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# APPENDIX

# OPA Negotiating Team

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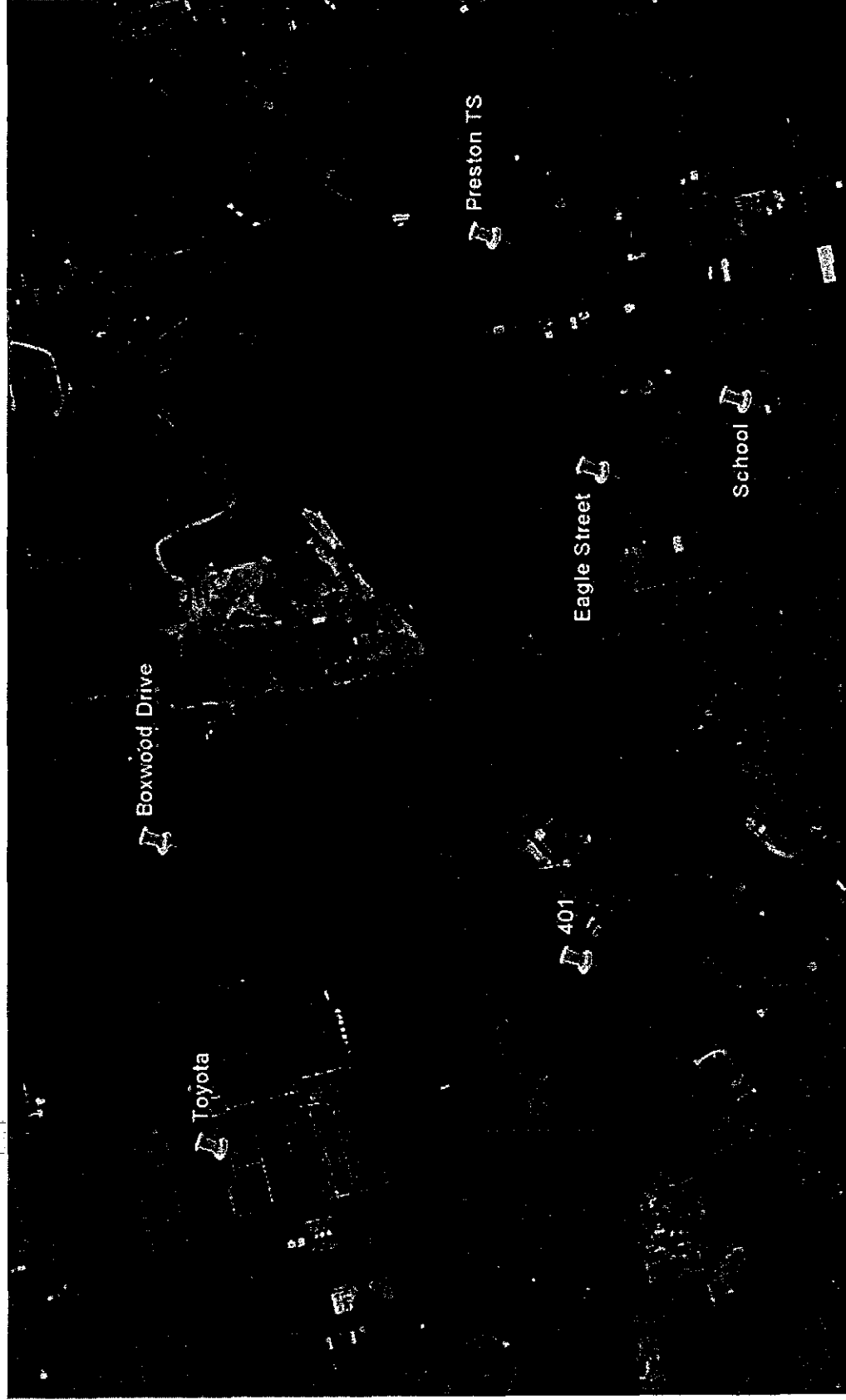
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# TransCanada Energy (TCE) Negotiating Team

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- Terry Bennett, VP Power Development
- Geoff Murray, VP US Power Development
- John Mikkelsen, Director Eastern Canada, Power Development
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# Boxwood Site



## Mitsubishi (MPS) Gas Turbines (GT's)

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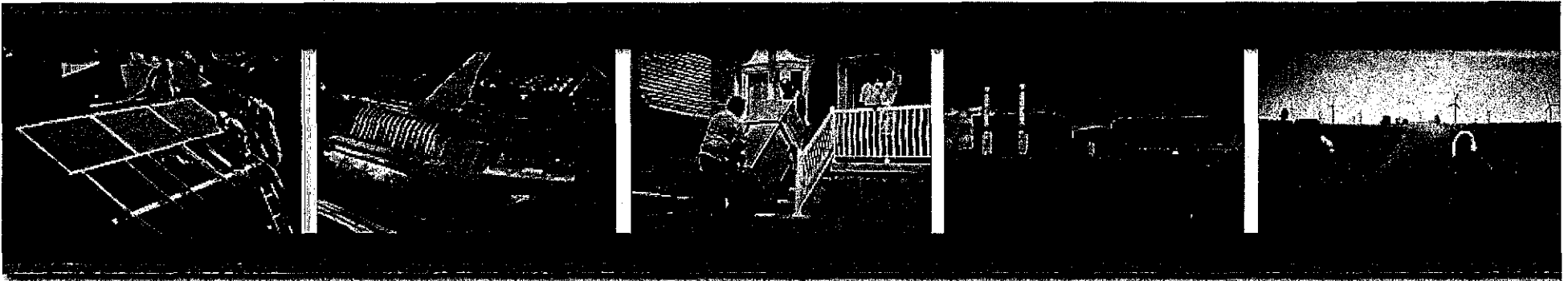
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- GT's will need to need to be converted to a faster start time

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- The terms of the Equipment Supply Agreement permit it, subject to MPS's consent, to be assigned by TCE to a third party





# **Winding Up of the Oakville Generating Station (OGS) Contract**

## **Government Briefing**

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June 29, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Southwest Greater Toronto Area (SW GTA) Supply

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- Need for generation identified in OPA's proposed Integrated Power System Plan (IPSP) submitted to OEB in August 2007
- GTA has experienced robust growth and generation in the area continues to be significantly less than the GTA load
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- In addition to aggressive conservation efforts the OPA has identified the need for new electricity generation in this area
- New electricity generation will:
  - Support coal-fired generation replacement by 2014
  - Provide system supply adequacy
  - Address reliability issues such as local supply and voltage support
  - Defer Transmission needs in the Western GTA

# OPA Procurement Process – Ministry Directive

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

# OPA Procurement Process – RFQ & RFP

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## 1. Request for Qualifications

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

## 2. Request for Proposals

- Released February 2009
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- SW GTA Contract based on Clean Energy Supply (CES) Contract
  - 20 year term
  - Contract-for-Differences based on Deemed Dispatch logic:
    - Generator guaranteed Net Revenue Requirement (NRR)
    - Market Revenues < NRR = Payment from OPA
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- TCE awarded SW GTA CES Contract on October 2009

# Opposition to Gas-Fired Generation

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- Procurement process fraught with local opposition
- Town of Oakville passed several by-laws:
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- Town of Oakville rejected TCE's:
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- OPA provided TCE with letter that stated "The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract."
- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

# TCE Initial Concerns

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

# Negotiations

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- All OPA/TCE discussions have occurred on a “Without Prejudice” basis
- Oct. 8<sup>th</sup> OPA/TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege
- OPA/TCE negotiating teams met on a weekly basis commenced Oct. 15/10 & ceased Feb. 17/11
- Discussions focused on the following issues:
  - Capital costs of replacement project
  - Financial value of OGS
  - Residual Value of OGS
  - Disposition of Mitsubishi gas turbines
  - Proper allocation of project risk

# MOU

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

# Replacement Project

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- It was determined that the replacement project would be a gas-fired peaking generation (i.e. simple cycle) plant with a contract capacity of 400 - 450 MW
- TCE owns a site in Cambridge (Eagle St.) but close to schools and residential areas
- TCE identified the Boxwood Industrial Park in Cambridge as its preferred site
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# Ministry of Energy Directive

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

# Settlement Proposals

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

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-Instructed Second Counter-Proposal April 24, 2011	TCE Response to Government-Instructed Second Counter-Proposal April 29, 2011	Comments
<b>NRR Net Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
<b>Contract Term</b>	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
<b>Contract Capacity (Annual Average)</b>	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
<b>Sunk Cost Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years -- no returns	Amortize over 25 years -- no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
<b>Gas/Electrical Interconnections</b>	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
<b>Other</b>	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

# Status of Negotiations

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- On April 26<sup>th</sup> TCE served the government with 60 day advance notice of its intent to sue the Crown pursuant to Section 7(1) of the Proceedings Against the Crown Act
- 60 day waiting period expired June 25<sup>th</sup> and TCE in a position to serve a Statement of Claim against the Crown
- Radio silence between TCE and OPA since end mid-May
- TCE and OPA dispute centres around the proper compensation to be paid to TCE in exchange for the mutual termination of the OGS Contract

# Fundamental Disagreement – Value of OGS

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- TCE has claimed that the financial value of the OGS contract is \$500 million.
- On 16 December 2010 TCE presented a project pro forma for the OGS bid into the SWGTA RFP.
- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

## **Residual Value of the OGS**

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

# Effect of Residual Value on OGS NPV

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- With the very low discount rate of 5.25% used by TCE to calculate NPV, the residual value of the OGS has a significant impact on NPV of after-tax cash flows.
- We believe that the TCE claim of a 5.25% unlevered cost of equity is too low and that a value of 7.5% is more appropriate based on published financial information.

# Effect of Residual Value on OGS NPV

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- In arriving at the \$503 million NPV, TCE is discounting the final 10 years at the same discount rate as the contract cash flows.
- Usually, residual value cash flows are not discounted at the same rate as project cash flows because they are inherently riskier.

# Arbitration

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- Both TCE and OPA have an interest in resolving the dispute by way of arbitration rather than litigation as this could permit a resolution on a confidential basis
- TCE has set out 3 conditions to arbitration:
  - Must include the Crown
  - Must recognize the terms of the OPA October 7 letter
  - Must not be an impediment to TCE participating in future OPA procurements

# Litigation

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- OPA retained litigation counsel (Osler, Hoskin & Harcourt).
- OPA has not been served with a statement of claim.

# Competitive Procurement

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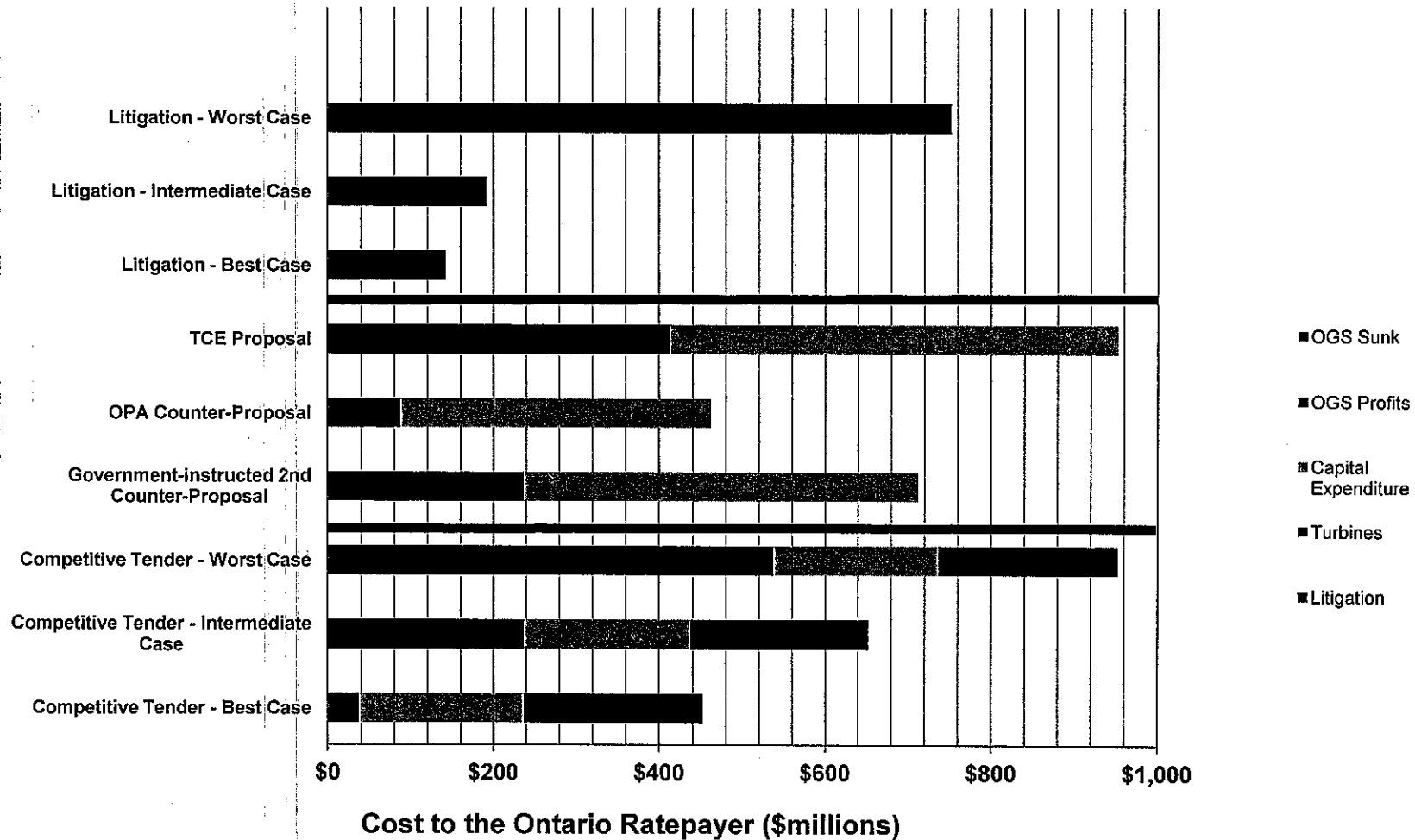
- OPA is considering taking assignment of the gas turbines from TCE. This is possible based on our review of its agreement with Mitsubishi.
- OPA could then launch a competitive procurement for the Replacement Project (K-W peaking plant).
- We believe that this is the only way to drive down the cost to construct the balance of plant.

# Potential Outcomes

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

# Financial Value of Potential Outcomes





# APPENDIX

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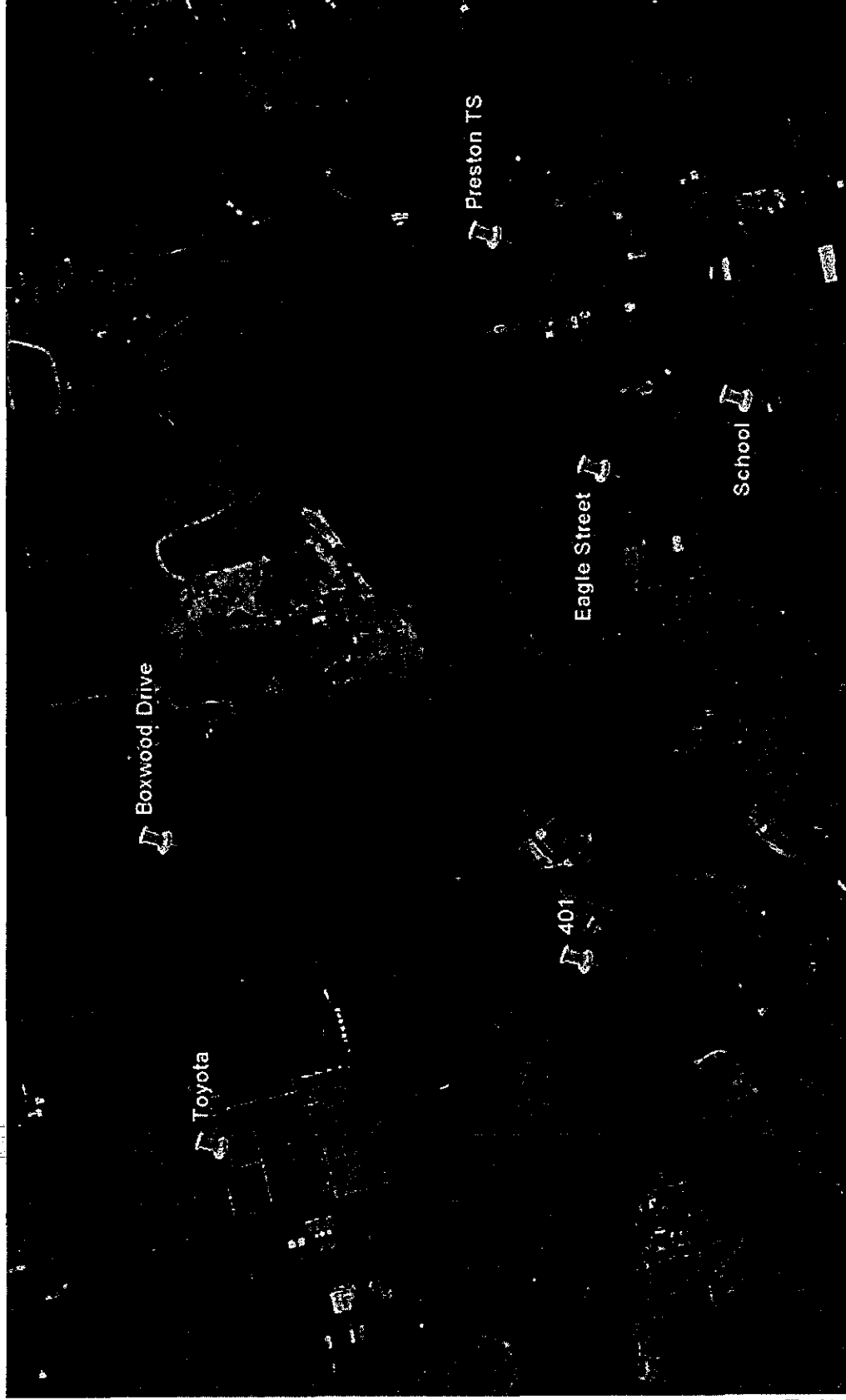
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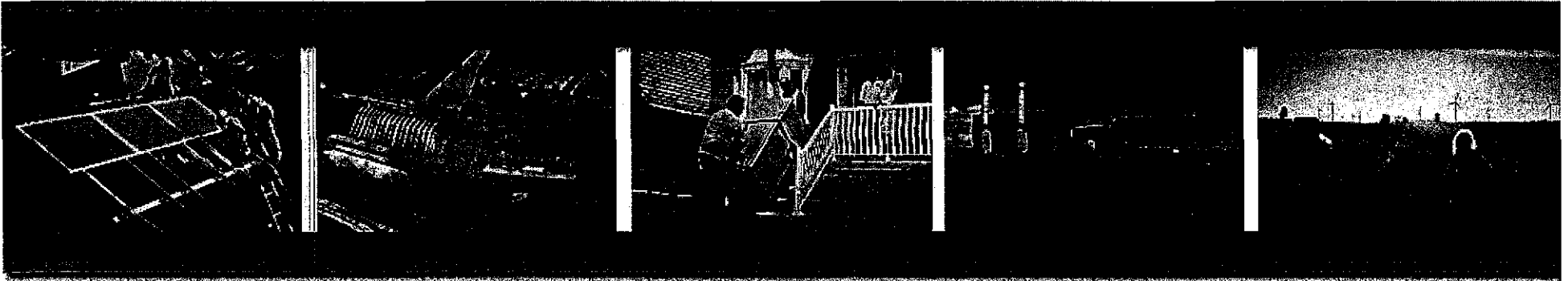
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- OPA Contract contains an Exclusion of Consequential Damages clause (including loss of profits)

# Termination Negotiations

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

# TCE Initial Concerns

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- TCE identified 3 immediate concerns:
  1. Canadian Securities Administrators (CSA) disclosure requires TCE to report a write down on the project if out-of-pocket costs not resolved by year-end (~\$37 MM)
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- Oct. 8<sup>th</sup> OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.
- This agreement has a term of five years.

