
**To:** Michael Killeavy  
**Cc:** Martha McQuat; Miriam Heinz  
**Subject:** BOARD STAFF IR I-1-21

Michael,

Martha McQuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

---

**From:** Kevin Dick  
**Sent:** January 25, 2011 6:31 PM  
**To:** Martha McQuat; Michael Killeavy  
**Cc:** Michael Lyle; Anna LeBourdais  
**Subject:** RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

---

**From:** Martha McOuat

**Sent:** January 25, 2011 2:08 PM

**To:** Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka

**Cc:** Michael Lyle; Anna LeBourdais

**Subject:** FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26<sup>th</sup> to advise us early in the process so you can incorporate this into your draft.

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February 7:	Colin's comments received, some further edits may be required
February 8:	Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

---

**From:** Anna LeBourdais

**Sent:** January 25, 2011 1:53 PM

**To:** Martha McOuat

**Subject:**

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

**BOARD STAFF INTERROGATORY 21**

**QUESTION**

**Supply Procurement and Contract Management**

**Issue 3.3**

Does Strategic Objective #3 adequately reflect the tasks that the OPA is charged with by statute and directives in 2011, and do the initiatives capture the range of activity required to achieve that end?

**Board Staff question #21**

**References**

Exhibit B/Tab 3/Schedule 1/Page 5 and 6

**Preamble**

The OPA states in its pre-filed evidence that Initiative 4 for Strategic Objective #3 is "Contract management and financial settlements of existing electricity supply contracts." In 2009, the OPA entered into a contract with a TransCanada Energy Ltd. to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville in response to an August 18, 2008 directive from the Minister of Energy and Infrastructure to procure supply for the Southwest Greater Toronto Area. On October 7, 2010 the Government of Ontario stated that the construction of a proposed natural gas plant in Oakville would no longer be required going forward.

**Questions**

- a) What is the status of the August 18, 2008 directive? How is the OPA planning to procure supply for the Southwest Greater Toronto Area in the absence of the Oakville contract?
- b) What process will the OPA undertake to terminate the contract? What resources are budgeted for this negotiation? How will performance be measured?

**RESPONSE**

Enter response here...

**DRAFT – CONFIDENTIAL – For the Advice of Counsel – Not for External Circulation**

Filed: February 8, 2011

EB-2010-0279

Exhibit I

Tab 1

Schedule 21

Page 2 of 2

## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** February 3, 2011 11:44 AM  
**To:** Susan Kennedy  
**Cc:** Michael Killeavy  
**Subject:** RE: Designation under the Electricity Act

Hi Susan;

The OPA negotiating team is anxious to acquire a copy of one of the documents referenced below (Item #1) for our due diligence efforts. Ideally we would like to acquire a copy of the PP presentation this week. Is this doable?

Deb

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

---

**From:** Deborah Langelaan  
**Sent:** January 28, 2011 4:41 PM  
**To:** Susan Kennedy  
**Cc:** 'ESmith@osler.com'; Michael Killeavy; 'RSebastiano@osler.com'  
**Subject:** FW: Designation under the Electricity Act

Susan;

TCE is requesting that the records identified below be designated as confidential pursuant to Section 25.13(3) of the Electricity Act. We are agreeable to doing so and look to you for your opinion on their request.

Thanks,  
Deb

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

---

**From:** John Mikkelsen [[mailto:john\\_mikkelsen@transcanada.com](mailto:john_mikkelsen@transcanada.com)]  
**Sent:** January 28, 2011 4:34 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy; Geoff Murray; John Cashin; Terry Bennett  
**Subject:** Designation under the Electricity Act

Dear Deb,

Further to our discussion yesterday we would like the OPA to consider designating the following records pursuant to section 25.13(3) of the *Electricity Act, 1998*.

1. TransCanada PowerPoint presentation to the OPA on January 25, 2011 titled "Proposed Ontario SCGT Project - Execution and Preliminary Capital Cost Review", filename "25<sup>th</sup> Jan 2011 -Capex and Construction Strategy Review R1.ppt".

2. The expected Implementation Agreement between TransCanada Energy Ltd. and Ontario Power Authority for the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area (the "Potential Project")
3. The following sections of the expected Kitchener-Waterloo-Cambridge Peaking Generation Contract: Article 5.5 (Payment Account Information), Exhibit A (Project Description), Exhibit B (Contract Capacity, Net Revenue Requirement, and Other Stated Variables), Exhibit F (Milestone Events and Milestone Dates for the Contract Facility) and as may be relocated, amended or replaced.

Thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

## TransCanada

Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

## Aleksandar Kojic

---

**From:** Martha McOuat  
**Sent:** February 3, 2011 5:05 PM  
**To:** Susan Kennedy  
**Cc:** Michael Killeavy  
**Subject:** FW: BOARD STAFF IR I-1-21  
**Attachments:** I-1-21 BOARD STAFF IR.docx

Are you able to help out with this?

---

**From:** Michael Killeavy  
**Sent:** February 2, 2011 4:51 PM  
**To:** Anna LeBourdais  
**Cc:** Martha McOuat; Miriam Heinz  
**Subject:** Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Anna LeBourdais  
**Sent:** Wednesday, February 02, 2011 04:44 PM  
**To:** Michael Killeavy  
**Cc:** Martha McOuat; Miriam Heinz  
**Subject:** BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

---

**From:** Kevin Dick  
**Sent:** January 25, 2011 6:31 PM  
**To:** Martha McOuat; Michael Killeavy  
**Cc:** Michael Lyle; Anna LeBourdais  
**Subject:** RE:



Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,  
Kevin

---

**From:** Martha McOuat

**Sent:** January 25, 2011 2:08 PM

**To:** Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka

**Cc:** Michael Lyle; Anna LeBourdais

**Subject:** FW:

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Your assistance with these is greatly appreciated.

---

**From:** Anna LeBourdais

**Sent:** January 25, 2011 1:53 PM

**To:** Martha McOuat

**Subject:**

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

1 **BOARD STAFF INTERROGATORY 21**

2 **QUESTION**

3 **Supply Procurement and Contract Management**

4 **Issue 3.3**

5 Does Strategic Objective #3 adequately reflect the tasks that the OPA is charged with by  
6 statute and directives in 2011, and do the initiatives capture the range of activity required to  
7 achieve that end?

8 **Board Staff question #21**

9 **References**

10 Exhibit B/Tab 3/Schedule 1/Page 5 and 6

11 **Preamble**

12 The OPA states in its pre-filed evidence that Initiative 4 for Strategic Objective #3 is  
13 "Contract management and financial settlements of existing electricity supply contracts." In  
14 2009, the OPA entered into a contract with a TransCanada Energy Ltd. to design, build and  
15 operate a 900 megawatt (MW) electricity generating station in Oakville in response to an  
16 August 18, 2008 directive from the Minister of Energy and Infrastructure to procure supply  
17 for the Southwest Greater Toronto Area. On October 7, 2010 the Government of Ontario  
18 stated that the construction of a proposed natural gas plant in Oakville would no longer be  
19 required going forward.

20 **Questions**

- 21 a) What is the status of the August 18, 2008 directive? How is the OPA planning to  
22 procure supply for the Southwest Greater Toronto Area in the absence of the Oakville  
23 contract?
- 24 b) What process will the OPA undertake to terminate the contract? What resources are  
25 budgeted for this negotiation? How will performance be measured?

26 **RESPONSE**

27 Enter response here...

**DRAFT – CONFIDENTIAL – For the Advice of Counsel – Not for External Circulation**

Filed: February 8, 2011

EB-2010-0279

Exhibit I

Tab 1

Schedule 21

Page 2 of 2

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** February 4, 2011 8:30 AM  
**To:** Martha McOuat; Susan Kennedy  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21  
**Attachments:** I-1-21 BOARD STAFF IR.docx

**Importance:** High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,  
Michael

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

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

**From:** Martha McOuat  
**Sent:** Thu 03-Feb-11 5:04 PM  
**To:** Susan Kennedy  
**Cc:** Michael Killeavy  
**Subject:** FW: BOARD STAFF IR I-1-21

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Director, Contract Management  
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23 contract?
- 24 b) What process will the OPA undertake to terminate the contract? What resources are  
25 budgeted for this negotiation? How will performance be measured?

