

than two years and the OPA paid TCE a termination amount equal to \$50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed \$37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 019 314 2 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the “NINRR” term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

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

Yours very truly,

JoAnne Butler

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

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.
2. **Emissions Requirements.**
 - (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
 - (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
 - (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
 - (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

3. **Fuel Supply.** The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.
4. **Equipment.** The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 12,887 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

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

Baseline NRR Calculation

CAPEX Spend:	\$375,000,000	Yearly % Spend	
2009	\$18	3%	
2010	\$26	5%	
2011	\$90	17%	
2012	\$109	20%	
2013	\$225	42%	
2014	\$72	13%	100%
	\$539 million		

Capital Cost Allowance:

		CCA Rate
CapEx to Class 1	33%	4%
CapEx to Class 17	38%	8%
CapEx to Class 48	29%	15%
	100%	
Inflation Factor	(Ify)	2%
NRR Index Factor	(NRRIF)	20%
Statutory Tax Rate		25%
Plant Capacity	(AACC)	500 MW

Equate ANR to INR => CSP is only revenue

Total Plan Revenues = CSP = NRRy*AACC

Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC

PNNRb = Project NRR

Fixed O&M \$5,500,000 (2009 \$)

GD&M \$10,000,000 (2011 \$)

Calculate EBITDA

EBITDA = Plant Revenues - Operating Costs (\$29 million/year)

Calculate CCA by allocating CAPEX to appropriate pools

Determine tax payable = (EBITDA - CCA)*(statutory tax rate)

Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009

All others are July 1, 20XX

Use XNPV

TCE Cost of Capital 7.50%

	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	\$12,293,714	\$17,870,388	\$62,741,053	\$75,486,742
Book Value of Capital	\$12,293,714	\$30,164,102	\$92,905,155	\$168,391,897
Non-Indexed NRR				
Indexed NRR				

Total NRR
REVENUES = CSP

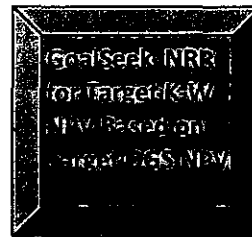
OPEX
GD&M
EBITDA

Depreciation (Capital Cost Allowance)

Taxes Payable

Total Cash Flow	(\$12,293,714)	(\$17,870,388)	(\$62,741,053)	(\$75,486,742)
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NRR	\$12,887
Target OGS NPV + Sunk Costs	\$87,000,000
XNPV for K-W Peaking Plant	\$87,000,000
XNPV in 2012 plus spend	\$80,149,497
XIRR	9.48%



		1	2	3	4
01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18
42%	13%				
\$156,543,204	\$50,064,899				
\$324,935,101	\$375,000,000	\$358,668,750	\$327,428,702	\$298,909,662	\$272,874,630
		\$10,310	\$10,310	\$10,310	\$10,310
		\$2,577	\$2,629	\$2,682	\$2,735

		\$12,887	\$12,938	\$12,991	\$13,045
		\$77,321,260	\$77,630,545	\$77,946,016	\$78,267,796
		\$6,193,893	\$6,317,771	\$6,444,127	\$6,573,009
		\$10,824,322	\$11,040,808	\$11,261,624	\$11,486,857
		\$60,303,045	\$60,271,966	\$60,240,265	\$60,207,930
		\$16,331,250	\$31,240,048	\$28,519,040	\$26,035,032
		\$10,992,949	\$7,257,979	\$7,930,306	\$8,543,225
(\$156,543,204)	(\$50,064,899)	\$49,310,096	\$53,013,987	\$52,309,959	\$51,664,706

5	6	7	8	9	10
01-Jul-19	01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24
\$249,107,250	\$227,410,009	\$207,602,597	\$189,520,411	\$173,013,183	\$157,943,735
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$2,790	\$2,846	\$2,903	\$2,961	\$3,020	\$3,080

\$13,099	\$13,155	\$13,212	\$13,270	\$13,329	\$13,390
\$78,596,012	\$78,930,792	\$79,272,268	\$79,620,573	\$79,975,844	\$80,338,221
\$6,704,469	\$6,838,559	\$6,975,330	\$7,114,836	\$7,257,133	\$7,402,276
\$11,716,594	\$11,950,926	\$12,189,944	\$12,433,743	\$12,682,418	\$12,936,066
\$60,174,949	\$60,141,308	\$60,106,994	\$60,071,993	\$60,036,293	\$59,999,879
\$23,767,380	\$21,697,241	\$19,807,412	\$18,082,186	\$16,507,228	\$15,069,448
\$9,101,892	\$9,611,017	\$10,074,895	\$10,497,452	\$10,882,266	\$11,232,608
\$51,073,057	\$50,530,291	\$50,032,098	\$49,574,542	\$49,154,027	\$48,767,271