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# Replacement Project Negotiations

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

# OPA Analysis

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

# Fundamental Disagreement – Value of OGS

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- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

# **TCE Current Position on OGS Financial Value**

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

# Ministry of Energy Directive

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- OPA has worked closely with Ministry of Energy on the drafting of a Directive to authorize negotiations with TCE for the replacement project
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<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
<b>Other</b>	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

# Status of Negotiations

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- On April 26<sup>th</sup> TCE served the government with 60 day advance notice of its intent to sue the Crown pursuant to Section 7(1) of the Proceedings Against the Crown Act
- 60 day waiting period expired June 25<sup>th</sup> and TCE in a position to serve a Statement of Claim against the Crown
- Radio silence between TCE and OPA since end mid-May
- TCE and OPA dispute centres around the proper compensation to be paid to TCE in exchange for the mutual termination of the OGS Contract

# Arbitration

---

- Both TCE and OPA have an interest in resolving the dispute by way of arbitration rather than litigation as this could permit a resolution on a confidential basis.
- OPA request for mediation was rejected by TCE. TCE has since proposed arbitration.
- TCE has set out 3 conditions to arbitration:
  - Must include the Crown
  - Must recognize the terms of the OPA October 7 letter
  - Must not be an impediment to TCE participating in future OPA procurements

# Litigation

---

- OPA retained litigation counsel (Osler, Hoskin & Harcourt).
- OPA has not been served with a statement of claim.

# Competitive Procurement

---

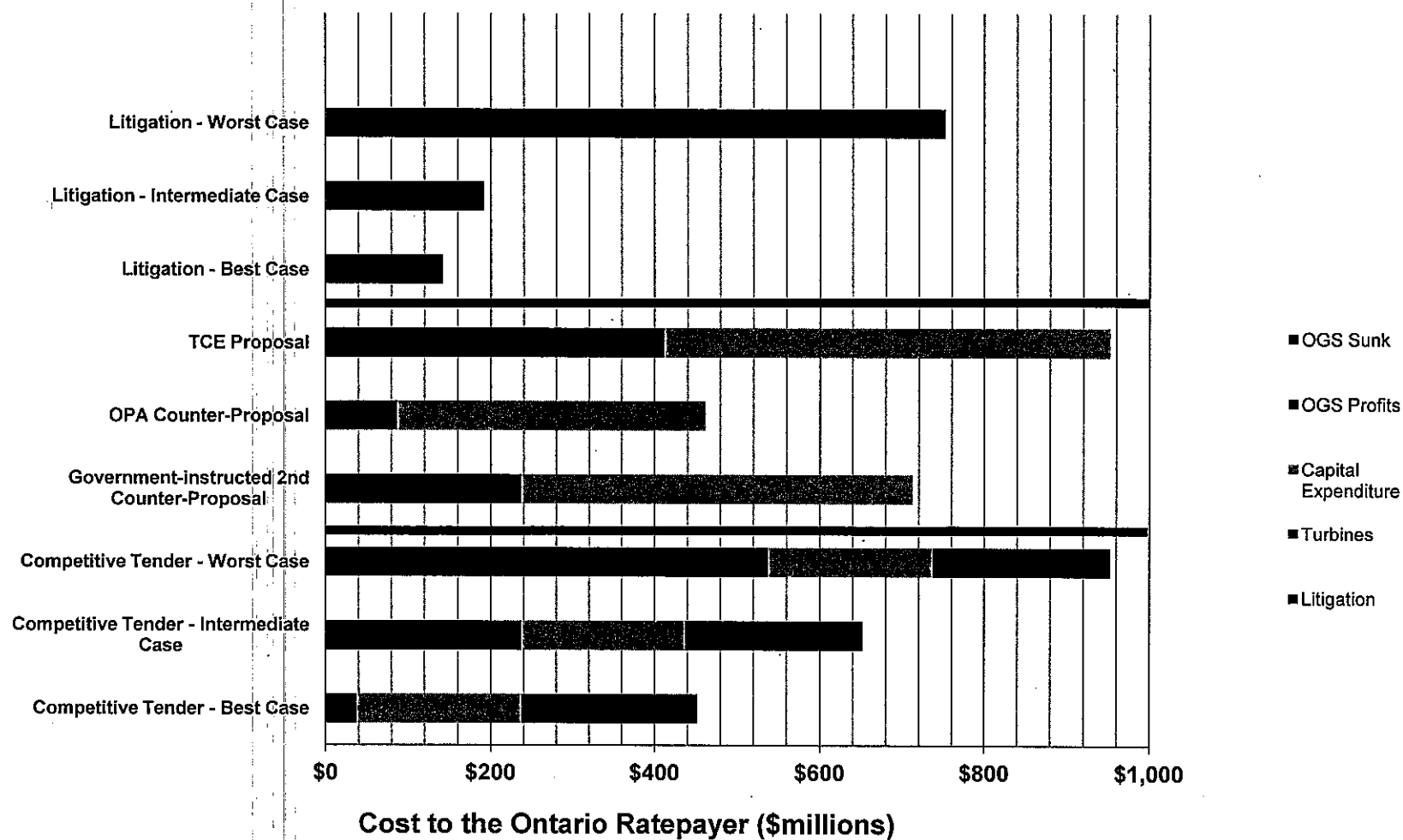
- OPA is considering taking assignment of the gas turbines from TCE. This is possible based on our review of its agreement with Mitsubishi.
- OPA could then launch a competitive procurement for the Replacement Project.
- We believe that this is the only way to drive down the cost to construct the balance of plant.

# Potential Outcomes

---

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

# Financial Value of Potential Outcomes



---

# APPENDIX

# OPA Negotiating Team

---

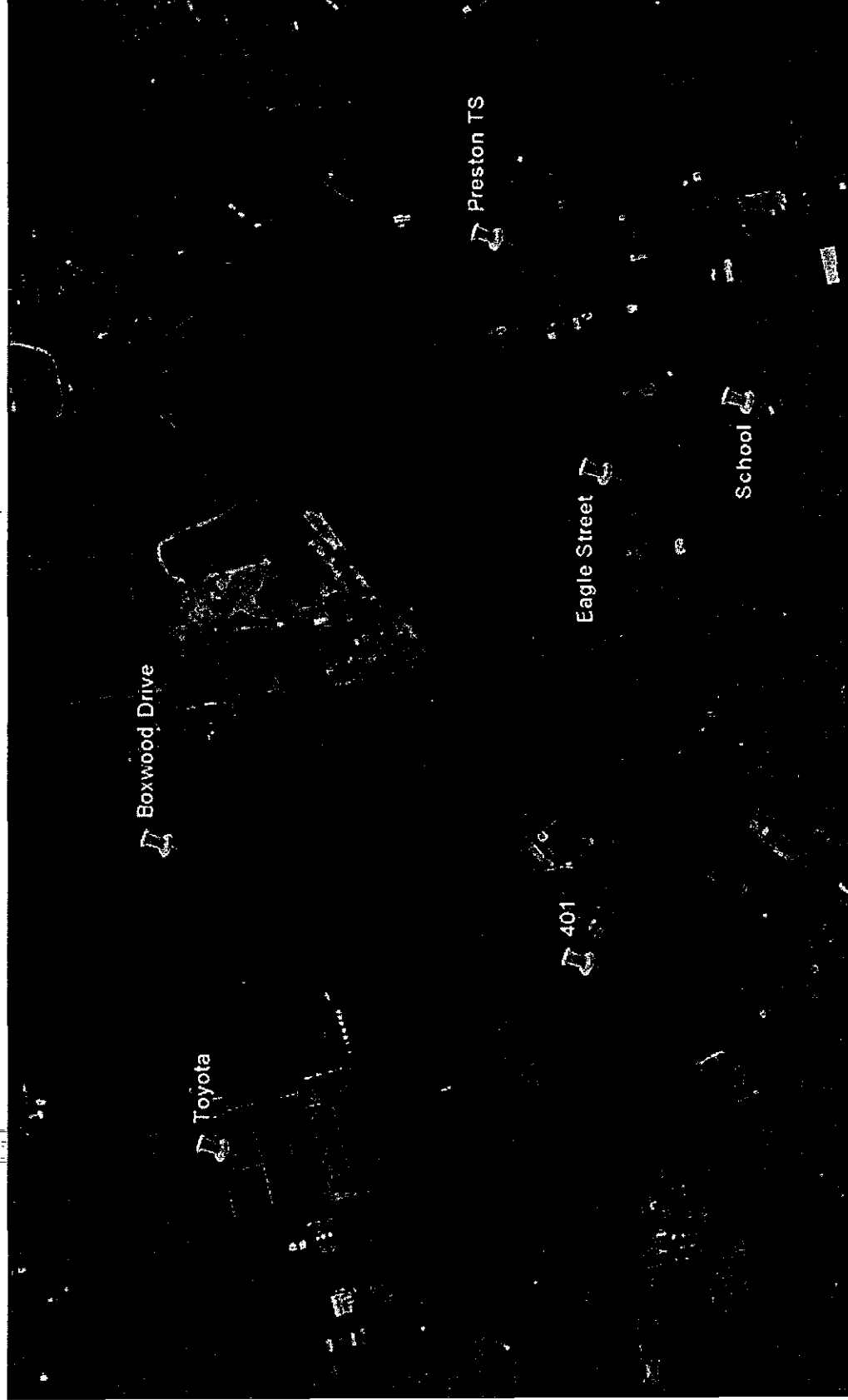
- JoAnne Butler, VP Electricity Resources
- Michael Killeavy, Director Contract Management
- Deborah Langelaan, Manager Contract Management
- Rocco Sebastiano, Partner, Osler, Hoskin & Harcourt LLP
- Elliot Smith, Associate, Osler, Hoskin & Harcourt LLP
- Safouh Soufi, SMS Energy Engineering

# **TransCanada Energy (TCE) Negotiating Team**

---

- Terry Bennett, VP Power Development
- Geoff Murray, VP US Power Development
- John Mikkelsen, Director Eastern Canada, Power Development
- John Cashin, Associate General Counsel, Power Law
- Chris Breen, Public Sector Relations

# Boxwood Site



## Mitsubishi (MPS) Gas Turbines (GT's)

---

- GT's originally purchased for OGS were designed for a Combined Cycle generation plant with a start time of 43 minutes
- The 43 minute start time is too slow for a peaking generation plant. To qualify for the Operating Reserve (OR) revenue market the IESO requires a start time of 30 minutes or less
- Repurposing the MPS GT's minimizes costs to the ratepayer
- GT's will need to need to be converted to a faster start time

## **Mitsubishi (MPS) Gas Turbines (GT's)**

---

- The terms of the Equipment Supply Agreement permit it, subject to MPS's consent, to be assigned by TCE to a third party

## Aleksandar Kojic

---

**From:** Ronak Mozayyan  
**Sent:** July 28, 2011 4:31 PM  
**To:** Deborah Langelaan; Michael Killeavy  
**Subject:** OGS MODEL  
**Attachments:** TCE MODEL REVAMPED v3.xlsm

\*\*\*PRIVELEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION\*\*\*

For your interest/review, I think I have finished the draft revamped model. Let me know if you have any comments or changes you would like me to make. Then I'll make the necessary changes and go over all the sheets to check for correct terminology, spelling, etc.

Michael, I get the same results as your model – so the data should be correct (unless I'm missing something).

Thanks,

**Ronak Mozayyan**  
**Business Analyst Contract Management, Electricity Resources**  
Ontario Power Authority  
120 Adelaide St. W. Suite 1600  
Toronto, ON M5H 1T1  
T: 416.969.6057  
F: 416.967.1947

**COVER**

v1.0 July 28, 2011

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**MENU**

v1.0 July 28, 2011

**Product:** OPA - TCE Settlement Negotiation  
**Author:** Ronak Mozayyan  
**Company:** Ontario Power Authority  
**Telephone:** 416 969 7474  
**Fax:**  
**Email:** ronak.mozayyan@powerauthority.on.ca  
**Internet:** www.powerauthority.on.ca  
**Objective:** Power Modelling  
**File Name:** TCE MODEL REVAMPED v3.xlsm  
**Version:** v1.0 July 28, 2011

**MENU**

COVER	▲
MENU	
Control	
WACC & Sunk Costs	
Baseline NRR	
Adjusted CAPEX	
Adjusted NRR	
Version Control	
Workings	
Schedule	
Styles	
Output	▼

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

## Control

v1.0 10-May-2011

CO-07	Client Name	TransCanada Energy Ltd
CO-08	Start Date	1-Aug-09
CO-09	Interval	12
CO-10	Currency	CAN
CO-11	Units	None
CO-12	Base Year	2011
CO-13	Terminal Year	2041
CO-14	Capacity new & clean (MW)	450 MW
CO-15	Degradation	
CO-16	Hours Available	
CO-17	Production Hours in Year	
CO-18	Maintenance Hours	
CO-19	Power Price (per MWh)	
CO-20	Heat Rate (Btu/KWh)	
CO-21	Gas Price (pence per therm)	
CO-22	Average Credit Terms Given (months)	
CO-23	Average Credit Terms Received (months)	
CO-24	Operating Costs	\$ 5,500,000.0
CO-25	Gas Demand & Management	\$ 10,000,000.0
CO-26	Proportion Operating & Maintenance on Wages	
CO-27	Capital Expenditures (CAPEX)	\$ 475,000,000
CO-28	Asset Life - Straight Line (years)	25
CO-29	Salvage Value / Loan Future Value	
CO-30	Depreciation Rate Tax - Declining Balance	25%
CO-31	Debt to Total Asset Ratio	
CO-32	Interest Rate - Debt	5.68%
CO-33	Debt Term (years)	
CO-34	Loan Method (1=Manual, 2=Function)	
CO-35	Loan Amortisation	
CO-36	Risk Free Rate	
CO-37	Risk Premium	
CO-38	Beta	0.391
CO-39	Owner Project Share	
CO-40	Tax Rate	25%
CO-41	EBITDA Exit Multiple (x)	
CO-42	Growth in Perpetuity	
CO-43	EBITDA/Perpetuity Switch	
CO-44		
CO-45	Inflation Factor	2%
CO-46	NRR Index Factor	20%
CO-47	GD&M Index Factor	20%
CO-48	TCE CAPEX 2009	\$ 17,680,000
CO-49	TCE CAPEX 2010	\$ 25,700,000
CO-50	TCE CAPEX 2011	\$ 90,230,000
CO-51	TCE CAPEX 2012	\$ 108,560,000
CO-52	TCE CAPEX 2013	\$ 225,130,000
CO-53	TCE CAPEX 2014	\$ 72,000,000
CO-54	Capital Cost Allowance (Depreciation)	Allocation to CCA Classes
CO-55	CapEx Allocation to Class 1	33%
CO-56	CapEx Allocation to Class 17	38%
CO-57	CapEx Allocation to Class 48	29%
CO-58		CCA Classes
CO-59	CapEx to Class 1	4%
CO-60	CapEx to Class 17	8%
CO-61	CapEx to Class 48	15%
CO-62		
CO-63	TCE Cost of Equity	7.50%
CO-64	TCE Cost of Debt	5.68%
CO-65	Proportion of Equity in Capital Structure	31%
CO-66	Proportion of Debt in Capital Structure	69%
CO-67		
CO-68	OGS Sunk Costs	\$ 37,000,000
CO-69	Contract Term (years)	25
CO-70	OPA Cost Overrun	50%
CO-71	OPA Cost Underrun	50%
CO-72	Expected Final CAPEX	\$ 550,000,000

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

**WACC & Sunk Costs**

v1.0 July 28, 2011

Label No.	Label	Ref	
WA-07	TCE Cost of Equity	CO-63	7.50%
WA-08	TCE Cost of Debt	CO-64	5.68%
WA-09	Proportion of Equity in Capital Structure	CO-65	31.0%
WA-10	Proportion of Debt in Capital Structure	CO-66	69.0%
WA-11	Depreciation Rate Tax - Declining Balance	CO-30	25.0%
WA-12	OGS Sunk Costs	CO-68	\$ 37,000,000
WA-13	Contract Term (years)	CO-69	25
WA-14	Interest Rate - Debt	CO-32	5.68%
WA-15	Capacity new & clean (MW)	CO-14	450 MW
WA-16			
WA-17			
WA-18	% Cost of Equity		2.3%
WA-19	% Cost of Debt		3.9%
WA-20	<b>WACC</b>		<b>5.26%</b>
WA-21			
WA-22			
WA-23	After-Tax Cost of Borrowing		4.3%
WA-24	Amortization of OGS Sunk Costs		\$2,433,974
WA-25	<b>Sunk Cost Adder to NRR</b>		<b>\$451</b>
WA-26			
WA-27			
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Calendar	Class	Ref	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Calendar 1	Class 1	CO-01	15%																													
Calendar 2	Class 2	CO-02	20%																													
Calendar 3	Class 3	CO-03	25%																													
Calendar 4	Class 4	CO-04	30%																													
Calendar 5	Class 5	CO-05	35%																													
Calendar 6	Class 6	CO-06	40%																													
Calendar 7	Class 7	CO-07	45%																													
Calendar 8	Class 8	CO-08	50%																													
Calendar 9	Class 9	CO-09	55%																													
Calendar 10	Class 10	CO-10	60%																													
Calendar 11	Class 11	CO-11	65%																													
Calendar 12	Class 12	CO-12	70%																													
Calendar 13	Class 13	CO-13	75%																													
Calendar 14	Class 14	CO-14	80%																													
Calendar 15	Class 15	CO-15	85%																													
Calendar 16	Class 16	CO-16	90%																													
Calendar 17	Class 17	CO-17	95%																													
Calendar 18	Class 18	CO-18	100%																													
Calendar 19	Class 19	CO-19	105%																													
Calendar 20	Class 20	CO-20	110%																													
Calendar 21	Class 21	CO-21	115%																													
Calendar 22	Class 22	CO-22	120%																													
Calendar 23	Class 23	CO-23	125%																													
Calendar 24	Class 24	CO-24	130%																													
Calendar 25	Class 25	CO-25	135%																													
Calendar 26	Class 26	CO-26	140%																													
Calendar 27	Class 27	CO-27	145%																													
Calendar 28	Class 28	CO-28	150%																													
Calendar 29	Class 29	CO-29	155%																													
Calendar 30	Class 30	CO-30	160%																													
Calendar 31	Class 31	CO-31	165%																													
Calendar 32	Class 32	CO-32	170%																													
Calendar 33	Class 33	CO-33	175%																													
Calendar 34	Class 34	CO-34	180%																													
Calendar 35	Class 35	CO-35	185%																													
Calendar 36	Class 36	CO-36	190%																													

Cells in column D containing two or more equations indicate that the equations within that row is not consistent throughout. For example, equations in year 6 (column I) and year 7 on (column M) are different. No formulas were entered for year 1 - year 5

[illegible]

Based on the Target IRR entered, the Goal Seek button will adjust the above date and thus the Total IRR (with OGS Sum) to provide an IRR that will be relatively close to the Target IRR.