26 **RESPONSE**

27 Enter response here...



Filed: February 8, 2011

EB-2010-0279

Exhibit I

Tab 1

Schedule 21

Page 2 of 2

## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** February 4, 2011 11:31 AM  
**To:** Anshul Mathur  
**Cc:** Michael Killeavy  
**Subject:** TransCanada Energy Ltd Corporate Structure  
**Attachments:** TransCanada Energy Ltd Corporate Structure.docx

Anshul;

Attached is a hodgepodge of corporate info on TCE.

Deb



TransCanada Energy Ltd. is a wholly-owned subsidiary of TransCanada PipeLines as described through their press releases. However it may be more accurately to say TransCanada Energy is owned by 701671 Alberta Ltd. which in turn is owned by TransCanada Pipelines Limited, which in turn is owned by TransCanada Corporation as illustrated in the corporate structure.

### Company Profile

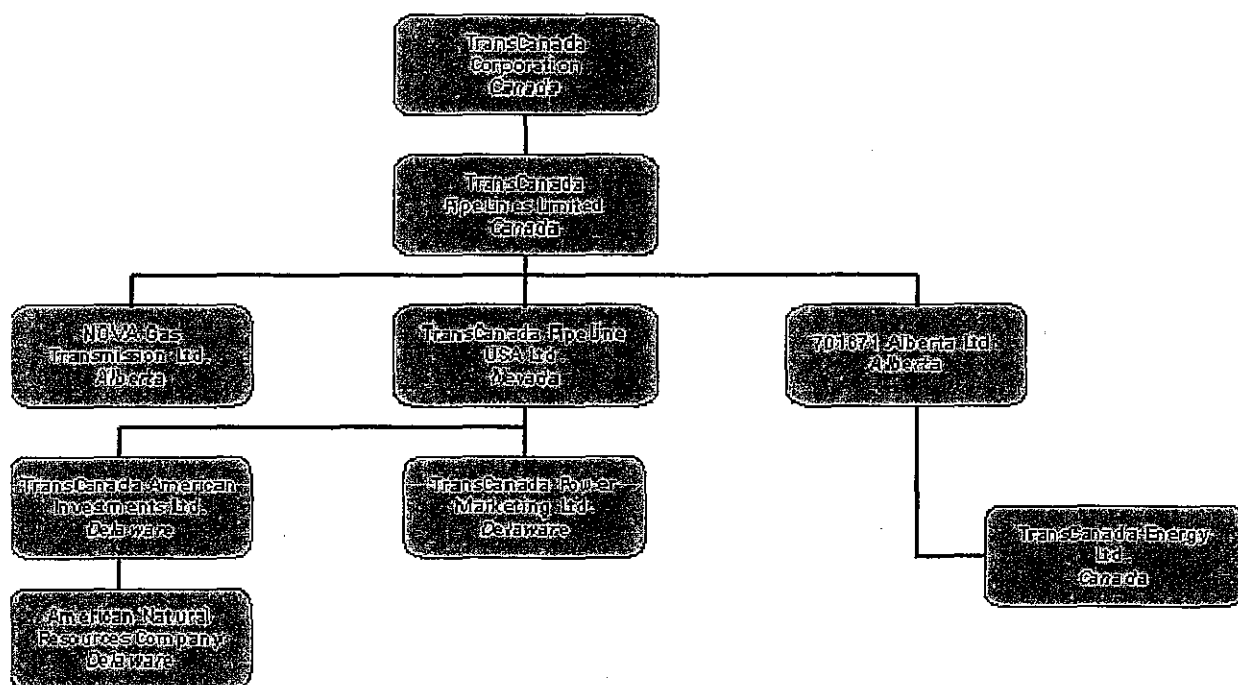
TransCanada Corp. (TRP) owns and operates the largest Canadian gas pipeline (Mainline) and Alberta's largest gas-gathering pipeline system (Alberta System). TRP also owns several equity and master limited partnership (MLP) interests in U.S. pipelines, 100% of a gas co-generation plant in the U.S. Northeast (Ocean States), 47.9% of Bruce Nuclear A, and 31.6% of Bruce Nuclear B. President and CEO: Russ Girling.

### Business Mix (Based on revenues unless otherwise noted)

53% Pipelines, 47% Energy

### Intercorporate Relationships

TransCanada's subsidiaries whose assets exceed ten per cent of TransCanada's consolidated assets or whose sales and operating revenues exceeded ten per cent of TransCanada's consolidated sales and operating revenues at year end are noted below. Also noted is the jurisdiction under which each subsidiary was incorporated. TransCanada owns, directly or indirectly, 100 per cent of the voting shares of each of these subsidiaries.





## Aleksandar Kojic

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**To:** Michael Killeavy; Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure  
**Attachments:** Cost of Capital.ppt

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ONTARIO POWER AUTHORITY

February 4  
2011

# Determination of Cost of Capital for Transcanada Energy

Confidential and Without Prejudice: Prepared in Contemplation of Litigation

# Assumptions Used

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%
<b>Avg. Effective Tax Rates</b>	<b>25.09%</b>

To estimate  
Transcanada Energy's  
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
<b>Average</b>	<b>100</b>	<b>1.05852</b>

# Cost of Capital using CAPM

<b>Cost of Equity: Based on CAPM Model</b>	
Risk Free Rate (10-year Cdn Govt Bond, 2009)	3.86%
Transcanada beta	1.06
Cost of Equity (CAPM)	7.95%
<b>Cost of Debt (Actual Values from Financial Statements)</b>	
Interest 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%
<b>Cost of Capital (Weighted)</b>	<b>5.56%</b>

# Cost of Capital using Financial Statement

<b>Cost of Equity: Based on Financial Statements</b>	
Return on Equity (Net Income / S. Equity)	9.80%
Dividend Yield	4.80%
Total Shareholder Return	14.40%
<b>Cost of Debt (Actual Values from Financial Statements)</b>	
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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%
<b>Cost of Capital (Weighted)</b>	<b>6.85%</b>

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**Cc:** Deborah Langelaan; Michael Killeavy  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

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I get very similar numbers (bounded by Anshul's numbers). See below. I think we can safely say the enterprise WACC is in the range of 5.25%. I have done an equity valuation on TRP if you are interested.

### Long Term Debt

pg 126 of 2009 statements

Average Debt Cost	6.73%	18,665.00	54.22%
Cost of Equity Using CAPM	7.24%	15,220.00	44.21%
Cost of Preferred Equity	17.60%	539.00	1.57%
Total		34,424.00	100%
Tax Rate	0.31		

WACC 5.98%

Preferred Dividend	1.1
Preferred Stock Price	25

I still think the issue is that a project like this must have a return (un-levered) that is greater than 5.25%

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**To:** Kevin Dick; Anshul Mathur  
**Cc:** Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

Thanks. I agree. The spreadsheet title we got from TCE refers to unlevered economics, I believe, which makes no sense if they claim they used a cost of capital of 5.25%.

I'd be interested in seeing your equity valuation.

BTW I screwed up on the disclaimer before - it should be "Privileged and Confidential - Prepared in Contemplation of Litigation"

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**Subject:** RE: TransCanada Energy Ltd Corporate Structure

I concur with your understanding. Terry Bennett stated the following..." they could use a higher discount rate for the back end but they would use a lower rate at the front end but the number stays at \$500MM. He further stated that..."TCE uses a standardized discount rate across the board."

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This is good. I think the CAPM result is a bit low. I like the financial statement analysis value better. It seems intuitively right.