11	12	13	14	15	16
01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29	01-Jul-30
\$144,186,835	\$131,628,162	\$120,163,349	\$109,697,121	\$100,142,502	\$91,420,090
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$3,142	\$3,205	\$3,269	\$3,334	\$3,401	\$3,469

\$13,451	\$13,514	\$13,578	\$13,644	\$13,710	\$13,778
\$80,707,845	\$81,084,862	\$81,469,419	\$81,861,667	\$82,261,760	\$82,669,855
\$7,550,321	\$7,701,328	\$7,855,354	\$8,012,461	\$8,172,711	\$8,336,165
\$13,194,788	\$13,458,683	\$13,727,857	\$14,002,414	\$14,282,462	\$14,568,112
\$59,962,736	\$59,924,851	\$59,886,208	\$59,846,792	\$59,806,587	\$59,765,579
\$13,756,899	\$12,558,673	\$11,464,813	\$10,466,228	\$9,554,619	\$8,722,412
\$11,551,459	\$11,841,544	\$12,105,349	\$12,345,141	\$12,562,992	\$12,760,792
\$48,411,277	\$48,083,306	\$47,780,859	\$47,501,651	\$47,243,595	\$47,004,787

17	18	19	20	21	22
01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36
\$83,457,400	\$76,188,261	\$69,552,263	\$63,494,261	\$57,963,911	\$52,915,254
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$3,538	\$3,609	\$3,681	\$3,755	\$3,830	\$3,906

\$13,848	\$13,918	\$13,991	\$14,064	\$14,139	\$14,216
\$83,086,112	\$83,510,694	\$83,943,768	\$84,385,503	\$84,836,073	\$85,295,655
\$8,502,888	\$8,672,946	\$8,846,405	\$9,023,333	\$9,203,800	\$9,387,876
\$14,859,474	\$15,156,663	\$15,459,797	\$15,768,993	\$16,084,372	\$16,406,060
\$59,723,750	\$59,681,085	\$59,637,567	\$59,593,178	\$59,547,901	\$59,501,719
\$7,962,690	\$7,269,140	\$6,635,998	\$6,058,002	\$5,530,350	\$5,048,657
\$12,940,265	\$13,102,986	\$13,250,392	\$13,383,794	\$13,504,388	\$13,613,266
\$46,783,485	\$46,578,099	\$46,387,174	\$46,209,384	\$46,043,513	\$45,888,453

23	24	25
01-Jul-37	01-Jul-38	01-Jul-39
\$48,306,336	\$44,098,854	\$40,257,844
\$10,310	\$10,310	\$10,310
\$3,985	\$4,064	\$4,146

\$14,294	\$14,374	\$14,455
\$85,764,427	\$86,242,576	\$86,730,287

\$9,575,633	\$9,767,146	\$9,962,489
\$16,734,181	\$17,068,865	\$17,410,242
\$59,454,613	\$59,406,565	\$59,357,556

\$4,608,919	\$4,207,482	\$3,841,010
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\$13,711,424	\$13,799,771	\$13,879,137
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\$45,743,190	\$45,606,794	\$45,478,420
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SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the Replacement Project will be \$375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

- (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed \$37,500,000

- (ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

- (iii) The adjusted NRR shall be equal to 5185.205289 plus 1.78219×10^{-5} multiplied by the Adjusted Capex.

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

- (c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	\$156,274,358
Main Turbine Additional Scope (excluding change orders)	\$39,198,860
[•]	

- (d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

- (e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Draft & Privileged

Aleksandar Kojic

From: JoAnne Butler
Sent: March 25, 2011 10:19 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

Ok...just had a quick read through...sounds like a great team effort...I will look at it more closely on Sunday but probably wait to talk to y'all on Monday....