Cost) to provide an XAPV that will be relatively close to the Target Cost of Profits

**The concept of Goal Seek is that the result to be achieved is known, but the inputs are not.**

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**Adjusted CAPEX**

v1.0 July 28, 2011

Label No.	Label	Ref	
WA-07	OPA Cost Overrun	CO-70	50%
WA-08	OPA Cost Underrun	CO-71	50%
WA-09	Capital Expenditures (CAPEX)	CO-27	\$ 475,000,000
WA-10	Expected Final CAPEX	CO-72	\$ 550,000,000
WA-11			
WA-12	TCE Cost Overrun	=1-F7	50%
WA-13	TCE Cost Underrun	=1-F8	50%
WA-14			
WA-15	Cost of Overrun (Underrun)	=F10-F9	\$ 75,000,000
WA-16	OPA Share	=F15*F7	\$ 37,500,000
WA-17	TCE Share	=F15*F12	\$ 37,500,000
WA-18	<b>Adjusted CAPEX</b>	<b>=F16+F9</b>	<b>\$ 512,500,000</b>
WA-19			
WA-20			
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Class No	Class	Ref	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
BH-07	Adjusted NRR																															
BH-08	Adjusted NRR																															
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BH-90	Adjusted NRR																															

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## Summary

v1.0 July 28, 2011

Label No.	Label	Ref	
OP-07			
OP-08			
OP-09	Capacity new & clean (MW)	CO-14	450
OP-10	Operating Costs	CO-24	\$5,500,000
OP-11	Gas Demand & Management	CO-25	\$10,000,000
OP-12	Capital Expenditures (CAPEX)	CO-27	\$475,000,000
OP-13	OGS Sunk Costs	CO-68	\$37,000,000
OP-14	Expected Final CAPEX	CO-72	\$550,000,000
OP-15	WACC	WA-20	5.26%
OP-16	Sunk Cost Adder to NRR	WA-25	\$451
OP-17			
OP-18	<b>Baseline</b>		
OP-19	Total NRR (with OGS Sunk Cost)	BN-75	\$18,162
OP-20	XNPV for K-W Peaking Plant	BN-77	\$300,000,000
OP-21	XIRR for K-W Peaking Plant	BN-79	11%
OP-22			
OP-23	<b>Adjusted</b>		
OP-24	Adjusted CAPEX	WA-18	\$512,500,000
OP-25	Adjusted Total NRR (with OGS Sunk Cost)	BN-75	\$18,773
OP-26	Adjusted XNPV for K-W Peaking Plant	BN-77	\$300,000,000
OP-27	Adjusted XIRR for K-W Peaking Plant	BN-79	10%
OP-28			
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OP-56			

Goal Seek: What If Analysis

Goal Seek: What If Analysis

ENTER A TARGET IRR

10%

ENTER A TARGET COST OF PROFITS (Target OGS NPV (800-500 profit))

300,000,000

Enter OGS	10.0%
OGS Bank Cost Addr	10.0%
Adjusted Total NPV (with OGS Bank Cost)	18,775
Adjusted NPV (OGS Paying Plant)	300,000,000
Adjusted NPV for A-W Paying Plant	10,000

## v1.0 July 28, 2011

Record here all changes to the original file - version control

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**Workings**

v1.0 July 28, 2011

Line No	Label	Ref	0
			01-Aug-09

Constants			
Ten		10	
Hundred		100	
Thousand		1,000	
Million		1,000,000	
Billion		1,000,000,000	

## Aleksandar Kojic

---

**From:** Michael Lyle  
**Sent:** July 31, 2011 8:00 PM  
**To:** 'jim\_hinds@irish-line.com'; Colin Andersen; JoAnne Butler; Michael Killeavy  
**Cc:** Susan Kennedy  
**Subject:** TCE  
**Attachments:** Draft Arbitration Agreement\_FINAL9\_IO(OPA comments).docx

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

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6035  
Fax: 416.969.6383  
Email: [michael.lyle@powerauthority.on.ca](mailto:michael.lyle@powerauthority.on.ca)

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 1 APPLICATION OF THE ACT

### Section 1.1

#### Recitals

The recitals herein are true and correct.

**Section 1.2**                      **Act**

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

**ARTICLE 2**

**Section 2.1**                      **Consideration**

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

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

**ARTICLE 3**

**ARBITRATOR**

**Section 3.1**

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

**ARTICLE 4**

**JURISDICTION OF ARBITRATOR**

**Section 4.1**                      **Final Decision and Award**

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

**Section 4.2**                      **The Disputes**

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

### Section 4.3

### Waiver of Defences

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

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

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

Comment [A3]: Same comment as earlier re over-ride of 14.1 in its entirety.

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

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

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

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

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

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

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

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

#### **Section 4.4 Arbitrator Jurisdiction**

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

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

#### **Section 4.5 Costs**

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

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

#### **Section 4.6 Timetable**

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

### **ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS**

#### **Section 5.1 Statement of Claim**

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

#### **Section 5.2 Defence**

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

#### **Section 5.3 Reply**

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

### **ARTICLE 6 CONDUCT OF THE ARBITRATION**

#### **Section 6.1 Documentary Discovery**

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

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

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

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

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

#### **Section 6.2 Evidence by Witness Affidavits**

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

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

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

#### **Section 6.3 Cross Examinations on Affidavits**

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

**Comment [A6]:** Significant case with large quantum of damages and TCE with the most information re calculation of damages. This limitation is not appropriate.

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

#### **Section 6.4 Expert Reports**

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

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

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

#### **Section 6.5 Arbitration Hearing**

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

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

#### **Section 6.6 Witness Statements**

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

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

#### **Section 6.7 Examinations and Oral Submissions**

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

#### **Section 6.8 Applicable Law**

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

#### **Section 6.9**

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

#### **Section 6.10**

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

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

## **ARTICLE 7 AWARD**

### **Section 7.1                      Decision(s) Timeline**

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

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

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

### **Section 7.2**

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

### Section 7.3

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

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

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

**Comment [A7]:** Unclear how this works. Which Respondent? What if award is only ordered against one respondent?

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

#### **Section 7.4 Release**

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

### **ARTICLE 8 CONFIDENTIALITY**

#### **Section 8.1**

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

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

## **ARTICLE 9 MISCELLANEOUS**

### **Section 9.1                      Amendment**

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

### **Section 9.2                      Governing Law**

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

### **Section 9.3                      Binding the Crown**

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

### **Section 9.4                      Extended Meanings**

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

### **Section 9.5                      Statutory References**

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

**Section 9.6 Counterparts**

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

**Section 9.7 Electronic Execution**

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

**Section 9.8 Counsel**

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

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

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

**Michael E. Barrack**  
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**Counsel for the Respondent,  
The Ontario Power Authority**

**Oslers, Hoskin & Harcourt LLP**  
Box 50, 1 First Canadian Place  
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**Paul A. Ivanoff**  
Tel: (416) 862-4223

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

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

**Section 9.9 Notices**

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

DATED this                      day of \_\_\_\_\_, 2011.

**TRANSCANADA ENERGY LTD.**

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

Title

**TRANSCANADA ENERGY LTD.**

By \_\_\_\_\_

Title

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

By: **Signatory to be determined in  
consultation with MAG**

Title

**ONTARIO POWER AUTHORITY**

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

Title

**SCHEDULE "A"**

**CONFIDENTIALITY AGREEMENT**

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

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

**BETWEEN:**

**TRANSCANADA ENERGY LTD.**

**Claimant**

**-and-**

**HER MAJESTY THE QUEEN IN**

**RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY**

**Respondents**

**-and-**

**•**

**("•")**

**CONFIDENTIALITY AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment [A9]: Why are legal advisors included?

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

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

Per: \_\_\_\_\_  
Name:  
Title:

**ONTARIO POWER AUTHORITY**

Per: \_\_\_\_\_  
Name:  
Title:

**TRANSCANADA ENERGY LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

•

Per: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE "B"**

### **FULL AND FINAL RELEASE**

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

TRANSCANADA ENERGY LTD.

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

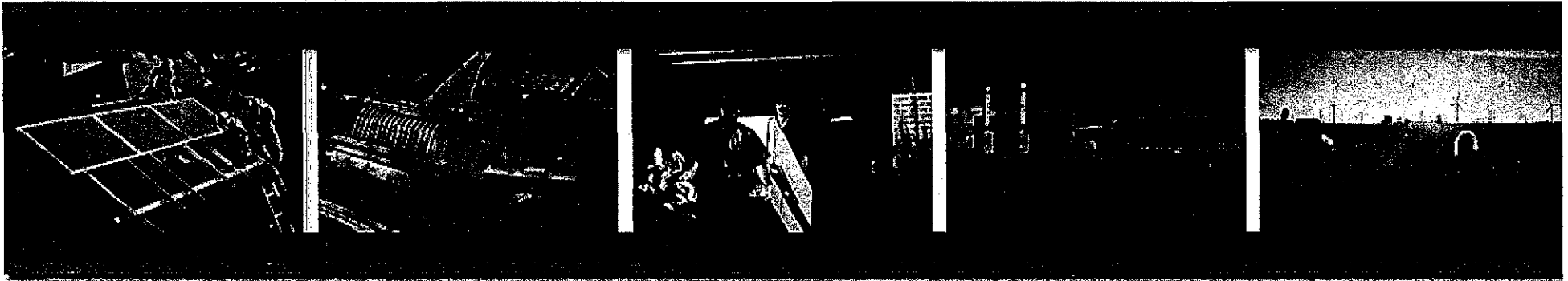
## Aleksandar Kojic

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

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

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

---

August 2, 2010

## Background:

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- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
  - » Scope of arbitration limited only to appropriate quantum of damages
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- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

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- Issue was elevated in Government and Infrastructure Ontario (“IO”) was asked to take a lead role in negotiations
- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

## **Proposed Deal – Key Elements**

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

# Arbitration Agreement – Key Elements

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

# Arbitration Agreement – OPA Key Concerns

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- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?
- Who should pay arbitration award? – ratepayers or taxpayers?
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- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
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# Comparison of Settlement Proposals

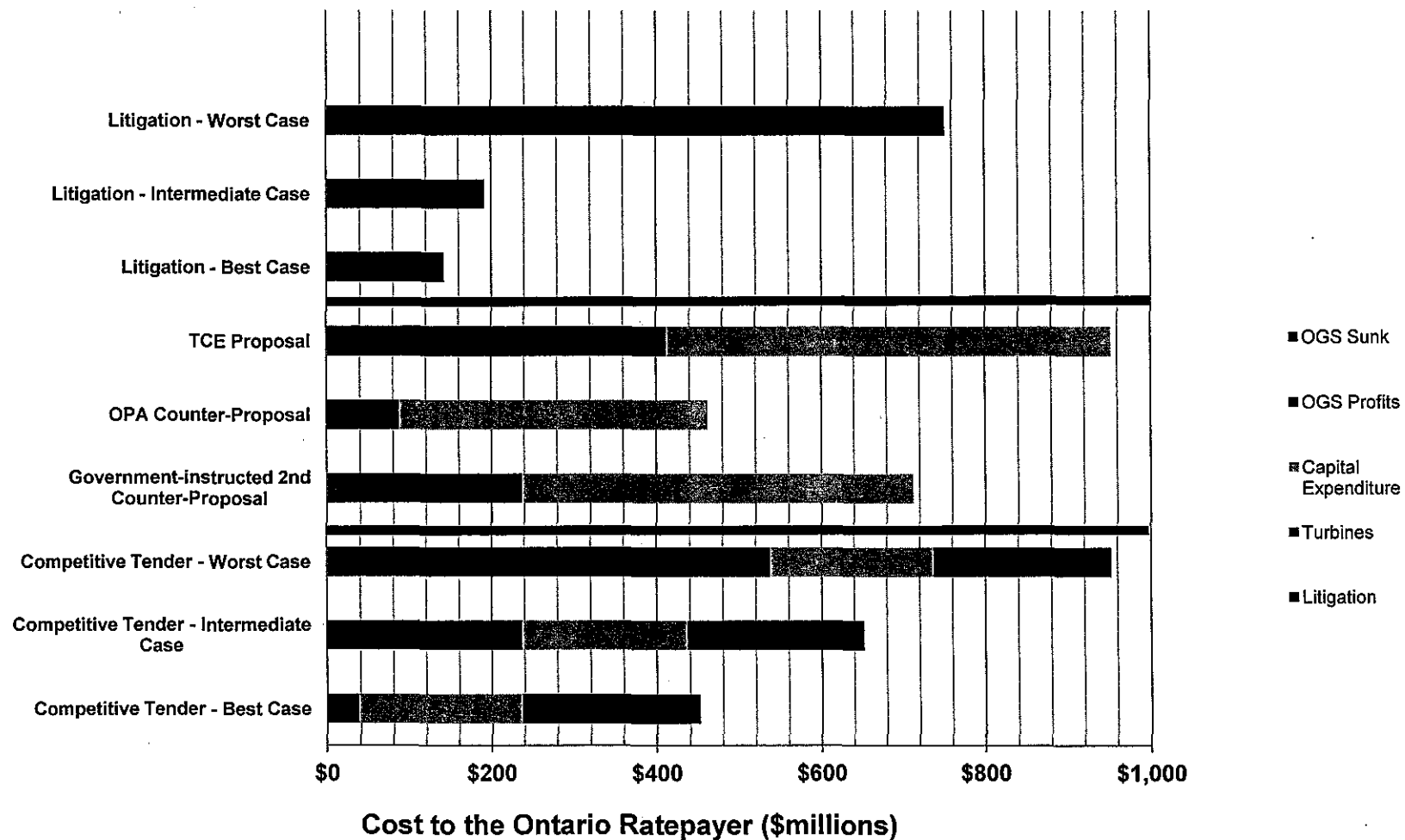
	TCE Proposal (March 10, 2011)	OPA counter-proposal (March 28, 2011)	Government Instructed Counter-proposal (April 14, 2011)	TCE Response to Government Instructed Counter-proposal (April 29, 2011)	Comments
<b>NRR Net Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
<b>Contract Term</b>	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
<b>Contract Capacity (Annual Average)</b>	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
<b>Sunk Cost Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
<b>Gas/Electrical Interconnections</b>	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
<b>Other</b>	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

# Potential Outcomes

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

# Financial Value of Potential Outcomes



# Management Assessment

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- Not enough information has been provided and we cannot provide any assessment on whether it's in the best interest of the OPA to enter into this arbitration agreement.