Anshul,

Now, the reason why I asked for this. At yesterday's meeting the TCE folks indicated that the 5.25% was a blended rate and that the residual value could be discounted at a higher value, but that in the end it was still \$500M. I have been thinking about this, and I don't see how the residual value could be discounted at a significantly higher discount rate, unless the contract cash flows over the term were discounted dirt cheap, i.e., well below TCE's cost of capital. This doesn't make much sense to me. When you have some time, can you please try a few model runs with the OGS model to see what the contract cash flows would need to be discounted at to still arrive at an NPV of \$503M, if the residual cash flows were discounted at say 10%, 15% and 20%. Assume that the pre-COD CAPEX cash flows and contract cash flows are discounted at the same rate.

Deb,

I believe in the TCE proposal to the SWGTA RFP it said that the project would be funded entirely with equity. Is this correct?

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

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

From: Anshul Mathur  
Sent: Fri 04-Feb-11 1:14 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

\*\*\* CONFIDENTIAL AND WITHOUT PREJUDICE - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

See attached the Cost of Capital Models. I have put that in a power point to make it an easy read.

From: Michael Killeavy  
Sent: February 4, 2011 11:33 AM  
To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Thank you both.

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

From: Anshul Mathur  
Sent: Friday, February 04, 2011 11:32 AM  
To: Deborah Langelaan  
Cc: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Thanks Deb. I found a bunch of information in their Financial Statements regarding Cost of Debt and Return on Equity (Targeted and Actual). I will be sending that out shortly.

---

From: Deborah Langelaan  
Sent: February 4, 2011 11:31 AM  
To: Anshul Mathur  
Cc: Michael Killeavy  
Subject: TransCanada Energy Ltd Corporate Structure

Anshul;

Attached is a hodgepodge of corporate info on TCE.

Deb



## Aleksandar Kojic

---

**From:** Kevin Dick  
**Sent:** February 4, 2011 1:51 PM  
**To:** Michael Killeavy; Anshul Mathur  
**Cc:** Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure  
**Attachments:** 20092007Statements\_2.xlsx

"Privileged and Confidential - Prepared in Contemplation of Litigation"

Keep in mind this is a 2009 valuation.

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

**From:** Michael Killeavy  
**Sent:** February 4, 2011 1:43 PM  
**To:** Kevin Dick; Anshul Mathur  
**Cc:** Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

Thanks. I agree. The spreadsheet title we got from TCE refers to unlevered economics, I believe, which makes no sense if they claim they used a cost of capital of 5.25%.

I'd be interested in seeing your equity valuation.

BTW I screwed up on the disclaimer before - it should be "Privileged and Confidential - Prepared in Contemplation of Litigation"

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[Michael.killeavy@powerauthority.on.ca](mailto:Michael.killeavy@powerauthority.on.ca)

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

**From:** Kevin Dick  
**Sent:** Fri 04-Feb-11 1:40 PM  
**To:** Anshul Mathur  
**Cc:** Deborah Langelaan; Michael Killeavy  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

\*\*\* CONFIDENTIAL AND WITHOUT PREJUDICE - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

I get very similar numbers (bounded by Anshul's numbers). See below. I think we can safely say the enterprise WACC is in the range of 5.25%. I have done an equity valuation on TRP if you are interested.

I still think the issue is that a project like this must have a return (un-levered) that is greater than 5.25%

Kevin

---

From: Anshul Mathur  
Sent: February 4, 2011 1:16 PM  
To: Kevin Dick  
Subject: FW: TransCanada Energy Ltd Corporate Structure

A fyi - I am getting some what different Cost of Capital numbers.

---

From: Anshul Mathur  
Sent: February 4, 2011 1:15 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

\*\*\* CONFIDENTIAL AND WITHOUT PREJUDICE - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

See attached the Cost of Capital Models. I have put that in a power point to make it an easy read.

---

From: Michael Killeavy  
Sent: February 4, 2011 11:33 AM

To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Thank you both.

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From: Anshul Mathur  
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Subject: RE: TransCanada Energy Ltd Corporate Structure

Thanks Deb. I found a bunch of information in their Financial Statements regarding Cost of Debt and Return on Equity (Targeted and Actual). I will be sending that out shortly.

---

From: Deborah Langelaan  
Sent: February 4, 2011 11:31 AM  
To: Anshul Mathur  
Cc: Michael Killeavy  
Subject: TransCanada Energy Ltd Corporate Structure

Anshul;

Attached is a hodgepodge of corporate info on TCE.

Deb





b	0.279620853	b	0.279621
1-b	0.720379147	1-b	0.720379
k	7.24%	k	7.24%
g	3.05%	g	5.74%

Trailing	P/E	17.72499906	P/E	50.68609
Leading	P/E	17.2	P/E	47.93566
Given P/E	P/E	17.2 - 0.0000		
Trailing	g	2.93%		
Leading	g	$=(b-1)*E/P+k$	3.05%	



**Consolidated Income***Year ended December 31**(millions of dollars except per share amounts)*

	2009	2008	2007	2006	2005
<b>Revenues</b>	<b>8966</b>	<b>8619</b>	<b>8828</b>	<b>7520</b>	<b>6124</b>
<b>Operating and Other Expenses/(Income)</b>					
Plant operating costs and other	3367	3014	3030	2411	1825
Commodity purchases resold	1511	1501	1901	1707	1232
Other income	-49	-38	-48	0	0
Calpine bankruptcy settlements (Note 18)	0	-279	0	0	0
Writedown of Broadwater LNG project costs (Note 7)	0	41	0	0	0
	4829	4239	4883	4118	3057
Net Operating Income	4137	4380	3945	3402	3067
Depreciation and amortization (Note 7)	1377	1247	1237	1059	1017
	2760	3133	2708	2343	2050
<b>Financial Charges/(Income)</b>					
Interest expense (Note 10)	954	943	943	825	836
Interest expense of joint ventures (Note 11)	64	72	75	92	66
Income from equity investments (Note 7)				-33	-247
Interest income and other	-121	-54	-120	-123	-63
Gains on sales of assets				-23	-445
	897	961	898	738	147
<b>Income before Income Taxes and Non-Controlling Interests</b>	<b>1863</b>	<b>2172</b>	<b>1810</b>	<b>1605</b>	<b>1903</b>
<b>Income Taxes (Note 19)</b>					
Current	30	526	432	301	550
Future	357	76	58	175	60
	387	602	490	476	610
<b>Non-Controlling Interests (Note 15)</b>	<b>96</b>	<b>130</b>	<b>97</b>	<b>78</b>	<b>84</b>
<b>Net Income</b>	<b>1380</b>	<b>1440</b>	<b>1223</b>	<b>1051</b>	<b>1209</b>
<b>Net Income from Discontinued Operations</b>				28	0
<b>Preferred Share Dividends (Note 17)</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Net Income Applicable to Common Shares</b>	<b>1374</b>	<b>1440</b>	<b>1223</b>	<b>1079</b>	<b>1209</b>
<b>Net Income per Share (Note 16)</b>					
Basic	2.11	2.53	2.31	2.21	2.49
Diluted	2.11	2.52	2.3	2.2	2.47



Consolidated Cash Flows

Year ended December 31

(millions of dollars)

**Cash Generated from Operations**

	2009	2008	2007	2006	2005
Net income	1380	1440	1223	1079	1209
Depreciation and amortization	1377	1247	1237	1059	1017
Future income taxes (Note 19)	357	76	58	175	60
Non-controlling interests (Note 15)	96	130	97	78	84
Employee future benefits funding (in excess of)/lower than expense (Note 22)	-111	17	43	-31	-9
Writedown of Broadwater LNG project costs (Note 7)	0	41	0	0	0
Other	-19	70	-37	18	-410
	3080	3021	2621	2378	1951
(Increase)/decrease in operating working capital (Note 23)	-90	135	63	-303	-49
Net cash provided by operations	2990	3156	2684	2075	1902