JCB

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

From: Michael Killeavy
Sent: Friday, March 25, 2011 09:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.
2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at \$375 million. We used the TCE CAPEX spend profile and just pro-rated it down from \$540 million to \$375 million.
3. The resulting NRR is \$12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~\$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be \$10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.
4. The financial value of the OGS is set at \$50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as \$200 million and still be defensible, but that puts the NRR up around \$15,984/MW-month, holding all other parameters the same.
5. The alleged OGS Sunk Costs are included in the NRR.
6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.
7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the

low NRR. We thought that if they did grudgingly accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS \$50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

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

Aleksandar Kojic

From: Michael Killeavy
Sent: March 27, 2011 2:59 PM
To: Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR
Attachments: OPA Counter-Proposal NRR Model 26 Mar 2011 COUNTER-PROPOSAL v5.xls
Importance: High

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

I reviewed how I had incorporated the OGS Sunk Costs into the NRR and I am proposing an alternative approach. I had incorporated them into the OGS NPV and then solved for NRR, which means TCE earns a return on these sunk costs. As an alternative, I am proposing that these sunk costs be amortized over the term of the agreement at TCE's after-tax cost of borrowing (average yield-to-maturity of its long-term debt) and then allocating the amortized amount over the MW of contract capacity on a monthly basis as a sunk cost adder to the NRR. In doing so, TCE only is compensated for the cost of borrowing to fund The adder is \$406/MW-month and this results in a total NRR of \$12,278/MW-month. The equation to convert Adjusted CAPEX into NRR is now:

$$\text{NRR} = 1.93200\text{E-}05 * \text{Adjusted CAPEX} + 5033.277778$$

I would be interested in comments from anyone on this approach. It changes the NRR by about \$600 per MW-month (from \$12,887/MW-month to \$12,278/MW-month) , which is significant if the analysis is correct. I am proposing to use the after-tax cost of borrowing to amortize the sunk costs over the term because TCE can deduct the interest payments and gain a tax shield effect.

Thank you,
Michael

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

Target Costing Allocation of Actual CAPEX

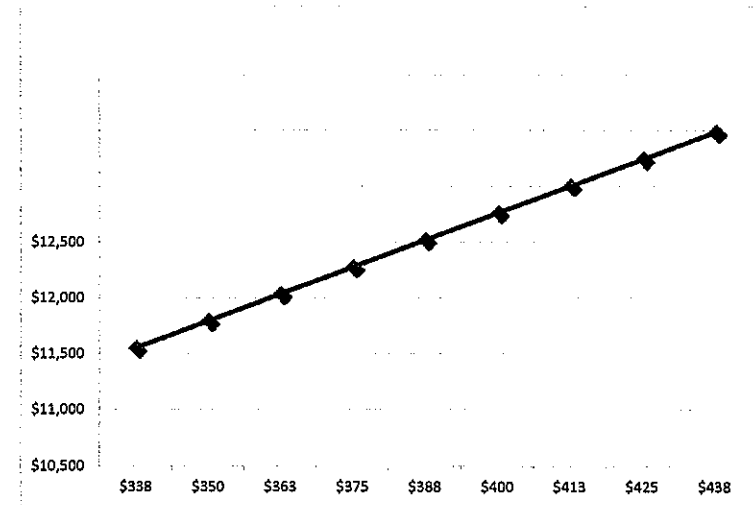
Target CAPEX = \$375,000,000

CAPEX Sharing:	Overrun	Underrun
OPA	50%	50%
TCE	50%	50%

FINAL CAPEX = \$500,000,000
 Overrun (Underrun) = \$125,000,000
 OPA Share \$62,500,000
 TCE Share \$62,500,000
 Adjusted CAPEX = \$437,500,000 Target CAPEX + OPA Share

Initial NRR \$11,873
 Final NRR \$13,486

		m = 1.93200E-05	
		b = 5033.277778	
ADJUSTED CAPEX		FINAL NRR	FITTED LINE
\$337,500,000	\$338	\$11,554	\$11,554
\$350,000,000	\$350	\$11,795	\$11,795
\$362,500,000	\$363	\$12,037	\$12,037
\$375,000,000	\$375	\$12,278	\$12,278
\$387,500,000	\$388	\$12,520	\$12,520
\$400,000,000	\$400	\$12,761	\$12,761
\$412,500,000	\$413	\$13,003	\$13,003
\$425,000,000	\$425	\$13,244	\$13,244
\$437,500,000	\$438	\$13,486	\$13,486



Aleksandar Kojic

From: JoAnne Butler
Sent: March 27, 2011 8:34 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

I have gone over this again and would like to review it with you before I talk to TCE. I know that we have a meeting booked for 9:30 AM but I will be at the Ministry. Could we re-schedule this until 10:00 AM and I will try to hurry back. After our meeting, I plan to call Terry Bennett at TCE with a heads up and then we can take it from there.