# Appendix

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## Planning Aspects

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## Planning Aspects

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## Lennox GS – Current Status

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# Southwest Greater Toronto Area (SW GTA) Supply

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

# Southwest Greater Toronto Area (SW GTA) Supply

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

# OPA Procurement Process – Ministry Directive

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

# OPA Procurement Process – RFQ & RFP

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## 1. Request for Qualifications

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

## 2. Request for Proposals

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

# Procurement Process - Contract

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

# Opposition to Gas-Fired Generation

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

# Opposition to Gas-Fired Generation

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

# Government Cancellation

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

# Termination Negotiations

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

# TCE Initial Concerns

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

# Confidentiality Agreement

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

# MOU

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

# Replacement Project

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

# Replacement Project Negotiations

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

# OPA Analysis

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

# Fundamental Disagreement – Value of OGS

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

# Residual Value of the OGS

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

# **TCE Current Position on OGS Financial Value**

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

# Ministry of Energy Directive

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

# Settlement Proposals

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

## Aleksandar Kojic

---

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

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

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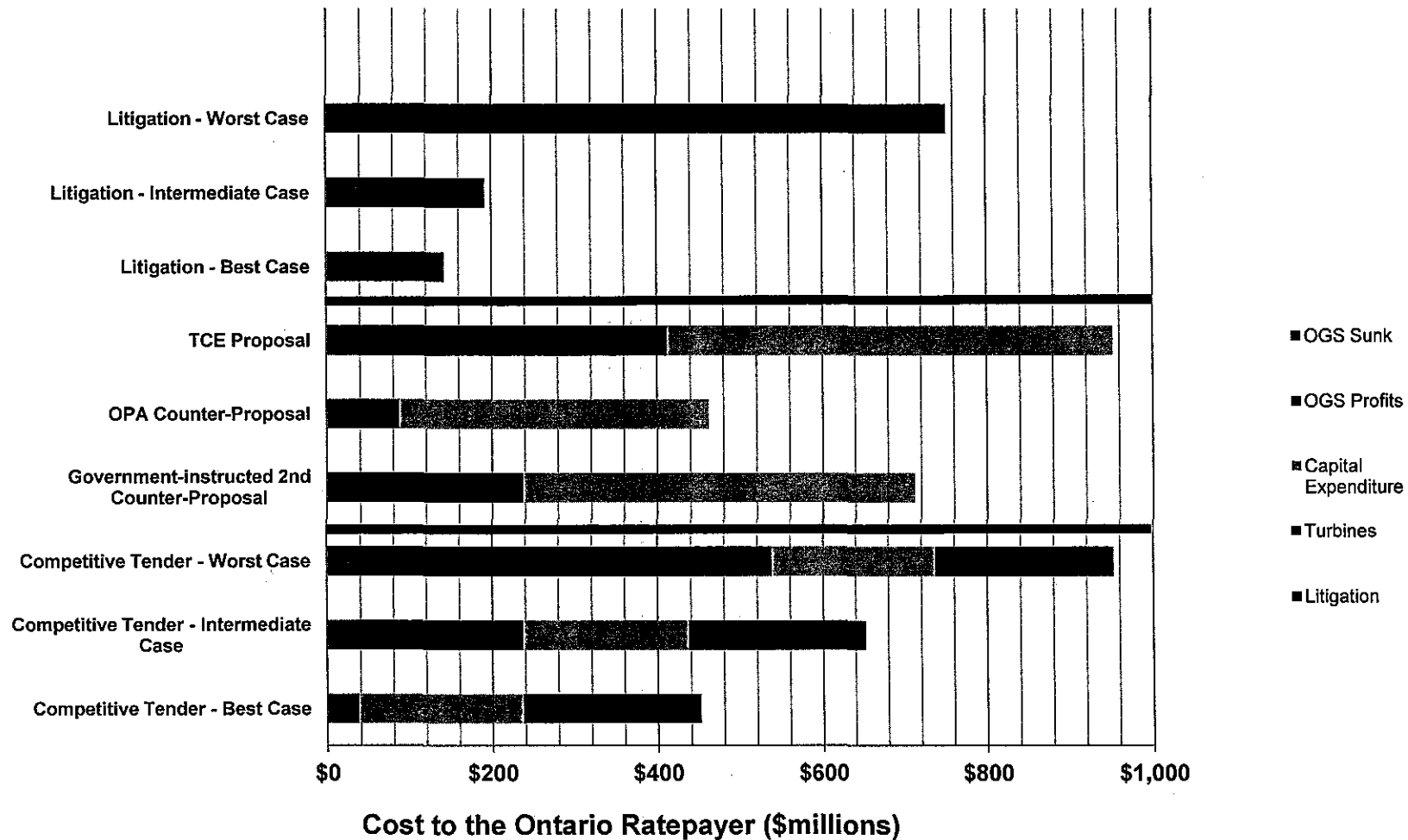
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# Appendix

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# Planning Aspects

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# Lennox GS - Current Status



# Southwest Greater Toronto Area (SW GTA) Supply

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## Aleksandar Kojic

---

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

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

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

---

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

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

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6035  
Fax: 416.969.6383  
Email: [michael.lyle@powerauthority.on.ca](mailto:michael.lyle@powerauthority.on.ca)

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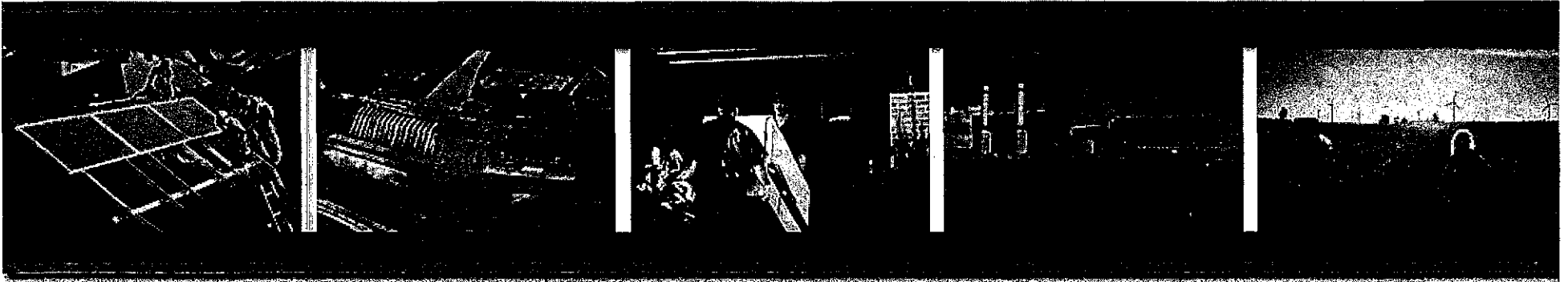
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**From:** Michael Killeavy  
**Sent:** August 2, 2011 11:38 AM  
**To:** Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick  
**Subject:** BOD 2 Aug 2011 Presentation - REVISED ....  
**Importance:** High

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

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

---

August 2, 2010

## Background:

---

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

## Background:

---

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

# Proposed Deal – Key Elements

---

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

# Arbitration Agreement – Key Elements

---

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

# Arbitration Agreement – OPA Key Concerns

---

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

# Arbitration Agreement – OPA Key Concerns

---

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

# Comparison of Settlement Proposals

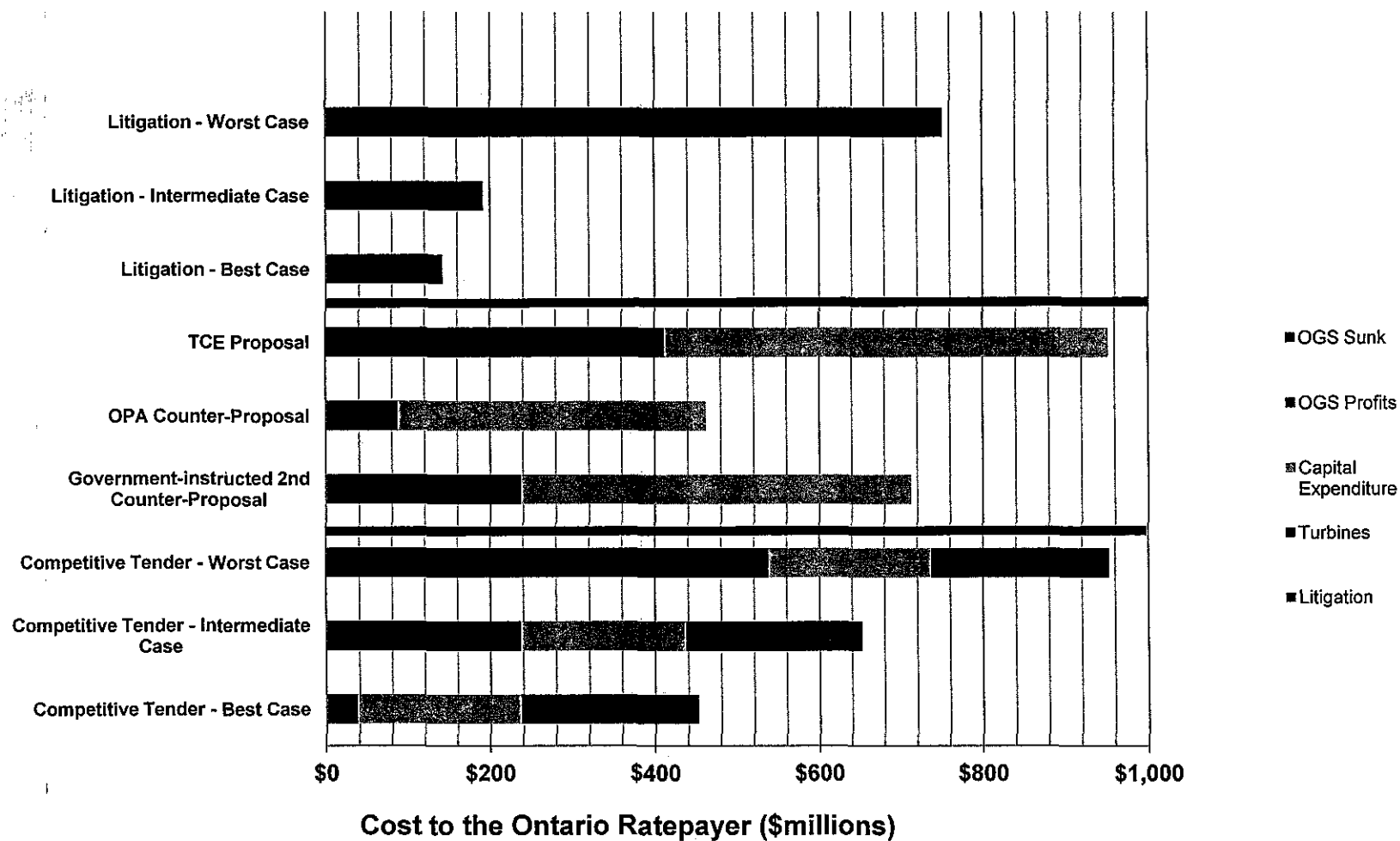
	IGEP Proposal March 10, 2011	OPG Counter Proposal March 23, 2011	TCE Counter Proposal April 21, 2011	LTEP Response to Second Counter Proposal April 29, 2011	Comments
<b>NRR Not Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
<b>Contract Term</b>	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
<b>Contract Capacity (Annual Average)</b>	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
<b>Sunk Cost Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
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## Aleksandar Kojic

---

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

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

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

---

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

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

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
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**From:** Michael Killeavy  
**Sent:** August 2, 2011 11:38 AM  
**To:** Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick  
**Subject:** BOD 2 Aug 2011 Presentation - REVISED ....  
**Importance:** High

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

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

---

August 2, 2010

## Background:

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- OPA is a party to proposed arbitration agreement

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# Comparison of Settlement Proposals

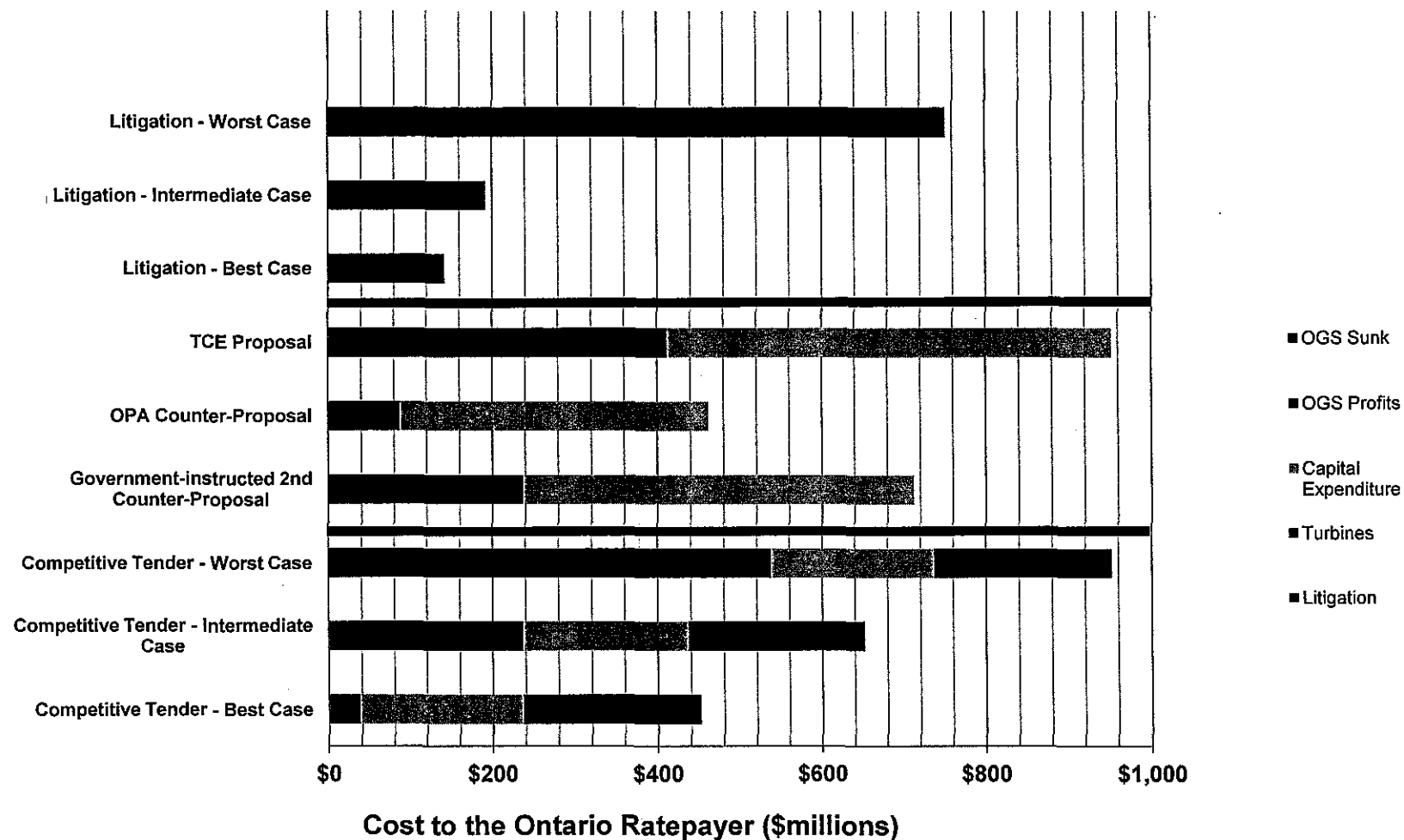
	TCE Proposal March 10, 2014	OPA Counter-Proposal March 28, 2014	Second Counter-Proposal April 24, 2014	TCE Response to Second Counter-Proposal April 29, 2014	Comments
<b>NRR Not Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
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<b>Sunk Costs Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
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<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
<b>Other</b>	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

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- The following graphic sets out several cases for litigation/arbitration and settlement
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- The cost of the OPA's Second Counter-Proposal is close to the worst case if we were to go to litigation

# Financial Value of Potential Outcomes



# Management Assessment

---

- Not enough information has been provided and we cannot provide any assessment on whether it is in the best interests of the OPA to enter into this arbitration agreement

# Appendix

---

# System Planning Considerations

---

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

# System Planning considerations-continued

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- It is higher value to the system to add capacity in Cambridge. The alternative is 20 Km of 230 KV transmission from either Guelph or Kitchener
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  - Contract was effective on the expiry of the most recent IESO RMR contract (October 1, 2009) and expired on December 31, 2010
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- OPG would like a longer term contract (3 to 10 years) with OPA that provides for capital projects including a CHP facility
- Based on the relatively low cost of extremely flexible capacity associated with Lennox, the OPA has been working with OPG to re-negotiate a new longer term agreement for Lennox and would be willing to provide compensation for capital projects but is doubtful about the CHP facility
- The re-negotiated contract is envisaged to be complete by November of 2011

# Southwest Greater Toronto Area (SW GTA) Supply

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

# Southwest Greater Toronto Area (SW GTA) Supply

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

# OPA Procurement Process – Ministry Directive

---

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

# OPA Procurement Process – RFQ & RFP

---

1. Request for Qualifications
  - Released October 2008
  - 9 Qualification Submissions were received
  - Short-list of 4 Qualified Applicants representing 7 proposed projects resulted
2. Request for Proposals
  - Released February 2009
  - 4 Proposals from 4 Proponents were received
  - Proposals evaluated on Completeness; Mandatory Requirements; Rated Criteria and Economic Bid
  - Project with lowest Adjusted Evaluated Cost selected

# Procurement Process - Contract

---

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

# Opposition to Gas-Fired Generation

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

# TCE Initial Concerns

---

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

# Confidentiality Agreement

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

# MOU

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

# Replacement Project

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

# Replacement Project Negotiations

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

# OPA Analysis

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

# Fundamental Disagreement – Value of OGS

---

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

## Residual Value of the OGS

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

# **TCE Current Position on OGS Financial Value**

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

# Ministry of Energy Directive

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

# Settlement Proposals

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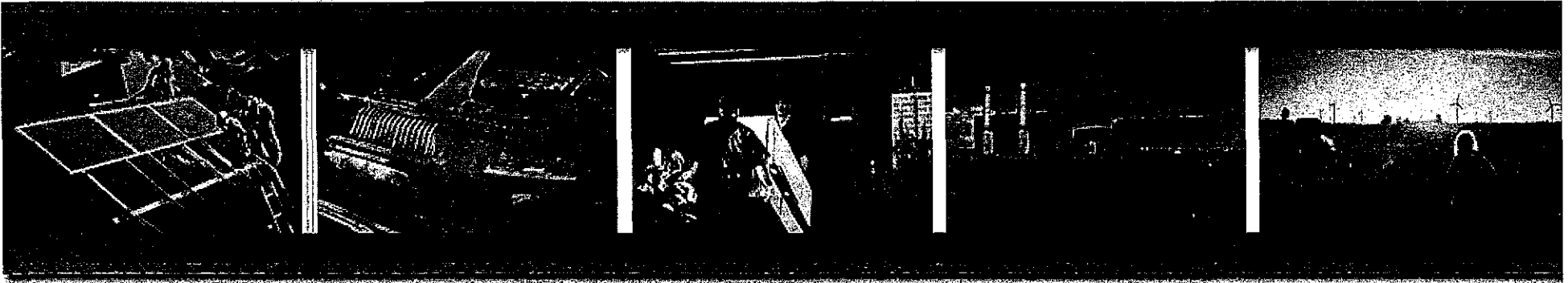
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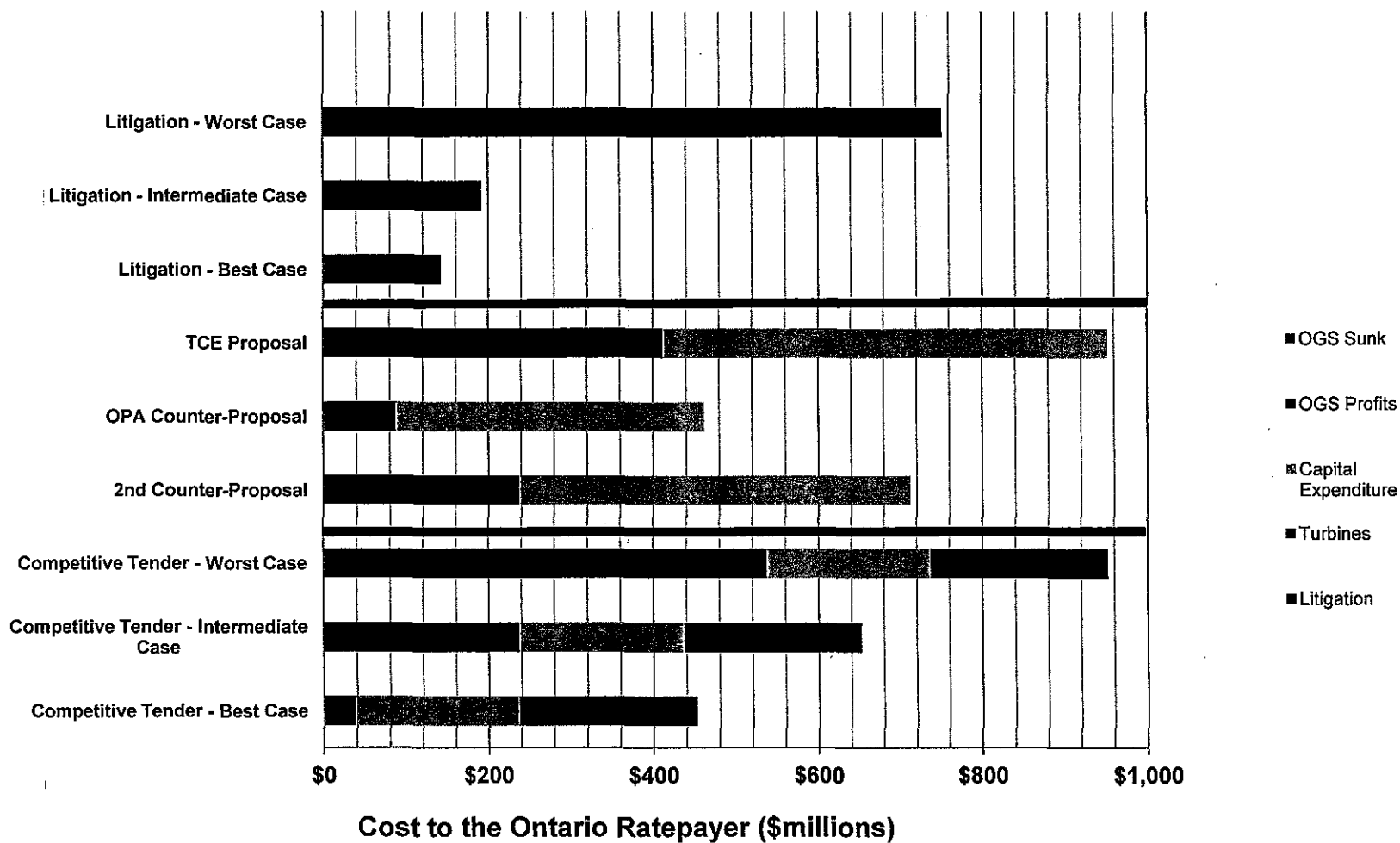
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# Financial Value of Potential Outcomes



## **Appendix – System Planning and Status of Lennox GS**

# **OPG/TCE Potential Deal - System Planning Considerations**

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

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# OPA Procurement Process – RFQ & RFP

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## 1. Request for Qualifications

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

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  - 20 year term
  - Contract-for-Differences based on Deemed Dispatch logic:
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# Opposition to Gas-Fired Generation

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- Procurement process fraught with local opposition
- Town of Oakville passed several by-laws:
  - Interim control of power generation facilities on certain lands in the Town of Oakville (2009-065)
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- Mississauga Mayor Hazel McCallion publically opposed project
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- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.
- These discussions began in October 2010 and continued until April 2011.
- All these discussions were on a confidential and without prejudice basis.