**Investing Activities**

Capital expenditures	-5417	-3134	-1651	-1572	-754
Acquisitions, net cash acquired (Note 9)	-902	-3229	-4223	-470	-1317
Disposition of assets, net of current income taxes (Note 9)	0	28	35	23	671
Deferred amounts and other	-594	-484	-188	-97	64
Net cash used in investing activities	-6913	-6819	-6027	-2116	-1336

**Financing Activities**

Dividend on common and preferred shares (Notes 16 and 17)	-728	-577	-546	-617	-586
Distributions paid to non-controlling interests	-100	-141	-88	-72	-74
Notes payable (repaid)/issued, net (Note 20)	-244	1293	-46	-495	416
Long-term debt issued, net of issue costs (Note 10)	3267	2197	2616	2107	799
Reduction of long-term debt	-1005	-840	-1088	-729	-1113
Long-term debt of joint ventures issued (Note 11)	226	173	142	56	38
Reduction of long-term debt of joint ventures	-246	-120	-157	-70	-80
Common shares issued, net of issue costs (Note 16)	1820	2384	1711	39	44
Preferred shares issues, net of issue costs (Note 17)	539	0	0	0	0
Partnership units of subsidiary issued, net of issue costs (Note 9)	193	0	348	0	0
Junior subordinated notes issued, net of issue costs (Note 12)	0	0	1094	0	0
Preferred securities redeemed	0	0	-488	0	0
Net cash provided by financing activities	3722	4369	3498	219	-556
Effect of Foreign Exchange Rate Changes on Cash and Cash Equivalents	-110	98	-50	9	11
(Decrease)/Increase in Cash and Cash Equivalents	-311	804	105	187	21
<b>Cash and Cash Equivalents,</b>					
Beginning of year	1308	504	399	212	191
<b>Cash and Cash Equivalents</b>					
End of year	997	1308	504	399	212



	Dec-31					
(Millions of dollars)	2009	2008	2007	2006	2005	
<b>Assets</b>						
<b>Current Assets</b>						
Cash and Cash Equivalents	997	1308	504	399	212	191
Accounts receivable	966	1280	1116	1004	796	616
Inventories	511	489	497	392	281	174
Other	701	523	188	297	277	120
	3175	3600	2305	2092	1566	1101
Plant property and Equipment (Note 5)	32879	29189	23452	21487	20038	18764
Long Term Investments			63	71	400	1098
Goodwill (Note 6)	3763	4397	2633	281	57	
Regulatory Assets (Note 14)	1524	201	0	0	0	
Intangibles and Other Assets (Note 7)	2500	2027	1877	1978	2052	1459
	43841	39414	30330	25909	24113	
<b>Liabilities and Shareholders Equity</b>						
<b>Current Liabilities</b>						
Notes Payable (Note 20)	1687	1702	421	467	962	546
Account payable	2195	2110	1767	1500	1494	1135
Accrued interest	377	359	261	264	222	214
Current portion of long-term debt (Note 10)	478	786	556	616	393	774
Current portion of long-term debt of joint ventures (Note 11)	212	207	30	142	41	85
	4949	5164	3035	2989	3112	2754
Regulatory Liabilities (Note 14)	385	317	0	0	0	
Deferred Amounts (Note 13)	743	1168	1107	1029	1196	783
Future Income Taxes (Note 19)	2856	1223	1179	876	703	509
Long-Term Debt (Note 10)	16186	15368	12377	10887	9640	9749
Long-Term Debt of Joint Ventures (Note 11)	753	869	873	1136	937	808
Junior Subordinated Notes (Note 12)	1036	1213	975	0	0	
Preferred Securities				536	536	554
	26908	25322	19546	17453	16124	15157
Non-Controlling Interests (Note 15)	1174	1194	999	755	783	700
Shareholders' Equity	15759	12898	9785	7701	7206	6565
	43841	39414	30330	25909	24113	22422
<b>Commitments, Contingencies and Guarantees (Note 24)</b>						





Consolidated Comprehensive Income

Year Ended December 31 (millions of dollars)	2009	2008	2007	2006	2005
Net Income	1380	1440	1223	1079	1209
Other Comprehensive (Loss)/Income, Net of Income Taxes					
Change in foreign currency translation gains and loss on investments in foreign operations	-471	571	-350	6	-34
Change in gains and losses on hedges of investments in foreign operations	258	-589	79	-6	15
Change in gains and losses on derivative instruments designated as cash flow hedges	77	-60	42	0	0
Reclassification to net income of gains and losses on derivative instruments designated as cash flow hedges pertaining to prior periods	-24	-23	42	0	0
Change in gains and losses on available-for-sale financial instruments	0	2	0	0	0
Other Comprehensive (Loss)/Income	-160	-99	-187	0	-19
Comprehensive Income	1220	1341	1036	1079	1190



	Currency Translation	Cash Flow	Total
Balance at January 1, 2007	(90)	—	(90)
Transition adjustment resulting from adopting new financial instruments	—	(96)	(96)
Change in foreign currency translation gains and losses on investments	(350)	—	(350)
Change in gains and losses on hedges of investments in foreign operations	79	—	79
Change in gains and losses on derivative instruments designated as cash flow hedges	—	42	42
Reclassification to net income of gains and losses on derivative instruments	—	42	42
Balance at December 31, 2007	(361)	(12)	(373)
Change in foreign currency translation gains and losses on investments	571	—	571
Change in gains and losses on hedges of investments in foreign operations	(589)	—	(589)
Change in gains and losses on derivative instruments designated as cash flow hedges	—	(60)	(60)
Reclassification to net income of gains and losses on derivative instruments	—	(23)	(23)
Change in gains and losses on available-for-sale financial instruments	—	2	2
Balance at December 31, 2008	(379)	(93)	(472)
Change in foreign currency translation gains and losses on investments	(471)	—	(471)
Change in gains and losses on hedges of investments in foreign operations	258	—	258
Change in gains and losses on derivative instruments designated as cash flow hedges	—	77	77
Reclassification to net income of gains and losses on derivative instruments	—	(24)	(24)
Balance at December 31, 2009	-592	-40	-632



Year ended December 31 (millions of dollars)	2009	2,008	2007	2006	2005
<b>Common Shares</b>					
Balance at the beginning of the year	9264	6,662	4794	4755	4711
Proceeds from shares issued under public offering, net of issue costs (Note 16)	1,792	2,363	1683	0	0
Shares issued under dividend reinvestment plan (Note 16)	254	218	157	0	0
Proceeds from shares issued on exercise of stock options (Note 16)	28	21	28	39	44
Balance at end of year	11338	9264	6662	4794	4755
<b>Preferred Shares</b>					
Balance at beginning of year	0	0	0	0	0
Proceeds from shares issued under public offering, net of issue costs (Note 17)	539	0	0	0	0
Balance at end of year	539	0	0	0	0
<b>Contributed Surplus</b>					
Balance at beginning of year	279	276	273	272	270
Increased ownership in PipeLines LP (Note 9)	47	0	0	0	0
Issuance of stock options (Note 16)	2	3	3	1	2
Balance at end of year	328	279	276	273	272
<b>Retained Earnings</b>					
Balance at beginning of year	3827	3,220	2724	2269	1655
Net income	1,380	1,440	1223	1079	1209
Common share dividends	-1,015	-833	-731	-624	-595
Preferred share dividends (Note 17)	-6	0	0	0	0
Transition adjustment resulting from adopting new financial instruments accounting standards	0	0	4	0	0
Balance at end of year	4186	3827	3220	2724	2269
<b>Accumulated Other Comprehensive Income</b>					
Balance at beginning of year	-472	-373	-90	-90	-71
Other comprehensive (loss)/income	-160	-99	-187	0	-19
Transition adjustment resulting from adopting new financial instruments accounting standards	0	0	-96	0	0
Balance at end of year	-632	-472	-373	-90	-90
<b>Total Shareholders' Equity</b>	<b>15759</b>	<b>12898</b>	<b>9785</b>	<b>7701</b>	<b>7206</b>

The accompanying notes to the consolidated financial statements are an integral part of these statements.