JCB

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

From: Michael Killeavy
Sent: Fri 25/03/2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.
2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at \$375 million. We used the TCE CAPEX spend profile and just pro-rated it down from \$540 million to \$375 million.
3. The resulting NRR is \$12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~\$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be \$10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.
4. The financial value of the OGS is set at \$50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as \$200 million and still be defensible, but that puts the NRR up around \$15,984/MW-month, holding all other parameters the same.
5. The alleged OGS Sunk Costs are included in the NRR.
6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the low NRR. We thought that if they did grudgingly accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS \$50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

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

Aleksandar Kojic

From: JoAnne Butler
Sent: March 27, 2011 8:49 PM
To: Colin Andersen; Irene Mauricette
Subject: FW: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA
Attachments: #20297127v6_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; OPA Counter-Proposal NRR Model 25 Mar 2011 COUNTER-PROPOSAL v4.xls; Draft Schedule C - Adjustment Methodology 20325513_1.DOC

Importance: High

Colin,

This is a heads up for you. As we discussed before I left, I want to get this to TCE tomorrow. I plan to verbally talk to Terry Bennett tomorrow morning and then send it via email. I am meeting with Deb and Michael at ten am as soon as I get back from talking to Rick Jennings about Atikokan. If there is anyway that you could make that, it would be great. If not, I will try to track you down later. I believe that TCE will not be happy - however, this is the start of the negotiation and so hopefully they will come to the table. Their biggest issues will be the financial value of the OGS contract - you can read below - we are starting at \$50 MM, but we can go up, and our CAPEX number, ie. 370MM versus their 540MM. This is also a 25 year contract, not twenty, and with nominal 500 MW's.

JCB

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

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Sent: Fri 25/03/2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
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I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

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

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

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

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

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

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

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than two years and the OPA paid TCE a termination amount equal to \$50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed \$37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 019 314 2 multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the “NINRR” term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

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

Yours very truly,

JoAnne Butler

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

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.
2. **Emissions Requirements.**
 - (a) The emissions from the Replacement Project shall meet or exceed the following criteria:
 - (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O₂ in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and
 - (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O₂ in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.
 - (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.
 - (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.
 - (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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3. **Fuel Supply.** The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.
4. **Equipment.** The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the “Generators”), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator’s output terminals) new and clean, at ISO conditions.

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SCHEDULE “B” – FINANCIAL PARAMETERS

Net Revenue Requirement	\$ 12,887 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

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

Baseline NRR Calculation

CAPEX Spend:	\$375,000,000	Yearly % Spend	
2009	\$18	3%	
2010	\$26	5%	
2011	\$90	17%	
2012	\$109	20%	
2013	\$225	42%	
2014	\$72	13%	100%
	\$539 million		

Capital Cost Allowance:

		CCA Rate
CapEx to Class 1	33%	4%
CapEx to Class 17	38%	8%
CapEx to Class 48	29%	15%
	100%	
Inflation Factor	(Ify)	2%
NRR Index Factor	(NRRIF)	20%
Statutory Tax Rate		25%
Plant Capacity	(AACC)	500 MW

Equate ANR to INR => CSP is only revenue

Total Plan Revenues = CSP = NRRy*AACC

Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC

PNNRb = Project NRR

Fixed O&M \$5,500,000 (2009 \$)

GD&M \$10,000,000 (2011 \$)

Calculate EBITDA

EBITDA = Plant Revenues - Operating Costs (\$29 million/year)

Calculate CCA by allocating CAPEX to appropriate pools

Determine tax payable = (EBITDA - CCA)*(statutory tax rate)

Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009

All others are July 1, 20XX

Use XNPV

TCE Cost of Capital 7.50%

	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	\$12,293,714	\$17,870,388	\$62,741,053	\$75,486,742
Book Value of Capital	\$12,293,714	\$30,164,102	\$92,905,155	\$168,391,897
Non-Indexed NRR				
Indexed NRR				

Total NRR
REVENUES = CSP

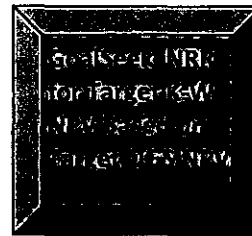
OPEX
GD&M
EBITDA

Depreciation (Capital Cost Allowance)