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- TCE identified 3 immediate concerns:
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  2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order (\$210 MM)
  3. Financial value of OGS

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  - Potential Project site identified for Cambridge
  - Potential Project will utilize the gas turbines sourced for OGS
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  - Potential Project to be gas-fired peaking generation plant
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- It was determined that the replacement project would be a gas-fired peaking generation (i.e. simple cycle) plant with a contract capacity of 400 - 450 MW
- TCE owns a site in Cambridge (Eagle St.) but close to schools and residential areas
- TCE identified the Boxwood Industrial Park in Cambridge as its preferred site
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- TCE estimated that the CAPEX was on the order of \$540 million. Our estimate is \$375 million.

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- The model shows a NPV of after-tax cash flows of \$503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

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- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
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# **TCE Current Position on OGS Financial Value**

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

## Aleksandar Kojic

---

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

Michael Costello, Does this work?

---

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

John,

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

Michael

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

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

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

---

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

---

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

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

Sent from my iPad

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

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

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

We attach the following materials:

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

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

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

The call-in details are as follows:

Toll Free: 1-877-320-7617

Board Members', Executive Team Access Code: 6802847#

John Zych

Corporate Secretary

Ontario Power Authority

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120 Adelaide Street West

Toronto, ON M5H 1T1

416-969-6055

416-967-7474 Main telephone

416-967-1947 OPA Fax

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

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This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

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

<2 - Original TS.pdf>

<3 - Preferred TS.pdf>

<4 - Draft Arbitration Agreement\_FINAL12\_IO.docx>



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

---

August 2, 2010

## **Background:**

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

## **Background:**

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

## **Proposed Deal – Key Elements**

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

# Arbitration Agreement – Key Elements

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

# Arbitration Agreement – OPA Key Concerns

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

# Arbitration Agreement – OPA Key Concerns

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

# Comparison of Settlement Proposals

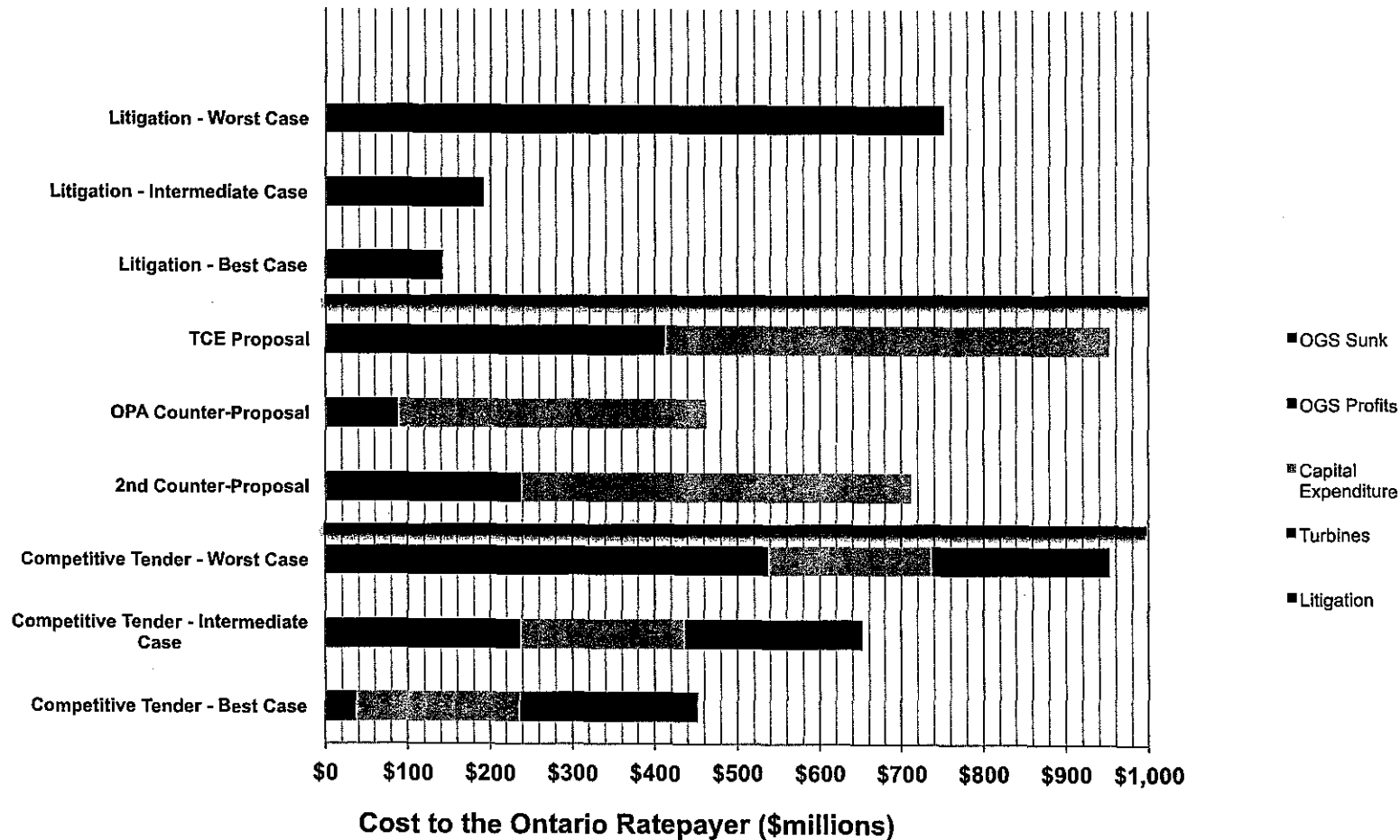
	TCE Proposal March 10, 2011	OPA Counter-Proposal March 29, 2011	Second Counter-Proposal April 4, 2011	TCE Response to Second Counter-Proposal April 29, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity. Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on Independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

## Potential Outcomes

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

# Financial Value of Potential Outcomes



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## **Appendix – System Planning and Status of Lennox GS**

## **OPG/TCE Potential Deal - System Planning Considerations**

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

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

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

# Current Status of Lennox Contract and Negotiations

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

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

## **Southwest Greater Toronto Area (SW GTA) Supply**

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

# Southwest Greater Toronto Area (SW GTA) Supply

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

# OPA Procurement Process – Ministry Directive

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

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## Aleksandar Kojic

---

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

Thank you, Michael.

Tim B

---

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

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

Michael Killeavy, LL.B., MBA, P.Eng.  
Director, Contract Management  
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[Michael.killeavy@powerauthority.on.ca](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Tim Butters  
**Sent:** Tuesday, August 09, 2011 03:02 PM  
**To:** Michael Killeavy  
**Subject:** Updated Critical Issues List (Request for Revisions)

Hi Michael,

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

---

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

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

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


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

**Tim Butters | Media Relations Specialist**

Ontario Power Authority

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 Please consider your environmental responsibility before printing this email

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## Aleksandar Kojic

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**From:** John Zych  
**Sent:** September 6, 2011 1:00 PM  
**To:** Michael Lyle; JoAnne Butler; Kristin Jenkins; Shawn Cronkwright; Michael Killeavy; Susan Kennedy  
**Cc:** Nimi Visram  
**Subject:** RECENT BOARD MINUTES  
**Attachments:** DRAFT - Minutes of Board of Directors Meeting - July 29, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 5, 2011.doc  
  
**Categories:** Orange Category

I attach minutes of the July 29, August 1, August 3, and August 5 Board meetings. These meetings dealt with only two subjects, the Korean Consortium arrangement and TransCanada re Oakville.

There are many ways to minute these developments. I am open to your suggestions.

May I have your comments by 12:00 (noon) on Wednesday?



## MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Monday, August 1, 2011 at 10:00 a.m., Toronto time, by teleconference

### PRESENT

Colin Andersen  
Michael Costello  
James Hinds  
Adèle Hurley  
Rick Fitzgerald  
Ron Jamieson  
Bruce Lourie  
Lyn McLeod  
Patrick Monahan

### MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning  
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs  
JoAnne Butler, Vice President, Electricity Resources  
Andrew Pride, Vice President, Conservation  
Kristin Jenkins, Vice President, Communications  
Elizabeth Squissato, Director, Human Resources  
Shawn Cronkwright, Director, Renewables Procurement, Electricity Resources  
Susan Kennedy, Associate General Counsel and Director, Corporate/Commercial Law Group, Legal, Aboriginal and Regulatory Affairs  
Michael Killeavy, Director, Contract Management, Electricity Resources  
Brett Baker, Senior Advisor, Policy and Strategy  
John Zych, Corporate Secretary

### 1. Constitution of the Meeting

Mr. James Hinds acted as Chair of the meeting and Mr. John Zych acted as Secretary.

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The Chair declared that, although less notice had been provided of this meeting than the by-laws of the OPA required (24 hours' notice had actually been given instead of the 48 hours' notice that was required), if no Board member objected to the lack of sufficient notice, the meeting would be properly called. No Board member objected. Mr. Hinds noted that a quorum of members was present. Thus, the meeting was duly constituted for the transaction of business.

The Chair advised that there were only two agenda items, namely, a report on the

a late-arising matter, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

Mr. Hinds brought the Board members up to date since the last time that the Board members had discussed this matter, which was June xx, 2011. Mr. Hinds indicated that the Government of Ontario had appointed Mr. David Livingston, President of Infrastructure Ontario, to look into making a settlement of TransCanada's claims which might include TransCanada Energy acquiring an interest in a present or future Ontario electricity generation facility in full or partial settlement of its claims.

Mr. Andersen reported on the views of the Deputy Attorney General of Ontario as to litigation risks involved in the case for the Government of Ontario.

Mr. Hinds indicated that the next step in the resolution of this matter was to hold another meeting of the Board within the next few days in order to hear from Mr. Livingston as to, President of Infrastructure Ontario as to the terms of an agreement to arbitrate the settlement of the dispute.

Mr. Lyle was asked to provide and the Board members discussed the range of the quantum of liability that the Ontario Power Authority faced in this matter.

Mr. Hinds advised all Board members and staff members present that the information imparted at the meeting was of a highly sensitive nature and would constitute material non-public information under securities legislation. Therefore none of them should trade in the securities of TransCanada Corporation, the publically traded corporate parent of TransCanada Energy, while a settlement of TransCanada's claims was being pursued and before a resolution thereof had been publicly announced.

### **4. Other Business**

There was no other business.

## 5. Termination

There being no further business to be brought before the meeting, the meeting terminated at 11:00 a.m.

Approved by the Board of Directors on  
the 14th day of September, 2011

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James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting



## MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Wednesday, August 3, 2011 at 4:30 p.m., Toronto time, by teleconference

### PRESENT

Colin Andersen  
Michael Costello  
Rick Fitzgerald  
James Hinds  
Adèle Hurley  
Ron Jamieson  
Bruce Lourie  
Lyn McLeod  
Patrick Monahan

### MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning  
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs  
JoAnne Butler, Vice President, Electricity Resources  
Andrew Pride, Vice President, Conservation  
Kristin Jenkins, Vice President, Communications  
Elizabeth Squigg, Director, Human Resources  
Kevin Dick, Director, Clean Energy Procurement, Electricity Resources  
Michael Killeavy, Director, Contract Management, Electricity Resources  
Brett Baker, Senior Advisor, Policy and Strategy  
John Zych, Corporate Secretary

#### 1. Constitution of the Meeting

Mr. James Hinds acted as Chair of the meeting and Mr. John Zych acted as Secretary.

The Chair declared that, with notice having been given and a quorum of members being present, the meeting was properly called and duly constituted for the transaction of business.

#### 2. TransCanada Energy Inc. Negotiations

The Chair advised that there was only one agenda item, namely, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims

arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

Mr. James Hinds noted that Mr. David Livingston, President of Infrastructure Ontario, would soon join the meeting.

Mr. Livingston outlined his involvement with this matter, which was since July 1, 2011 at the request of the Premier's Office to possibly arrange for the arbitration of the dispute between TransCanada and the Ontario government and to determine whether it was feasible to settle any liability to TransCanada by awarding TransCanada an interest in an Ontario electricity asset owned by Ontario. Mr. Livingston advised that the desired timeframe for doing so, namely, to agree on an arbitration procedure and to agree on the plant property to be awarded in partial settlement was by the end of August.

The original version of a settlement was for TransCanada Energy to acquire an interest in the Portlands Plant but the Ontario Government's holder of that interest, Ontario Power Generation Inc., indicated that to do so was not in the interest of Ontario Power Generation Inc. However, Ontario Power Generation proposed an alternative transaction whereby TransCanada Inc. could acquire an interest in the Lennox Plant by Portlands Energy Centre, the owner of the Portlands Plant and in which TransCanada Energy had an interest and could acquire an interest in the Lennox Plant and the Lennox Plant could then enter into a long-term power purchase agreement with Ontario Electricity Financial Corporation. Such a settlement could be a means whereby TransCanada Energy could satisfy its entitlement arising out of the arbitration of its claims.

Mr. Livingston left the meeting.

Mr. Rocco Sebastiano, of the Osler, Carr, Murray and Hoskin LLP, the OPA's outside counsel in this matter, joined the Board meeting. Mr. Sebastiano discussed his concerns with the arbitration agreement as presently drafted, including the waiver of some of the OPA's defences.

Mr. Hinds indicated that any amount that the Ontario Power Authority was called upon to pay had to be able to be defended as providing benefits to the Ontario Electricity ratepayers.

Mr. Amir Shalaby pointed out that from a planning perspective, the Ontario Electricity System needed flexible generation sources over the next ten years. Thus, a plant in the Kitchener-Waterloo area would be more suitable. A refurbished Lennox plant would be suitable if it was built later as opposed to earlier in the ten-year period.

Ms. JoAnne Butler indicated that TransCanada Energy's claim included a loss on the value of turbines being constructed by its supplier for which it no longer had a use. A settlement could take into account the OPA acquiring the turbines at TransCanada Energy's cost and thus eliminate TransCanada Energy's claim for loss.

The Board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario rate payer and also was of the few that there too many disadvantages for the OPA arising out of the arbitration agreement as currently proposed. Management was asked to advise Mr. Livingston of these views.

Ms. Lyn McLeod left the meeting at 6:05.

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

There being no further business to be brought before the meeting, the meeting terminated at 6:45 p.m.

Approved by the Board of Directors on  
the 14th day of September, 2011

James Hinds  
Chair of the meeting

John Zych  
Secretary of the meeting



## MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Friday, August 5, 2011 at 1:00 p.m., Toronto time, by teleconference

### PRESENT

Colin Andersen  
Michael Costello  
Rick Fitzgerald  
James Hinds  
Adèle Hurley  
Ron Jamieson  
Bruce Lourie  
Patrick Monahan

### MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning  
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs  
JoAnne Butler, Vice President, Electricity Resources  
Andrew Pride, Vice President, Conservation  
Kristin Jenkins, Vice President, Communications  
Michael Killeavy, Director, Contract Management, Electricity Resources  
Brett Baker, Senior Advisor, Policy and Strategy  
John Zych, Corporate Secretary

#### 1. Constitution of the Meeting

Mr. James Hinds acted as Chair of the meeting and Mr. John Zych acted as Secretary.

The Chair declared that with notice having been given and a quorum of members being present, the meeting was properly called and duly constituted for the transaction of business.

The Chair advised that there was only one agenda item, namely, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

## 2. TransCanada Energy Inc. Negotiations

Mr. James Hinds advised that since the August 3 Board Meeting, OPA management had made significant progress on the issue of the proposed arbitration agreement and on allocation as between the Ontario electricity ratepayer and the Ontario taxpayer of the costs of any settlement with TransCanada energy.

Mr. Andersen discussed these developments. TransCanada Energy had no interest in or objection to an apportionment of Ontario government costs between taxpayers and ratepayers and therefore this matter would be addressed, not in the arbitration agreement, but in a side agreement between the Ontario government and the Ontario Power Authority. TransCanada Energy still wanted to acquire an interest in a generation facility in Ontario, but had no interest in the Pennox plant, so the matter of the plant was deferred to a later time.

The proposed allocation to the OPA of any award under the arbitration agreement was restricted to costs incurred by TransCanada Energy in connection with the performance or termination of its contract with the Ontario Power Authority for the Oakville generating station.