		2009	2008	2007	2006	2005	Average	Standard Deviation
1 Operating Income	/Revenue	0.461	0.508	0.447	0.452	0.501	0.474	0.028
2 Depreciation	/Revenue	0.154	0.145	0.140	0.141	0.166	0.149	0.011
3 Tax	/Revenue	0.043	0.070	0.056	0.063	0.100	0.066	0.021
4 Net Working Capital adjusted for Cash, MS and NP	/Revenue	-0.121	-0.136	-0.092	-0.110	-0.130	-0.118	0.017
5 Net Fixed Asset	/Revenue	3.667	3.387	2.657	2.857	3.272	3.168	0.408
6 WCInv	/Revenue	-0.024	0.006	-0.018	0.039	0.013	0.003	0.025
7 Interest Expense	/Revenue	0.106	0.109	0.107	0.110	0.137	0.114	0.013

								4 yr Growth Rate 06-09	4 yr Growth Rate 05-08	5 yr Growth Rate 05-09
Growth Rates										
Basic Earnings Per Share		2.110	2.530	2.310	2.210	2.490	2.330	0.179	-1.151%	0.399%
Dividends		1.520	1.440	1.360	1.280	1.220	1.364	0.120	4.390%	4.232%
Revenue		8966	8619	8828	7520	6124	8011	1199	4.495%	8.919%
Fixed Asset		32879	29189	23452	21487	20038	25409	5435	11.221%	9.860%
Fixed Asset Growth		12.64%	24.46%	9.15%	7.23%				13.37%	10.411%





WACC	5.98%							
Base Year	2009							Terminal Value
		2009	2010	2011	2012	2013	2014	2015
Revenue	4.5%	8966	9369	9790	10230	10690	11171	11673
Operating Income	47.4% of Revenue		4440	4640	4848	5066	5294	5532
Less Depreciation	14.9% of Revenue		1396	1459	1525	1593	1665	1740
Pretax Profit			3044	3181	3324	3473	3629	3792
Less Taxes	6.63% of Revenue		1396	1459	1525	1593	1665	1740
NI			1647	1721	1799	1880	1964	2052
Depreciation			1396	1459	1525	1593	1665	1740
Operating Cash Flows			3044	3181	3324	3473	3629	3792
Less Change in Net Working Capital	0.003039567 of Revenue		-28	-30	-31	-32	-34	-35
Less Change in Fixed Assets	3.167913797 of Revenue		-2378	-2549	-2734	-2932	-3144	-3144
Int	0.11377003 of Revenue		1066	1114	1164	1216	1271	1328
Int * (1- average 5 yr tax rate)	0.3134		732	765	799	835	873	912
Free Cash Flows			1370	1366	1358	1344	1324	1525
Present Value at	43569		1292	1216	1141	1065	990	37864
Working Capital at	-	1,084 -	1,056 -	1,026 -	995 -	962 -	928	
Fixed Assets at		32,879	35,257	37,806	40,540	43,471	46,615	
Inflation Rate	3.05%							
Corporate Value	43569							
Long term debt	18665							
Preferred equity	539							
Common Equity	24365							
Shares outstanding	684,400,000							
Share Price	35.60							



WACC	5.98%							
Base Year	2009						Terminal Value	
		2009	2010	2011	2012	2013	2014	2015
Revenue	4.5%	8966	9369	9790	10230	10690	11171	11673
Operating Income	47.4% of Revenue		4440	4640	4848	5066	5294	5532
Less Depreciation	14.9% of Revenue		1396	1459	1525	1593	1665	1740
Pretax Profit			3044	3181	3324	3473	3629	3792
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Present Value at	43569		1292	1216	1141	1065	990	37864
Working Capital at	- 1,084 -	1,056 -	1,026 -	995 -	962 -	928		
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Inflation Rate	3.05%							
Corporate Value	43569							
Long term debt	18665							
Preferred equity	539							
Common Equity	24365							
Shares outstanding	684,400,000							
Share Price	35.60							



# Long Term Debt

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Average Debt Cost	6.73%	18,665.00	54.22%
Cost of Equity Using CAPM	7.24%	15,220.00	44.21%
Cost of Preferred Equity	17.60%	539.00	1.57%
Total		34,424.00	100%
Tax Rate	0.31		

WACC 5.98%

Preferred Dividend	1.1
Preferred Stock Price	25



	2009	2008	2007	2006	2005
Net Income	1380	1440	1223	1051	1209
NCC = Depreciation	1377	1247	1237	1059	1017
Interest	5.11%	5.11%	6.37%	6.45%	7.59%
Interest \$	954	943	943	825	836
Tax Rate	0.29	0.295	0.321	0.325	0.336
Change in Fixed Capital Investment	5067	6984	3202	2508	2291
Change in Working Capital Investment	-217	50	-156	291	77
FCFF	-1415.66	-3682.19	54.297	-132.125	413.104

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Decrease/(increase) in accounts receivable (197) 51	314	-197	51		
(increase)/decrease in inventories 82 (6)	-19	82	-6		
(Increase)/decrease in other current assets (61) 33	-249	-61	33		
(Decrease)/increase in accounts payable 213 (6)	-154	213	-6		
Increase/(decrease) in accrued interest 98 (9)	18	98	-9		
(Increase)/Decrease in Operating Working Capital 135 63	-90	135	63	-506	78
	-394	-177	-227	-71	-362
	-217	50	-156	291	-362
-1302.2	-1774	-1564	-730	-897	-1546
	2009	2008	2007	2006	2005
AR	-314	164	112	208	180
Inv	22	-8	105	111	107
Other	178	335	-109	20	157
AP	85	343	267	6	359
AI	18	98	-3	42	8
9	-217	50	-156	291	77
0.00304	-0.024203	0.005801	-0.017671	0.038697	0.012573



TransCanada Dividend

ke	7.24%		WACC	7.24%		WACC	7.24%		WACC	7.24%	
Do	1.52		Do	1.52		Do	1.52		Do	1.52	
g	3.05%		g	5.74%		g	2.93%		g	3.05%	
Value	37.400		Value	106.948		Value	36.292		Value	37.400	
EPS 2009	2.11	2.03	EPS 2009	2.11	2.03	EPS 2009	2.11	2.03	EPS 2009	2.11	2.03
P/E	17.2		P/E	17.2		P/E	17.2		P/E	17.2	
Dividend	1.52		Dividend	1.52		Dividend	1.52		Dividend	1.52	
RR	0.280	0.251	RR	0.280	0.251	RR	0.280	0.251	RR	0.280	0.251
DPR	0.720	0.749	DPR	0.720	0.749	DPR	0.720	0.749	DPR	0.720	0.749
V	37.400	37.400	V	106.948	106.948	V	36.292	36.292	V	37.400	37.400



## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** February 4, 2011 1:52 PM  
**To:** Kevin Dick  
**Subject:** Re: TransCanada Energy Ltd Corporate Structure

Thank you, sir.

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

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

**From:** Kevin Dick  
**Sent:** Friday, February 04, 2011 01:51 PM  
**To:** Michael Killeavy; Anshul Mathur  
**Cc:** Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

"Privileged and Confidential - Prepared in Contemplation of Litigation"

Keep in mind this is a 2009 valuation.

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

**From:** Michael Killeavy  
**Sent:** February 4, 2011 1:43 PM  
**To:** Kevin Dick; Anshul Mathur  
**Cc:** Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

Thanks. I agree. The spreadsheet title we got from TCE refers to unlevered economics, I believe, which makes no sense if they claim they used a cost of capital of 5.25%.

I'd be interested in seeing your equity valuation.

BTW I screwed up on the disclaimer before - it should be "Privileged and Confidential - Prepared in Contemplation of Litigation"

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Michael.killeavy@powerauthority.on.ca

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From: Kevin Dick  
Sent: Fri 04-Feb-11 1:40 PM  
To: Anshul Mathur  
Cc: Deborah Langelaan; Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

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I get very similar numbers (bounded by Anshul's numbers). See below. I think we can safely say the enterprise WACC is in the range of 5.25%. I have done an equity valuation on TRP if you are interested.

I still think the issue is that a project like this must have a return (un-levered) that is greater than 5.25%

Kevin

---

From: Anshul Mathur  
Sent: February 4, 2011 1:16 PM  
To: Kevin Dick  
Subject: FW: TransCanada Energy Ltd Corporate Structure

A fyi - I am getting some what different Cost of Capital numbers.

---

From: Anshul Mathur  
Sent: February 4, 2011 1:15 PM

To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

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From: Deborah Langelaan  
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To: Anshul Mathur



Cc: Michael Killeavy  
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Anshul;

Attached is a hodgepodge of corporate info on TCE.

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## Aleksandar Kojic

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We have them.

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## Aleksandar Kojic

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Ask Deb.

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13 By definition, only non-discretionary capital spending is eligible for inclusion in an ICM  
14 application. That criterion holds THESL to a bare sustainment capital program during the pre15  
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16 required during the three year period are excluded. Projects that provide for stable and  
17 predictable renewal of distribution and general plant are thus deferred to THESL's rebasing  
18 application anticipated for 2015. As such, THESL's proposals are intended and necessary to  
19 maintain existing levels of reliability.

20

21 The ICM screening mechanism has had the effect of increasing the proportion of proposed  
22 capital expenditures devoted to distribution plant in contrast to general plant. This is set out in  
23 Table 4 below.



Year of Cash Flows	7/1/2009	9/30/2009	12/31/2009	4/1/2010	7/1/2010	9/30/2010	12/31/2010	4/1/2011
Capex Cash Flows	-0.01550316	-3.871688225	-28.82236711	-25.9224611	-99.1934901	-65.11064744	-67.43611025	-56.210582
Cash Flow 1-20 Years	0	0	0	0	0	0	0	0
Cash Flow 21-30 Years	0	0	0	0	0	0	0	0
Int. Rate (1-20 Years)	5.25%							
Int. Rate (21-30 Years)	5.25%							
Cash Flow Capex PV	-1003.1							
Cash Flow 1-20 Years	1265.4							
Cash Flow 21-30 Years	241.0							
Total NPV	503.3							

Interest Rate Adjustment for Years 21 to 30							
Interest Rate Adjustment for Years 1 to 20		5.25%	6%	7.50%	10%	15%	20%
	4%	678	633	567	503	456	443
	4.50%	604	558	492	429	381	368
	5%	535	490	424	360	313	300
	5.25%	503	458	392	328	281	268
	6%	415	369	303	240	192	179
	7%	313	268	202	138	91	78





[illegible]



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	7/1/2025	7/1/2026	7/1/2027	7/1/2028
133.0329 0	130.3265 0	126.8936 0	123.772 0	123.5552 0	124.8961 0	120.9478 0	122.2195 0	121.5856 0	122.2289 0	109.4013 0	118.278 0	118.9483 0



7/1/2029	7/1/2030	7/1/2031	7/1/2032	7/1/2033	7/1/2034	7/1/2035	7/1/2036	7/1/2037	7/1/2038	7/1/2039	7/1/2040	7/1/2041	7/1/2042	7/1/2043	7/1/2044
117.6566	118.6529	118.2964	121.3972	94.4369											
0	0	0	0	0	98.01242	97.88653	97.79083	97.722	97.67718	97.65386	97.64989	97.66338	121.8196	202.2735	0



## Aleksandar Kojic

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**Sent:** February 4, 2011 3:06 PM  
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Based on this spreadsheet, if we assume that the whole project is Equity Funded and that Cost of Equity will definitely be higher than 5.25% - lets say in the range of 7% - then the OGS NPV even with the last 10 years discounted at the same rate as the first 20 years - should be equal \$221MM.

The IRR for this project based on the numbers they provided is approx. 9%.

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Now, the reason why I asked for this. At yesterday's meeting the TCE folks indicated that the 5.25% was a blended rate and that the residual value could be discounted at a higher value, but that in the end it was still \$500M. I have been thinking about this, and I don't see how the residual value could be discounted at a significantly higher discount rate, unless the contract cash flows over the term were discounted dirt cheap, i.e., well below TCE's cost of capital. This doesn't make much sense to me. When you have some time, can you please try a few model runs with the OGS model to see what the contract cash flows would need to be discounted at to still arrive at an NPV of \$503M, if the residual cash flows were discounted at say 10%, 15% and 20%. Assume that the pre-COD CAPEX cash flows and contract cash flows are discounted at the same rate.

Deb,

I believe in the TCE proposal to the SWGTA RFP it said that the project would be funded entirely with equity. Is this correct?

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

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

From: Anshul Mathur  
Sent: Fri 04-Feb-11 1:14 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

\*\*\* CONFIDENTIAL AND WITHOUT PREJUDICE - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

See attached the Cost of Capital Models. I have put that in a power point to make it an easy read.

---

From: Michael Killeavy  
Sent: February 4, 2011 11:33 AM  
To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Thank you both.

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: Anshul Mathur  
Sent: Friday, February 04, 2011 11:32 AM  
To: Deborah Langelaan  
Cc: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Thanks Deb. I found a bunch of information in their Financial Statements regarding Cost of Debt and Return on Equity (Targeted and Actual). I will be sending that out shortly.

---

From: Deborah Langelaan  
Sent: February 4, 2011 11:31 AM  
To: Anshul Mathur  
Cc: Michael Killeavy  
Subject: TransCanada Energy Ltd Corporate Structure

Anshul;

Attached is a hodgepodge of corporate info on TCE.

Deb



## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** February 4, 2011 3:08 PM  
**To:** Anshul Mathur; Deborah Langelaan  
**Subject:** Re: TransCanada Energy Ltd Corporate Structure

Thank you. This is interesting.

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

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

**From:** Anshul Mathur  
**Sent:** Friday, February 04, 2011 03:06 PM  
**To:** Michael Killeavy; Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

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

Based on this spreadsheet, if we assume that the whole project is Equity Funded and that Cost of Equity will definitely be higher than 5.25% - lets say in the range of 7% - then the OGS NPV even with the last 10 years discounted at the same rate as the first 20 years - should be equal \$221MM.

The IRR for this project based on the numbers they provided is approx. 9%.

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

**From:** Anshul Mathur  
**Sent:** February 4, 2011 3:02 PM  
**To:** Michael Killeavy; Deborah Langelaan  
**Subject:** RE: TransCanada Energy Ltd Corporate Structure

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

Hi Michael and Deb,  
See attached spreadsheet to see how the OGS NPV changes if you change the WACC for First 20 years and the last 10 years based on the Cash Flows TCE provided.

Thanks,  
Anshul

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

**From:** Michael Killeavy  
**Sent:** February 4, 2011 2:42 PM



To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Yes, but look how rich the last 10 years are.

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

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

From: Anshul Mathur  
Sent: Friday, February 04, 2011 02:38 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

A lower Cost of Capital also boosts their 1-20year cash flows too and not just last 10 years.

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

From: Michael Killeavy  
Sent: February 4, 2011 2:36 PM  
To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

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

I agree. It's nonsensical.

I think they've done what they've done to boost the value of the project on fictional, speculative, post-contract cash flows.

We have them.

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

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

From: Anshul Mathur

Sent: Friday, February 04, 2011 02:31 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

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

Cost of Equity of 5.25% while Cost of Debt ~6.63% means whatever they are smoking is good stuff, in my opinion.