On motion duly made, seconded and unanimously carried, it was RESOLVED THAT:

1. the Board of Directors authorize the Ontario Power Authority (the "Corporation") to agree to enter into agreements (the "Agreements") as follows:
  - an agreement for the arbitration of a dispute with TransCanada Energy Inc. arising out of the cancellation of the Oakville Generating Station (the "arbitration"), in accordance with the parameters described in the August 5, 2011 presentation to the Board of Directors; and,
  - an agreement with Her Majesty the Queen in right of Ontario addressing the division of liability for an award arising out of the arbitration between Her Majesty the Queen in right of Ontario and the Corporation, in the form presented to the Board of Directors on August 5, 2011;
2. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to negotiate, finalize, execute and deliver the Agreements, together with such changes thereto as that officer may approve, such approval to be evidenced conclusively by the execution and delivery of the Agreements;
3. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver all such ancillary agreements, documents, deeds and instruments and to do all such further acts as may be necessary or desirable to implement the Agreements, to perform its obligations thereunder and to obtain the benefits thereof; and,
4. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver such subsequent documents as shall be

necessary or desirable to make non-material amendments to the above-noted Agreements, documents, deeds and instruments, as such officer shall determine and as shall be evidenced by such officer's signature thereto.

### 3. Other Business

There was no other business.

### 4. Termination

There being no further business to be brought before the meeting, the meeting terminated at 1:40 p.m.

Approved by the Board of Directors on  
the 14th day of September, 2011

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James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting

DRAFT

## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** September 6, 2011 1:07 PM  
**To:** John Zych  
**Subject:** RE: RECENT BOARD MINUTES  
**Attachments:** DRAFT - Minutes of Board of Directors Meeting - August 5 2011-MK.doc

John,

They all looked good to me. I did note a typographical error in the 5 August minutes it refers to "...fort the..." and I think it ought to say "... for the ...." I have corrected it in the attached mark-up.

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:** John Zych  
**Sent:** September 6, 2011 1:00 PM  
**To:** Michael Lyle; JoAnne Butler; Kristin Jenkins; Shawn Cronkwright; Michael Killeavy; Susan Kennedy  
**Cc:** Nimi Visram  
**Subject:** RECENT BOARD MINUTES

I attach minutes of the July 29, August 1, August 3, and August 5 Board meetings. These meetings dealt with only two subjects, the Korean Consortium arrangement and TransCanada re Oakville.

There are many ways to minute these developments. I am open to your suggestions.

May I have your comments by 12:00 (noon) on Wednesday?



## MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Friday, August 5, 2011 at 1:00 p.m., Toronto time, by teleconference

### PRESENT

Colin Andersen  
Michael Costello  
Rick Fitzgerald  
James Hinds  
Adèle Hurley  
Ron Jamieson  
Bruce Lourie  
Patrick Monahan

### MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning  
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs  
JoAnne Butler, Vice President, Electricity Resources  
Andrew Pride, Vice President, Conservation  
Kristin Jenkins, Vice President, Communications  
Michael Killeavy, Director, Contract Management, Electricity Resources  
Brett Baker, Senior Advisor, Policy and Strategy  
John Zych, Corporate Secretary

#### 1. Constitution of the Meeting

Mr. James Hinds acted as Chair of the meeting and Mr. John Zych acted as Secretary.

The Chair declared that, with notice having been given and a quorum of members being present, the meeting was properly called and duly constituted for the transaction of business.

The Chair advised that there was only one agenda item, namely, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

## 2. TransCanada Energy Inc. Negotiations

Mr. James Hinds advised that since the August 3 Board Meeting, OPA management had made significant progress on the issue of the proposed arbitration agreement and on allocation as between the Ontario electricity ratepayer and the Ontario taxpayer of the costs of any settlement with TransCanada energy.

Mr. Andersen discussed these developments. TransCanada Energy had no interest in or objection to an apportionment of Ontario government costs between taxpayers and ratepayers and therefore this matter would be addressed, not in the arbitration agreement, but in a side agreement between the Ontario Government and the Ontario Power Authority. TransCanada Energy still wanted to acquire an interest in a generation facility in Ontario, but had no interest in the Lennox plant, so the matter of the plant was deferred to a later time.

The proposed allocation to the OPA of any award under the arbitration agreement was restricted to costs incurred by TransCanada Energy in connection with the performance or termination of its contract with the Ontario Power Authority for the Oakville generating station.

Comment [O1]: Typographical error only.

On motion duly made, seconded and unanimously carried, it was RESOLVED THAT:

1. the Board of Directors authorize the Ontario Power Authority (the "Corporation") to agree to enter into agreements (the "Agreements") as follows:
  - an agreement for the arbitration of a dispute with TransCanada Energy Inc. arising out of the cancellation of the Oakville Generating Station (the "arbitration"), in accordance with the parameters described in the August 5, 2011 presentation to the Board of Directors; and,
  - an agreement with Her Majesty the Queen in right of Ontario addressing the division of liability for an award arising out of the arbitration between Her Majesty the Queen in right of Ontario and the Corporation, in the form presented to the Board of Directors on August 5, 2011;
2. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to negotiate, finalize, execute and deliver the Agreements, together with such changes thereto as that officer may approve, such approval to be evidenced conclusively by the execution and delivery of the Agreements;
3. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver all such ancillary agreements, documents, deeds and instruments and to do all such further acts as may be necessary or desirable to implement the Agreements, to perform its obligations thereunder and to obtain the benefits thereof; and,
4. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver such subsequent documents as shall be

necessary or desirable to make non-material amendments to the above-noted Agreements, documents, deeds and instruments, as such officer shall determine and as shall be evidenced by such officer's signature thereto.

### 3. Other Business

There was no other business.

### 4. Termination

There being no further business to be brought before the meeting, the meeting terminated at 1:40 p.m.

Approved by the Board of Directors on  
the 14th day of September, 2011

\_\_\_\_\_  
James Hinds  
Chair of the meeting

\_\_\_\_\_  
John Zych  
Secretary of the meeting

DRAFT

## Aleksandar Kojic

---

**From:** Michael Killeavy  
**Sent:** November 20, 2011 8:18 PM  
**To:** Deborah Langelaan; Ronak Mozayyan  
**Cc:** JoAnne Butler  
**Attachments:** Analysis of TCE Cost of Capital 19 Nov 2011 v1.pptx  
  
**Importance:** High

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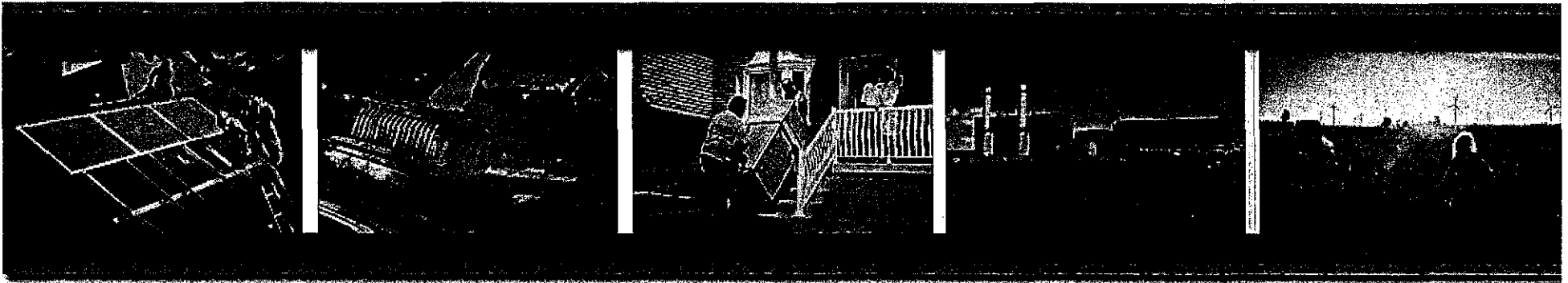
\*\*\* PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION \*\*\*

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Attached is a rough framework for the Thursday presentation. It is very much a work in progress.

Michael Killeavy, LL.B., MBA, P.Eng.  
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Ontario Power Authority  
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[Michael.killeavy@powerauthority.on.ca](mailto:Michael.killeavy@powerauthority.on.ca)





## Analysis of TCE Cost of Capital

19 November 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Assumptions

Getting the  
Effective Tax Rate

Transcanada Tax Rates	
2004	26.70%
2005	28.90%
2006	18.75%
2007	27.70%
2008	27.71%
2009	20.77%
<b>Avg. Effective Tax Rates</b>	<b>25.09%</b>

To estimate  
TransCanada Energy's  
 $\beta$  (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 Statements

<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>	
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>6.85%</b>

# Fundamental Disagreement – Value of OGS

---

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

## Residual Value of the OGS

---

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

# **TCE Current Position on OGS Financial Value**

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

# Reanalysis of OGS Financial Value

---

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

# Reanalysis of OGS Financial Value

---

- If we conduct the analysis of the free cash flows with a cost of equity of 7.5% for the contract cash flows, and then discount the residual value at 15% to account for their riskiness, the OGS NPV is \$176 million.
- In this analysis the present value of the residual value is \$26 million. If we say that this residual value is zero, then we are getting close to the expert's value.

# Delays and Construction Cost Overruns

---

- Any assessment of the OGS NPV also has to take into account the impact that cost overruns and delays to completion of the facility.
- A six-month delay in completion results in an OGS NPV of \$282 million using a discount rate of 5.25% for contract cash flows and 8% for residual value
- A 10% increase in construction costs results in an OGS NPV of \$xxx million using a discount rate of 5.25%

# TransCanada's Unlevered Cost of Equity

---

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

# TransCanada's Unlevered Cost of Equity

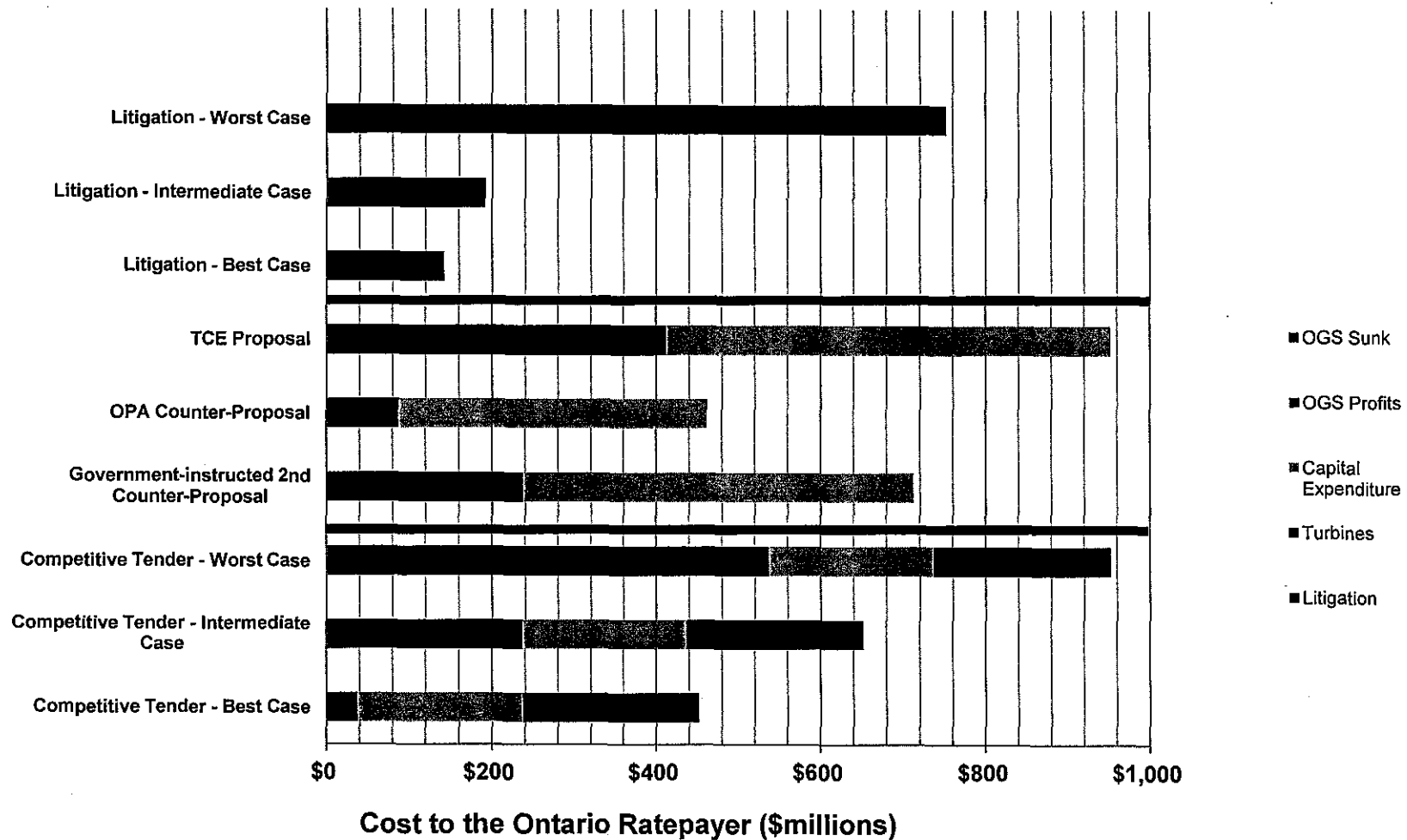
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- Using TCE before-tax cost of debt of 6.63% and a cost of equity of 7.5%, we can get a WAAC of 5.25% if the project is funded 89% debt and 11% equity. It appears that TCE's "unlevered" cost of equity is its WACC.
- It would make no economic sense to discount residual value at WACC since residual value is a risk that equity takes alone, as debt is repaid by the end of the term.
- TCE has manipulated its financial model to amplify the impact of residual value on project NPV.

# Comparison of Settlement Proposals

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-Instructed Second Counter-Proposal April 24, 2011	TCE Response to Government-Instructed Second Counter-Proposal April 29, 2011	Comments
<b>NRR Net Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis; this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
<b>Contract Term</b>	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portland's Energy Centre has option for additional five years on the 20-year term.
<b>Contract Capacity (Annual Average)</b>	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWGC; need at least 450 MW of summer peaking capacity. Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
<b>Sunk Costs Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
<b>Gas/Electrical Interconnections</b>	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portland's Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
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# Financial Value of Potential Outcomes



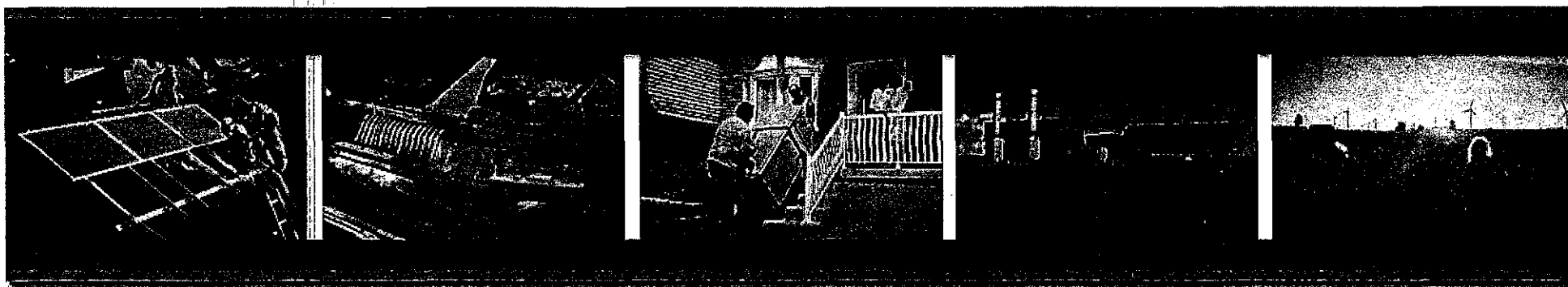
## Aleksandar Kojic

---

**From:** Deborah Langelaan  
**Sent:** November 23, 2011 11:44 AM  
**To:** Michael Killeavy  
**Cc:** Ronak Mozayyan  
**Subject:** Confidential  
**Attachments:** Analysis\_of\_TCE\_Cost\_of\_Capital\_20111123.pptx

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

Deb



## Analysis of TCE Cost of Capital

---

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Assumptions

Getting the  
Effective Tax Rate

TransCanada Tax Rates	
2004	26.70%
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To estimate  
TransCanada Energy's  
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Comparable Companies to calculate Beta		
	Weighting of similarities	Beta
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<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%
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<b>Cost of Capital (Weighted)</b>	<b>5.56%</b>

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# Fundamental Disagreement – Value of OGS

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

# Residual Value of the OGS

---

- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
- Cash flows over the term of the contract amount to \$262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.
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# Residual Value of the OGS

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- Contingency needs to be factored into residual value to reflect:
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# **TCE Current Position on OGS Financial Value**

---

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$385 million and not the earlier claimed \$503 million.
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# Reanalysis of OGS Financial Value

---

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

# Reanalysis of OGS Financial Value

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- If we conduct the analysis of the free cash flows with a cost of equity of 7.5% for the contract cash flows, and then discount the residual value at 15% to account for their riskiness, the OGS NPV is \$176 million.
- In this analysis the present value of the residual value is \$26 million. If we say that this residual value is zero, then we are getting close to the expert's value.