Why would equity holders, without any protection, give money for lower return than Debt holders? Moreover, if they are raising money for only OGS, then the risk profile for the new shareholders is really high.

I can't think of any possible reason why and how they can raise equity money for lower returns debt.

I am trying to run the model for comparing discount rates for 1-20 vs. 21-30years - but excel is giving me problems - it's not able to calculate xnpv for some odd reason. I will do some analysis and get back you.

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

From: Michael Killeavy  
Sent: February 4, 2011 2:24 PM  
To: Deborah Langelaan; Anshul Mathur  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Anshul,

What do you think? Am I out to lunch?

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

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

From: Deborah Langelaan  
Sent: Friday, February 04, 2011 02:16 PM  
To: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Seems to be - it's a bit of a head scratcher.

Deb

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

From: Michael Killeavy

Sent: February 4, 2011 2:11 PM  
To: Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Yep. So, they're saying their cost of equity is 5.25 percent?

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

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

From: Deborah Langelaan  
Sent: Friday, February 04, 2011 01:59 PM  
To: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Yes, it's explicitly stated at the top of the spreadsheet (TransCanada Oakville GS - Unlevered Economics (July 8, 2009)) and the subject line in the cover letter that was sent along with the spreadsheet is as follows:

"Re: TransCanada Base Oakville Generating Station Unlevered Economics"

Unlevered definition: Refers to the calculation of cash flow without the effects of debt financing (e.g., no interest expense, issuance or repayment of debt).

Deb

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

From: Michael Killeavy  
Sent: February 4, 2011 1:53 PM  
To: Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

But the OGS financial model we got from TCE refers to "unlevered economics", doesn't it?

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

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

From: Deborah Langelaan  
Sent: Friday, February 04, 2011 01:49 PM  
To: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

I concur with your understanding. Terry Bennett stated the following..." they could use a higher discount rate for the back end but they would use a lower rate at the front end but the number stays at \$500MM. He further stated that..."TCE uses a standardized discount rate across the board."

Deb

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

From: Michael Killeavy  
Sent: February 4, 2011 1:41 PM  
To: Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Was my understanding correct about what TCE said? My notes say that 5.25% was a blended rate.

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

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

From: Deborah Langelaan  
Sent: Fri 04-Feb-11 1:39 PM  
To: Michael Killeavy; Anshul Mathur  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Yes, in TCE's Executive Summary that was submitted as part of their SW GTA Proposal they are quoted as saying..."One hundred percent (100%) equity financing has been approved by TransCanada Corporation's Board of Directors."

Deb

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

From: Michael Killeavy  
Sent: February 4, 2011 1:34 PM  
To: Anshul Mathur; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

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

This is good. I think the CAPM result is a bit low. I like the financial statement analysis value better. It seems intuitively right.

Anshul,

Now, the reason why I asked for this. At yesterday's meeting the TCE folks indicated that the 5.25% was a blended rate and that the residual value could be discounted at a higher value, but that in the end it was still \$500M. I have been thinking about this, and I don't see how the residual value could be discounted at a significantly higher discount rate, unless the contract cash flows over the term were discounted dirt cheap, i.e., well below TCE's cost of capital. This doesn't make much sense to me. When you have some time, can you please try a few model runs with the OGS model to see what the contract cash flows would need to be discounted at to still arrive at an NPV of \$503M, if the residual cash flows were discounted at say 10%, 15% and 20%. Assume that the pre-COD CAPEX cash flows and contract cash flows are discounted at the same rate.

Deb,

I believe in the TCE proposal to the SWGTA RFP it said that the project would be funded entirely with equity. Is this correct?

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

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

From: Anshul Mathur  
Sent: Fri 04-Feb-11 1:14 PM  
To: Michael Killeavy; Deborah Langelaan  
Subject: RE: TransCanada Energy Ltd Corporate Structure

\*\*\* CONFIDENTIAL AND WITHOUT PREJUDICE - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

See attached the Cost of Capital Models. I have put that in a power point to make it an easy read.

---

From: Michael Killeavy

Sent: February 4, 2011 11:33 AM  
To: Anshul Mathur; Deborah Langelaan  
Subject: Re: TransCanada Energy Ltd Corporate Structure

Thank you both.

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

From: Anshul Mathur  
Sent: Friday, February 04, 2011 11:32 AM  
To: Deborah Langelaan  
Cc: Michael Killeavy  
Subject: RE: TransCanada Energy Ltd Corporate Structure

Thanks Deb. I found a bunch of information in their Financial Statements regarding Cost of Debt and Return on Equity (Targeted and Actual). I will be sending that out shortly.

---

From: Deborah Langelaan  
Sent: February 4, 2011 11:31 AM  
To: Anshul Mathur  
Cc: Michael Killeavy  
Subject: TransCanada Energy Ltd Corporate Structure

Anshul;

Attached is a hodgepodge of corporate info on TCE.

Deb



## Aleksandar Kojic

---

**From:** Karen Frecker  
**Sent:** February 7, 2011 8:19 PM  
**To:** Martha McQuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21  
**Attachments:** I-1-21 BOARD STAFF v3 (MK kf) 2011-02-07.docx

Based on Colin's comments and review today with Mike Lyle and external legal counsel, the language in the Oakville GS interrogatory now reads:

(a) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. As noted in the LTEP, because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003 the outlook has changed, and the plant in Oakville is no longer required. However, a transmission solution to maintain reliable supply in the Southwest GTA will be required. The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area.

(b) As noted above, the OPA is in negotiations with TransCanada Energy to terminate the contract. In addition to their other responsibilities, three staff members from Electricity Resources and the Legal department have been assigned to the negotiating team. The OPA staff is assisted by external legal counsel and a technical consultant. Performance will be measured in terms of limiting the cost to the ratepayer.

Please advise if you have any concerns.

Thanks,

Karen

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

**From:** Karen Frecker  
**Sent:** February 7, 2011 9:57 AM  
**To:** Martha McQuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21

I've spoken with Joe Toneguzzo and we have identified the following text to replace part (a):

The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area. The OPA plans to address the aspects of this solution related to the bulk system in the second IPSP.

The second sentence is optional.

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

**From:** Martha McQuat  
**Sent:** February 4, 2011 9:41 AM  
**To:** Michael Lyle; Susan Kennedy; Michael Killeavy  
**Cc:** JoAnne Butler; Karen Frecker  
**Subject:** RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?



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

From: Michael Lyle  
Sent: February 4, 2011 9:38 AM  
To: Susan Kennedy; Michael Killeavy; Martha McOuat  
Cc: JoAnne Butler  
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
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Fax: 416.969.6383  
Email: michael.lyle@powerauthority.on.ca

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

From: Susan Kennedy  
Sent: February 4, 2011 8:41 AM  
To: Michael Killeavy; Martha McOuat  
Cc: JoAnne Butler; Michael Lyle  
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy  
Sent: February 4, 2011 8:30 AM  
To: Martha McOuat; Susan Kennedy  
Cc: JoAnne Butler  
Subject: RE: BOARD STAFF IR I-1-21  
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,  
Michael

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

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

From: Martha McOuat  
Sent: Thu 03-Feb-11 5:04 PM  
To: Susan Kennedy  
Cc: Michael Killeavy  
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy  
Sent: February 2, 2011 4:51 PM  
To: Anna LeBourdais

Cc: Martha McOuat; Miriam Heinz  
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais  
Sent: Wednesday, February 02, 2011 04:44 PM  
To: Michael Killeavy  
Cc: Martha McOuat; Miriam Heinz  
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick  
Sent: January 25, 2011 6:31 PM  
To: Martha McOuat; Michael Killeavy  
Cc: Michael Lyle; Anna LeBourdais  
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

---

From: Martha McOuat  
Sent: January 25, 2011 2:08 PM  
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka  
Cc: Michael Lyle; Anna LeBourdais  
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25: authors immediately	Interrogatories received from Intervenors, distributed to
February 1:	Your responses due to Regulatory Affairs
February 2-3: may be required	Regulatory and Legal review, some further edits by authors
February 4: Submit full package to Colin for review	Mike Lyle review; some further edits may be required.

February 7:  
required

Colin's comments received, some further edits may be

February 8:

Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais  
Sent: January 25, 2011 1:53 PM  
To: Martha McOuat  
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

BOARD STAFF INTERROGATORY 21

QUESTION

**Supply Procurement and Contract Management**

**Issue 3.3**

Does Strategic Objective #3 adequately reflect the tasks that the OPA is charged with by statute and directives in 2011, and do the initiatives capture the range of activity required to achieve that end?

**Board Staff question #21**

References

Exhibit B/Tab 3/Schedule 1/Page 5 and 6

Preamble

The OPA states in its pre-filed evidence that Initiative 4 for Strategic Objective #3 is "Contract management and financial settlements of existing electricity supply contracts." In 2009, the OPA entered into a contract with a TransCanada Energy Ltd. to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville in response to an August 18, 2008 directive from the Minister of Energy and Infrastructure to procure supply for the Southwest Greater Toronto Area. On October 7, 2010 the Government of Ontario stated that the construction of a proposed natural gas plant in Oakville would no longer be required going forward.

Questions

- a) What is the status of the August 18, 2008 directive? How is the OPA planning to procure supply for the Southwest Greater Toronto Area in the absence of the Oakville contract?
- b) What process will the OPA undertake to terminate the contract? What resources are budgeted for this negotiation? How will performance be measured?

RESPONSE

(a) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2014. As noted in the LTEP, because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003 the outlook has changed, and the plant in Oakville is no longer required. However, a

Comment [KEE1]: Mike, please confirm whether this is adequate in light of the question regarding the status of the directive.

**DRAFT – CONFIDENTIAL – For the Advice of Counsel – Not for External Circulation**

Filed: February 8, 2011

EB-2010-0279

Exhibit I

Tab 1

Schedule 21

Page 2 of 3

1 transmission solution to maintain reliable supply in the Southwest GTA will be required. The  
2 OPA is in the process of developing a transmission solution which meets the reliability  
3 requirements for the Southwest Greater Toronto Area.

4 (b) As noted above, the OPA is in negotiations with TransCanada Energy to terminate the  
5 contract. In addition to their other responsibilities, three staff members The OPA has  
6 entered into negotiations with TransCanada Energy to terminate the OGS contract on  
7 mutually satisfactory terms. Three staff members from Electricity Resources and the Legal  
8 department have been have been deployed assigned to negotiate the termination of the  
9 OGS contract the negotiating team. The OPA staff is assisted by external legal counsel and  
10 a technical consultant. As reflected in the Board's Issues Decision, the OPA does not  
11 currently have the ability to allocate or budget internal staff costs on a project-by-project  
12 basis. The OPA acknowledges the statement in the Issues Decision that "an organization  
13 with the OPA's sophistication and responsibilities should be able to provide information as  
14 to how its budget is allocated among initiatives" and, accordingly, the OPA will endeavour  
15 to develop a capability to allocate internal staff costs for the purposes of its next revenue  
16 requirement submission. Performance will be measured in terms of limiting the cost to the  
17 ratepayer.

**DRAFT – CONFIDENTIAL – For the Advice of Counsel – Not for External Circulation**

Filed: February 8, 2011  
EB-2010-0279  
Exhibit I  
Tab 1  
Schedule 21  
Page 3 of 3

1

2





## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** February 8, 2011 8:15 AM  
**To:** Karen Frecker; Martha McOuat; Michael Lyle; Susan Kennedy; Joe Toneguzzo  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21

This is fine with me.

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:** Karen Frecker  
**Sent:** February 7, 2011 8:19 PM  
**To:** Martha McOuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21

Based on Colin's comments and review today with Mike Lyle and external legal counsel, the language in the Oakville GS interrogatory now reads:

(a) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. As noted in the LTEP, because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003 the outlook has changed, and the plant in Oakville is no longer required. However, a transmission solution to maintain reliable supply in the Southwest GTA will be required. The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area.

(b) As noted above, the OPA is in negotiations with TransCanada Energy to terminate the contract. In addition to their other responsibilities, three staff members from Electricity Resources and the Legal department have been assigned to the negotiating team. The OPA staff is assisted by external legal counsel and a technical consultant. Performance will be measured in terms of limiting the cost to the ratepayer.

Please advise if you have any concerns.

Thanks,

Karen

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

**From:** Karen Frecker  
**Sent:** February 7, 2011 9:57 AM

To: Martha McOuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo  
Cc: JoAnne Butler  
Subject: RE: BOARD STAFF IR I-1-21

I've spoken with Joe Toneguzzo and we have identified the following text to replace part (a):

The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area. The OPA plans to address the aspects of this solution related to the bulk system in the second IPSP.

The second sentence is optional.

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

From: Martha McOuat  
Sent: February 4, 2011 9:41 AM  
To: Michael Lyle; Susan Kennedy; Michael Killeavy  
Cc: JoAnne Butler; Karen Frecker  
Subject: RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?

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

From: Michael Lyle  
Sent: February 4, 2011 9:38 AM  
To: Susan Kennedy; Michael Killeavy; Martha McOuat  
Cc: JoAnne Butler  
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
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Fax: 416.969.6383  
Email: michael.lyle@powerauthority.on.ca

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

From: Susan Kennedy  
Sent: February 4, 2011 8:41 AM  
To: Michael Killeavy; Martha McOuat  
Cc: JoAnne Butler; Michael Lyle  
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy  
Sent: February 4, 2011 8:30 AM  
To: Martha McQuat; Susan Kennedy  
Cc: JoAnne Butler  
Subject: RE: BOARD STAFF IR I-1-21  
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,  
Michael

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

416-969-6288 (office)  
416-969-6071 (fax)  
416-520-9788 (cell)  
Michael.killeavy@powerauthority.on.ca

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

From: Martha McOuat  
Sent: Thu 03-Feb-11 5:04 PM  
To: Susan Kennedy  
Cc: Michael Killeavy  
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy  
Sent: February 2, 2011 4:51 PM  
To: Anna LeBourdais  
Cc: Martha McOuat; Miriam Heinz  
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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: Anna LeBourdais  
Sent: Wednesday, February 02, 2011 04:44 PM  
To: Michael Killeavy  
Cc: Martha McOuat; Miriam Heinz  
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick  
Sent: January 25, 2011 6:31 PM  
To: Martha McOuat; Michael Killeavy  
Cc: Michael Lyle; Anna LeBourdais  
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

---

From: Martha McOuat  
Sent: January 25, 2011 2:08 PM  
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka  
Cc: Michael Lyle; Anna LeBourdais  
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25: authors immediately	Interrogatories received from Intervenors, distributed to
February 1:	Your responses due to Regulatory Affairs
February 2-3: may be required	Regulatory and Legal review, some further edits by authors
February 4: Submit full package to Colin for review	Mike Lyle review; some further edits may be required.
February 7: required	Colin's comments received, some further edits may be
February 8:	Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais  
Sent: January 25, 2011 1:53 PM  
To: Martha McQuat  
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

**Aleksandar Kojic**

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**From:** Joe Toneguzzo  
**Sent:** February 8, 2011 8:21 AM  
**To:** Karen Frecker; Martha McOuat; Michael Lyle; Susan Kennedy; Michael Killeavy  
**Cc:** JoAnne Butler  
**Subject:** Re: BOARD STAFF IR I-1-21

Sounds good to me.

Thanks - Joe

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

**From:** Karen Frecker  
**Sent:** Monday, February 07, 2011 08:19 PM  
**To:** Martha McOuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo  
**Cc:** JoAnne Butler  
**Subject:** RE: BOARD STAFF IR I-1-21

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Karen

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**Cc:** JoAnne Butler  
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