# Delays and Construction Cost Overruns

---

- Any assessment of the OGS NPV also has to take into account the impact that cost overruns and delays have to the completion of the facility.
- A one year delay in completion results in an OGS NPV of \$xxx million using a discount rate of 5.25% for contract cash flows and 8% for residual value
- A 10% increase in construction costs results in an OGS NPV of \$283 million using a discount rate of 5.25%

# TransCanada's Unlevered Cost of Equity

---

- During our meetings with TCE we found out how TCE arrived at 5.25% “unlevered” cost of equity.
- TCE does not project finance. TCE borrows on its balance sheet and then uses this “blend” of balance sheet debt and equity to fund projects.
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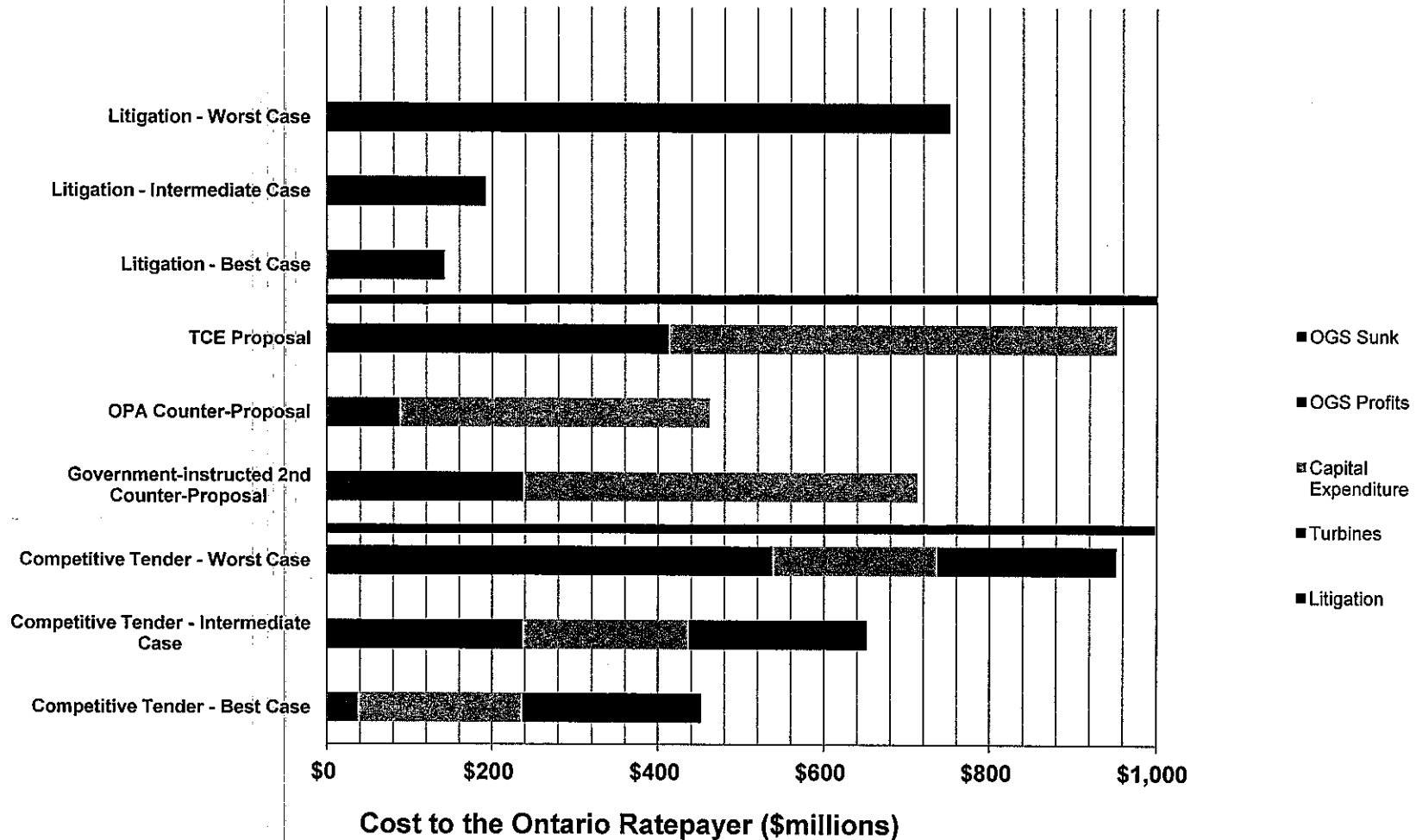
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# Comparison of Settlement Proposals

	TCE Proposal March 10, 2011	OPEA Counter Proposal March 23, 2011	Government Instructed Counter Proposal March 23, 2011	TCERC Counter Government Instructed Second Counter Proposal April 29, 2011	Comments
<b>NRR Net Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
<b>Contract Term</b>	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract – Portlands Energy Centre has option for additional five years on the 20-year term.
<b>Contract Capacity (Annual Average)</b>	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
<b>Sunk Cost Treatment</b>	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
<b>Gas/Electrical Interconnections</b>	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
<b>Capital Expenditures (CAPEX)</b>	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
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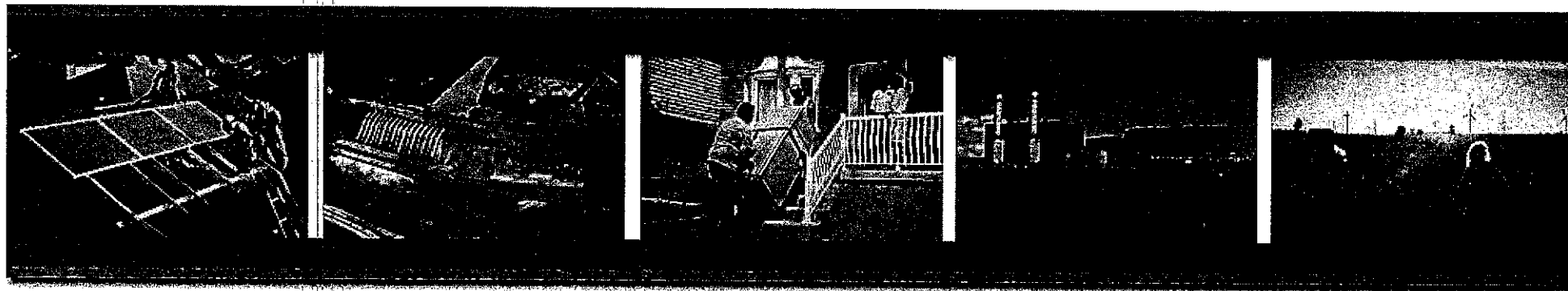
## Aleksandar Kojic

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**From:** Ronak Mozayyan  
**Sent:** November 23, 2011 12:43 PM  
**To:** Michael Killeavy; Deborah Langelaan  
**Subject:** one year delay presentation  
**Attachments:** Analysis\_of\_TCE\_Cost\_of\_Capital\_2011rm.pptx

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

**Ronak Mozayyan**  
**Business Analyst Contract Management, Electricity Resources**  
Ontario Power Authority  
120 Adelaide St. W. Suite 1600  
Toronto, ON M5H 1T1  
T: 416.969.6057  
F: 416.967.1947



## Analysis of TCE Cost of Capital

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November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Assumptions

Getting the  
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---

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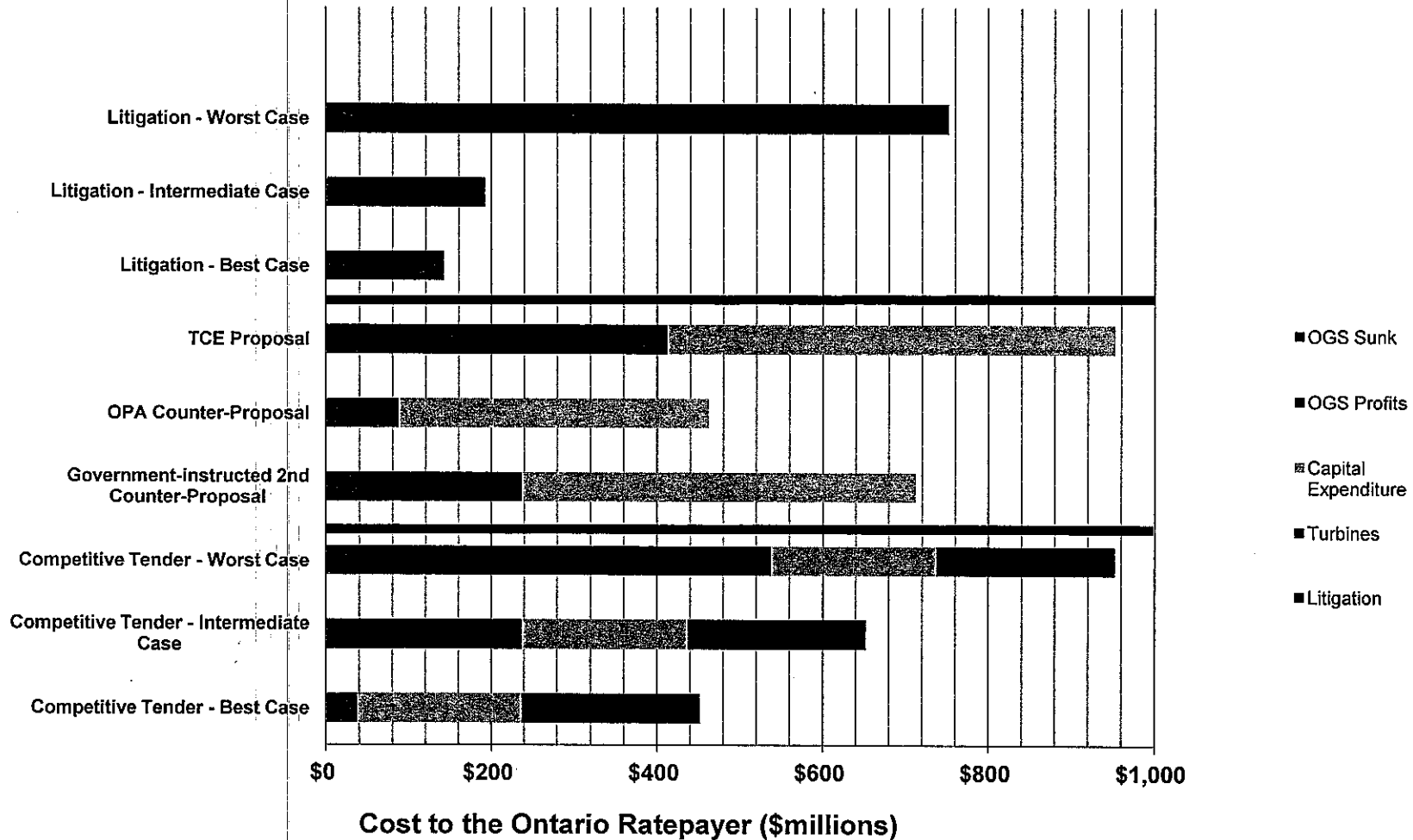
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**Aleksandar Kojic**

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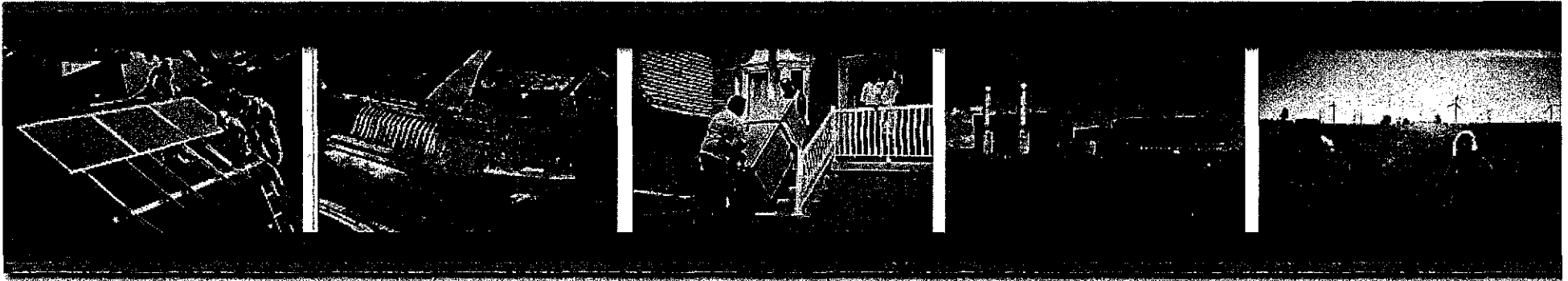
**From:** Deborah Langelaan  
**Sent:** November 23, 2011 3:31 PM  
**To:** JoAnne Butler; Michael Killeavy  
**Cc:** Ronak Mozayyan  
**Subject:** OGS Presentation for tomorrow's meeting  
**Attachments:** Analysis\_of\_TCE\_Cost\_of\_Capital\_20111123.pptx

Michael and JoAnne;

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

Thanks,  
Deb





## Analysis of TCE Cost of Capital

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

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# Delays and Construction Cost Overruns

---

- Any assessment of the OGS NPV also has to take into account the impact that cost overruns and delays have to the completion of the facility.
- A one year delay in completion results in an OGS NPV of \$366 million using a discount rate of 5.25% for contract cash flows and 8% for residual value.
- A 10% increase in construction costs results in an OGS NPV of \$283 million using a discount rate of 5.25%.

# TransCanada's Unlevered Cost of Equity

---

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

# TransCanada's Unlevered Cost of Equity

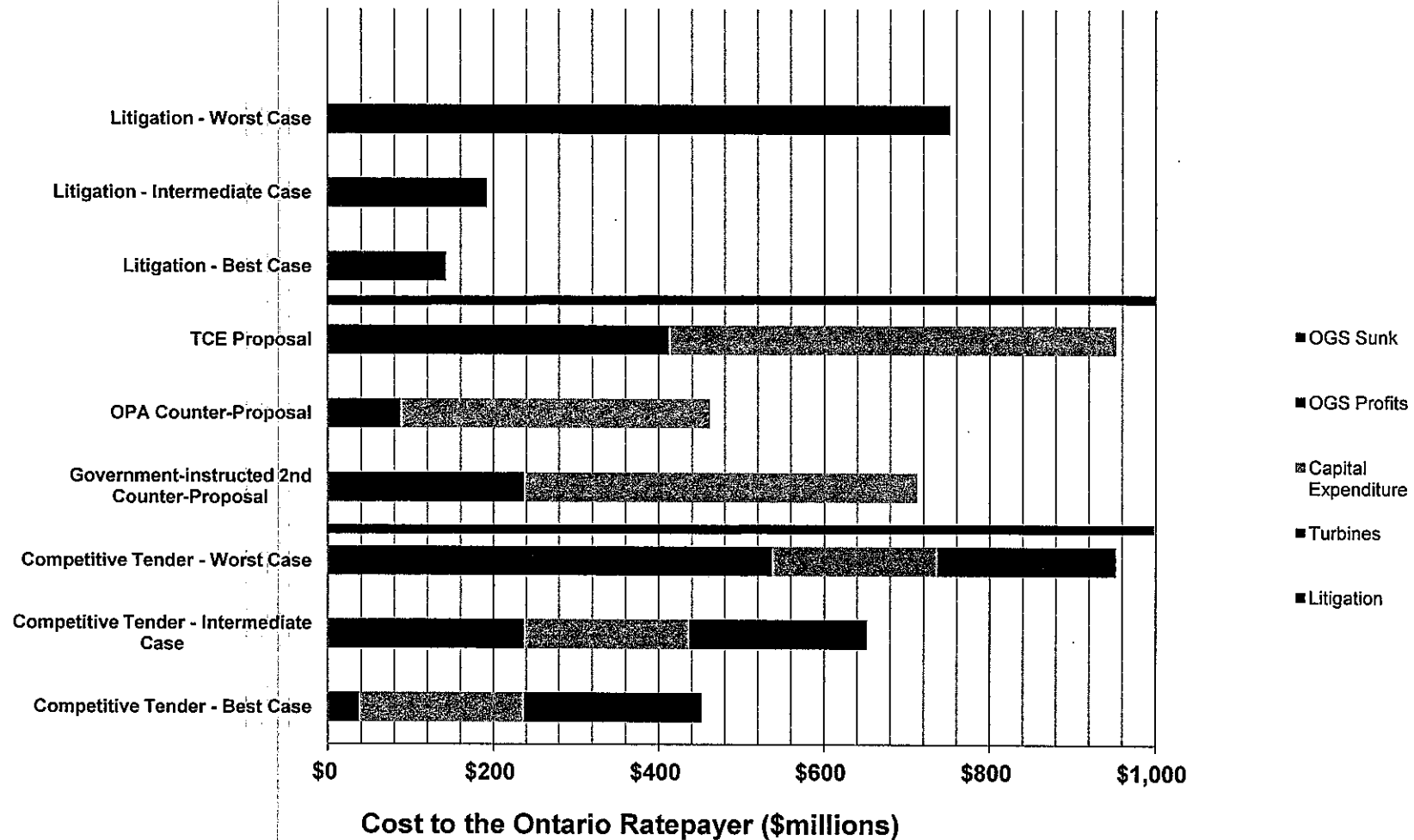
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- Using TCE before-tax cost of debt of 6.63% and a cost of equity of 7.5%, we can get a WAAC of 5.25% if the project is funded 89% debt and 11% equity. It appears that TCE's "unlevered" cost of equity is its WACC.
- It would make no economic sense to discount residual value at WACC since residual value is a risk that equity takes alone, as debt is repaid by the end of the term.
- TCE has manipulated its financial model to amplify the impact of residual value on project NPV.

# Comparison of Settlement Proposals

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<b>NRR Net Revenue Requirement</b>	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
<b>Financing Assumptions</b>	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
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<b>Operational Expenditures (OPEX)</b>	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
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# Financial Value of Potential Outcomes



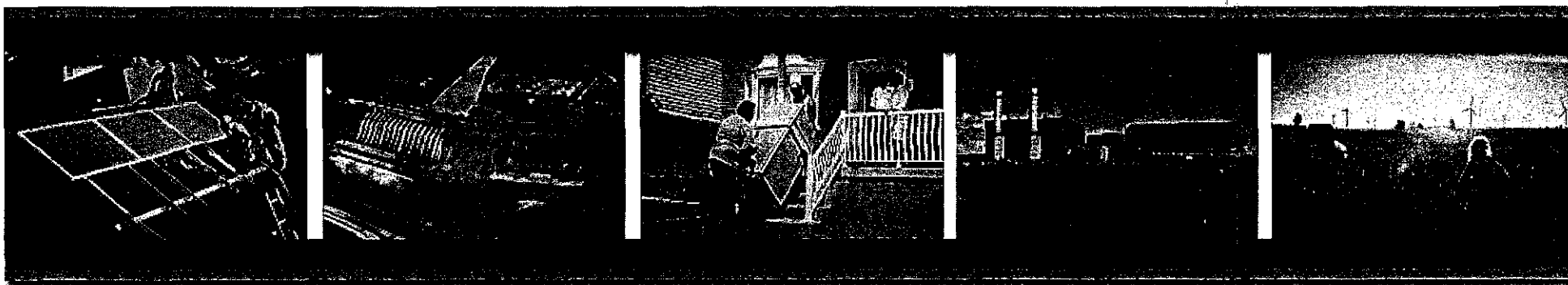
## Aleksandar Kojic

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**From:** Michael Killeavy  
**Sent:** November 24, 2011 12:08 PM  
**To:** JoAnne Butler; Deborah Langelaan; Ronak Mozayyan  
**Subject:** TCE Cost of Capital Presentation - FINAL ....  
**Attachments:** Analysis\_of\_TCE\_Cost\_of\_Capital\_20111123 FINAL.pptx

---

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



## Analysis of TCE Cost of Capital

November 24, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

# Assumptions

Getting the  
Effective Tax Rate

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

To estimate  
TransCanada Energy's  
 $\beta$  (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 TCPL's 2010 Financial Statements

<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>	
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>6.85%</b>

# Fundamental Disagreement – Value of OGS

---

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

# Residual Value of the OGS

---

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

# Residual Value of the OGS

---

- Contingency needs to be factored into residual value to reflect:
  - Possibility that facility does not exist and/or function in 20 years
  - Uncertainty around price of natural gas and electricity in 20 years
  - Uncertainty around price of carbon credits

# Residual Value of the OGS

---

- Very little case law on this point - one case *Air Canada v Ticketnet* considered the concept of salvage value.
  - Plaintiff omitted loss profits from residual value and judge found that constituted a conservative assumption
  - Inferred that Court considers residual value to be a valid head of damage

# **TCE Current Position on OGS Financial Value**

---

- In February 2011 TCE revised its initial position on the residual value of the OGS.
- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of \$389 million and not the earlier claimed \$503 million.
- Our independent expert believed that the NPV of OGS could be on the order of \$100 million. Given the problems in developing OGS the value is likely much lower.

# Reanalysis of OGS Financial Value

---

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

# Reanalysis of OGS Financial Value

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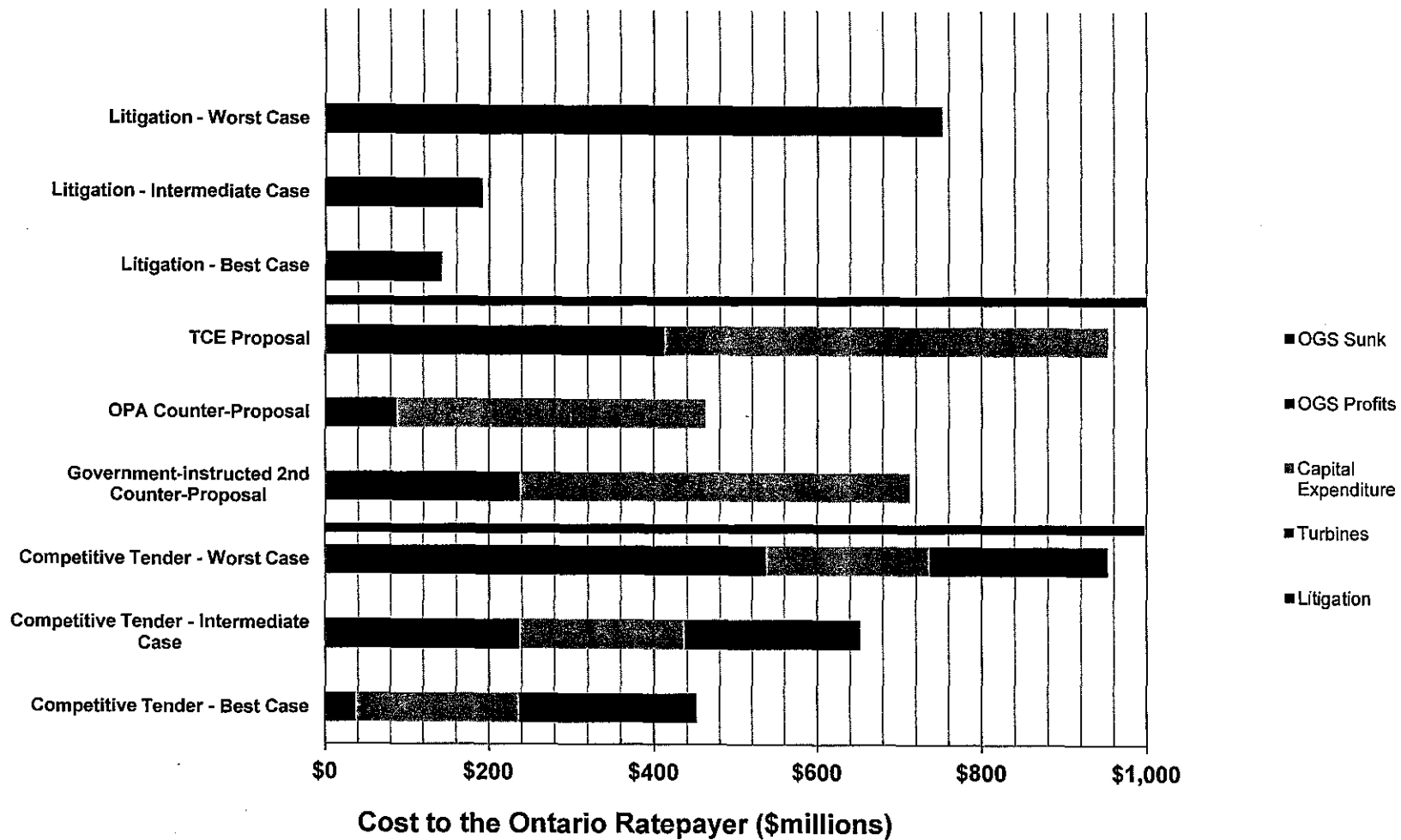
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# Financial Value of Potential Outcomes



## Aleksandar Kojic

---

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

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

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6035  
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Email: [michael.lyle@powerauthority.on.ca](mailto:michael.lyle@powerauthority.on.ca)

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

Michael:

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

Happy to discuss.

Regards

Dermot

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

---

Claimant

- and -

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

Respondents

**ARBITRATION AGREEMENT**

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 1 APPLICATION OF THE ACT**

### **Section 1.1                      Recitals**

The recitals herein are true and correct.

### **Section 1.2                      Act**

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

## **ARTICLE 2**

### **Section 2.1                      Consideration**

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the

understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the PACA, the Parties agree:

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

### **ARTICLE 3 ARBITRATOR**

#### **Section 3.1                      Arbitrator**

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

### **ARTICLE 4 JURISDICTION OF ARBITRATOR**

#### **Section 4.1                      Final Decision and Award**

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

#### **Section 4.2                      The Disputes**

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

#### **Section 4.3                      Waiver of Defences**

- (a) The Respondents agree that they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.
- (b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:
  - (i) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

- (ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.
- (c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:
  - (i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and
  - (ii) the reasonable damages including the anticipated financial value of the CES Contract is understood to include the following components:
    - (A) the net profit to be earned by TCE over the 20 year life of the CES Contract;
    - (B) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (A); and
    - (C) each Party reserves its rights to argue whether the Respondents are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by the Claimant in the period after the expiration of the twenty year term of the CES Contract for its remaining useful life.

#### **Section 4.4 Arbitrator Jurisdiction**

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

- (a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;
- (b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*,

and make such orders or directions as may be required in respect of such issues;

- (c) determine any question of law arising in the Arbitration;
- (d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;
- ~~(e) make one or more interlocutory or interim orders;~~
- (f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and
- (g) proceed in the Arbitration and make any interlocutory or interim award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below).

#### **Section 4.5                      Costs**

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

#### **Section 4.6                      Timetable**

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

### **ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS**

#### **Section 5.1                      Statement of Claim**

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

~~Section 5.2~~ ————— ~~Defence~~

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

~~Section 5.3~~ ————— ~~Reply~~

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

**ARTICLE 5**  
**INITIATION OF THE ARBITRATION PROCESS**

**Section 5.1**

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

**Section 5.2**

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

**Section 5.3**

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

**ARTICLE 6**  
**CONDUCT OF THE ARBITRATION**

~~Section 6.1~~ ————— ~~Documentary Discovery~~

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

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

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

~~—— When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties. In the event that the Parties cannot come to an agreement on these dates or the extent or nature of production they will refer the decision back to the Arbitrator.~~

#### **Section 6.2 — Evidence by Witness Affidavits**

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

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

#### **Section 6.3 — Cross Examinations on Affidavits**

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

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

#### **Section 6.4 — Expert Reports**

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

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

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

## Section 6.1

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

## Section 6.2

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

## Section 6.3

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

- (1) the Parties will provide to each other the amount it is prepared to settle for in respect of 20 Year Net Profit NPV and Terminal Value NPV and the basis for its position including a brief description of its financial calculations and legal arguments; and
- (2) TCE will provide a brief description of the amount it is claiming in respect of subsection 4.3(c)(ii)(B) ("Performance and Termination Costs") and a breakdown of those amounts by category.

## Section 6.4

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

## Section 6.5

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

## Section 6.6

Within four (4) weeks of the meeting referred to in Section 6.5 (no later than March 12, 2012), each of the Parties shall exchange initial expert reports setting out the

amount of damages they are prepared to settle for in respect of each of the issues. These reports will be provided to the Arbitrator.

#### **Section 6.7**

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

#### **Section 6.8**

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

#### **Section 6.9**

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

#### **Section 6.10**

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

#### **Section 6.11**

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

#### **Section 6.12**

##### **Arbitration Hearing**

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

### **Section 6.13                      Witness Statements**

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

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

### **Section 6.14                      Examinations and Oral Submissions**

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

### **Section 6.15                      Applicable Law**

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

### **Section 6.16**

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

### **Section 6.17**

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

## **ARTICLE 7 AWARD**

### **Section 7.1                      Decision(s) Timeline**

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

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within ~~six (6) months~~ sixty (60) days from the delivery of the communication of the final submissions from the parties (the "Final Award"). The Arbitrator shall sign and date the Final Award.

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

## **Section 7.2**

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

## **Section 7.3**

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

- (a) Upon the request of the Respondent, the Province of Ontario, to satisfy the Final Award [or interim final award] as against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "Assets of Interest") to the Respondent for consideration. Such list to consist of assets owned by

the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amongst the Parties. Assets which will provide partial Equivalent Value may be considered.

- (b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:
  - (i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;
  - (ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;
  - (iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and
  - (iv) TCE does not become liable for any pre-closing liabilities relating to the asset.
- (e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

- (f) If more than ninety (90) days have passed after the date of the issuance of the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.
- 

#### **Section 7.4**

#### **Release**

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

### **ARTICLE 8 CONFIDENTIALITY**

#### **Section 8.1**

#### **Confidentiality**

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

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

## **ARTICLE 9 MISCELLANEOUS**

### **Section 9.1                      Amendment**

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

### **Section 9.2                      Governing Law**

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

### **Section 9.3                      Binding the Crown**

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

### **Section 9.4                      Extended Meanings**

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

### **Section 9.5                      Statutory References**

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

### **Section 9.6                      Counterparts**

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

### **Section 9.7                      Electronic Execution**

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

### **Section 9.8                      Counsel**

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 9.9**

## **Notices**

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

**DATED** this                      5<sup>th</sup> day of August, 2011.

**TRANSCANADA ENERGY LTD.**

By: \_\_\_\_\_  
William C. Taylor

Title Senior Vice-President, Eastern Power

By \_\_\_\_\_  
Terry Bennett

Title Vice-President, Eastern Growth

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

By David Lindsay

Title Deputy Minister of Energy

**ONTARIO POWER AUTHORITY**

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

Title

## SCHEDULE "A"

### CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

**AGREED TO** as of the ► day of ►

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Witness

---

(Name)

## SCHEDULE "B"

### FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising

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

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

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

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

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

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

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

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

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

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

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**TRANSCANADA ENERGY LTD.**

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

By \_\_\_\_\_  
Title

## Aleksandar Kojic

---

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

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Paul,

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

Michael

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

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

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

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model<sup>1</sup>, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

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<sup>1</sup> Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

## Aleksandar Kojic

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

Privileged and Confidential

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

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

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

Hi,

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

Andrew

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

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This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

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**Crystal Pritchard**

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

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

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

Please review and advise if you have any revisions.

Thanks.

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



## OPA Briefing Note

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

April 14, 2011

For internal use only

#### ISSUE:

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

#### BACKGROUND:

##### Planning and Procurement Process:

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

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

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

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

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

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

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

#### **Cancellation of OGS:**

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

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

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

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

#### **OPA/ TCE public statements on compensation:**

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

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

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

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

He responded as follows:

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

#### **APPROVED KEY MESSAGES:**

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

#### **QUESTIONS AND ANSWERS:**

##### **What is the status of the negotiations with TransCanada?**

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

### **What went wrong with OPA's procurement for SWGTA?**

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

### **Do you expect to be sued by TransCanada?**

- The OPA and TCE have a long-standing, positive working relationship, which has benefited ratepayers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
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### **How many more gas plants are required in Ontario?**

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

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

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

#### **How much will the SWGTA transmission project cost?**

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

#### **What does this mean for future need in the area?**

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

## Crystal Pritchard

---

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

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

---

**From:** Mary Bernard  
**Sent:** April 15, 2011 11:50 AM  
**To:** Patricia Phillips  
**Cc:** Tim Butters  
**Subject:** Briefing note on OGS settlement

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April 14, 2011

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**Crystal Pritchard**

---

**From:** Mary Bernard  
**Sent:** Monday, April 18, 2011 2:29 PM  
**To:** Kristin Jenkins  
**Cc:** Patricia Phillips; Tim Butters  
**Subject:** Briefing note on OGS/Transcanada negotiations  
**Attachments:** Briefing Note OGS Settlement Negotiations 20110414 (TB-MB-pp).doc

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

Pat and I have both reviewed.

Thanks.

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## **OPA Briefing Note**

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**April 14, 2011**

**For internal use only**

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He responded as follows:

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

#### **APPROVED KEY MESSAGES:**

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

#### **QUESTIONS AND ANSWERS:**

##### **What is the status of the negotiations with TransCanada?**

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

### **What went wrong with OPA's procurement for SWGTA?**

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

### **Do you expect to be sued by TransCanada?**

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

### **How many more gas plants are required in Ontario?**

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

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

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

#### **How much will the SWGTA transmission project cost?**

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

#### **What does this mean for future need in the area?**

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

## Crystal Pritchard

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

Kristin – Tim caught a typo that has been fixed in this version. Please delete the earlier one.

Thanks.

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

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

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

Pat and I have both reviewed.

Thanks.

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



## OPA Briefing Note

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

April 14, 2011

For internal use only

#### ISSUE:

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

#### BACKGROUND:

##### Planning and Procurement Process:

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

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

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

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

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

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

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

#### **Cancellation of OGS:**

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

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

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

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

#### **OPA/ TCE public statements on compensation:**

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

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

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

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

He responded as follows:

- 2007 IPSP identified need for gas plant in the Cambridge area.
- OPA and TransCanada are currently in discussions to mutually terminate the OGS contract.
- Discussions are going well – the key objective is to reach agreement that is in best interest of the ratepayer
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#### **APPROVED KEY MESSAGES:**

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
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5. OPA's preference continues to be a negotiated agreement that sees TCE developing needed generation project. This is why OPA has proposed mediation to TCE.

#### **QUESTIONS AND ANSWERS:**

##### **What is the status of the negotiations with TransCanada?**

- OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
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However, a transmission solution to maintain reliable supply in the southwest GTA will be required.

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

## Crystal Pritchard

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

Hi Pat,

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

### Description:

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

### Impact:

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

### Status:

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

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

I've tried to keep it short and sweet.

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

## Crystal Pritchard

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**From:** Kristin Jenkins  
**Sent:** Monday, October 24, 2011 4:47 PM  
**To:** Colin Andersen; JoAnne Butler; Michael Killeavy; Michael Lyle  
**Cc:** Tim Butters; Mary Bernard; Patricia Phillips  
**Subject:** Change in Media Relations Protocol  
  
**Importance:** High

Minister's Office does not want calls referred there. They want OPA to draft responses for review and approval which OPA will then send to media. Below are recommended responses to the calls. Tim please confirm capacity and CODs for OGS and Greenfield South for response to third question.

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

-Not appropriate to float options publicly when we have not yet engaged the proponent which is also something we don't want to highlight. Recommend:

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

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

### Recommended Response:

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

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

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

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

## Aleksandar Kojic

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**From:** Nimi Visram on behalf of John Zych  
**Sent:** October 7, 2010 1:40 PM  
**To:** 'A Hurley'; 'blourie@ivey.org'; 'Charles Bayless (ceb1618@aol.com)'; Colin Andersen; 'John Beck (jbeck@aecon.com)'; 'Lyn McLeod (lynandneil@sympatico.ca)'; 'michael costello'; 'Patrick Monahan (pjmon@yorku.ca)'; 'rfitzgerald7@sympatico.ca'; 'Ron Jamieson'  
**Cc:** Michael Lyle; JoAnne Butler; John Zych; Nimi Visram  
**Subject:** FW: Final Oakville Materials  
**Attachments:** Ministry News Release.doc; Ministry Qs & As.doc; Minister's Remarks.doc; OPA Q & A.doc

Further to this morning's Board meeting, as advised at the Board Meeting, the Minister of Energy made his announcement pertaining to not proceeding with the Oakville Gas Plant, at 1 p.m. today.

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

For the benefit of Charles Bayless, Lyn McLeod and Patrick Monahan, who were not present at the Board meeting, the Board members heard about the plan not to proceed with the Oakville Gas Plant and reviewed the terms of and approved the sending of a letter to TransCanada Energy Ltd., instructing TransCanada Energy to cease all further work in connection with the Oakville Gas Plant and acknowledging that TransCanada Energy is entitled to reasonable compensation. The letter also indicated the OPA's intention into good faith negotiations with TransCanada Energy Ltd. to reach a mutual agreement to terminate the contract.

John Zych  
Corporate Secretary  
Ontario Power Authority  
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## **Oakville Power Plant Not Moving Forward**

*McGuinty Government to Invest in Transmission to Meet Local Power Demands*

### **NEWS**

October 7, 2010

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

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

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

### **QUOTES**

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

— Hon. Brad Duguid, Minister of Energy

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

— Kevin Flynn, MPP, Oakville

### **QUICK FACTS**

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

### **LEARN MORE**

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

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

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

## MINISTRY OF ENERGY

### Key Messages:

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

### Questions and Answers

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

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

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

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

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

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

## **MINISTRY OF ENERGY**

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

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

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

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

*If Pressed:*

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

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

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

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

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

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

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

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

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

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

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

## MINISTRY OF ENERGY

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

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

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

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

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

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

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

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

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

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

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

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

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

## MINISTRY OF ENERGY

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

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

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

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

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

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

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

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

### **Q15. Does this mean Toronto needs a Third Line?**

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

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

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

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

## MINISTRY OF ENERGY

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

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

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

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

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

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

**Q.19 What is this transmission solution?**

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

**Q20. Where is the transmission going?**

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

**Q21. Will you be burying the lines?**

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

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

WORD COUNT: 603

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

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

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

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

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

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

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

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

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

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

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

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

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

Nor will this plant move forward elsewhere in the GTA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

-30-

## **Ontario Power Authority**

### **Background**

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

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

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

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

### **Key Messages**

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

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

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

### **Supporting Messages**

## **Ontario Power Authority**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Ontario Power Authority**

### **Questions and Answers**

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

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

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

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

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

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

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

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

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

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

## **Ontario Power Authority**

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

### **3. Did the OPA pick the wrong project?**

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

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

### **4. Does this mean Toronto needs a Third Line?**

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

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

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

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

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

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

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

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

## **Ontario Power Authority**

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