Taxes Payable

Total Cash Flow	(\$12,293,714)	(\$17,870,388)	(\$62,741,053)	(\$75,486,742)
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NRR	\$12,887
Target OGS NPV + Sunk Costs	\$87,000,000
XNPV for K-W Peaking Plant	\$87,000,000
 XNPV in 2012 plus spend	 \$80,149,497
 XIRR	 9.48%



		1	2	3	4
01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18
42%	13%				
\$156,543,204	\$50,064,899				
\$324,935,101	\$375,000,000	\$358,668,750	\$327,428,702	\$298,909,662	\$272,874,630
		\$10,310	\$10,310	\$10,310	\$10,310
		\$2,577	\$2,629	\$2,682	\$2,735

		\$12,887	\$12,938	\$12,991	\$13,045
		\$77,321,260	\$77,630,545	\$77,946,016	\$78,267,796
		\$6,193,893	\$6,317,771	\$6,444,127	\$6,573,009
		\$10,824,322	\$11,040,808	\$11,261,624	\$11,486,857
		\$60,303,045	\$60,271,966	\$60,240,265	\$60,207,930
		\$16,331,250	\$31,240,048	\$28,519,040	\$26,035,032
		\$10,992,949	\$7,257,979	\$7,930,306	\$8,543,225
(\$156,543,204)	(\$50,064,899)	\$49,310,096	\$53,013,987	\$52,309,959	\$51,664,706

5	6	7	8	9	10
01-Jul-19	01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24
\$249,107,250	\$227,410,009	\$207,602,597	\$189,520,411	\$173,013,183	\$157,943,735
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$2,790	\$2,846	\$2,903	\$2,961	\$3,020	\$3,080

\$13,099	\$13,155	\$13,212	\$13,270	\$13,329	\$13,390
\$78,596,012	\$78,930,792	\$79,272,268	\$79,620,573	\$79,975,844	\$80,338,221
\$6,704,469	\$6,838,559	\$6,975,330	\$7,114,836	\$7,257,133	\$7,402,276
\$11,716,594	\$11,950,926	\$12,189,944	\$12,433,743	\$12,682,418	\$12,936,066
\$60,174,949	\$60,141,308	\$60,106,994	\$60,071,993	\$60,036,293	\$59,999,879
\$23,767,380	\$21,697,241	\$19,807,412	\$18,082,186	\$16,507,228	\$15,069,448
\$9,101,892	\$9,611,017	\$10,074,895	\$10,497,452	\$10,882,266	\$11,232,608
\$51,073,057	\$50,530,291	\$50,032,098	\$49,574,542	\$49,154,027	\$48,767,271

11	12	13	14	15	16
01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29	01-Jul-30
\$144,186,835	\$131,628,162	\$120,163,349	\$109,697,121	\$100,142,502	\$91,420,090
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$3,142	\$3,205	\$3,269	\$3,334	\$3,401	\$3,469

\$13,451	\$13,514	\$13,578	\$13,644	\$13,710	\$13,778
\$80,707,845	\$81,084,862	\$81,469,419	\$81,861,667	\$82,261,760	\$82,669,855
\$7,550,321	\$7,701,328	\$7,855,354	\$8,012,461	\$8,172,711	\$8,336,165
\$13,194,788	\$13,458,683	\$13,727,857	\$14,002,414	\$14,282,462	\$14,568,112
\$59,962,736	\$59,924,851	\$59,886,208	\$59,846,792	\$59,806,587	\$59,765,579
\$13,756,899	\$12,558,673	\$11,464,813	\$10,466,228	\$9,554,619	\$8,722,412
\$11,551,459	\$11,841,544	\$12,105,349	\$12,345,141	\$12,562,992	\$12,760,792
\$48,411,277	\$48,083,306	\$47,780,859	\$47,501,651	\$47,243,595	\$47,004,787

17	18	19	20	21	22
01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36
\$83,457,400	\$76,188,261	\$69,552,263	\$63,494,261	\$57,963,911	\$52,915,254
\$10,310	\$10,310	\$10,310	\$10,310	\$10,310	\$10,310
\$3,538	\$3,609	\$3,681	\$3,755	\$3,830	\$3,906

\$13,848	\$13,918	\$13,991	\$14,064	\$14,139	\$14,216
\$83,086,112	\$83,510,694	\$83,943,768	\$84,385,503	\$84,836,073	\$85,295,655
\$8,502,888	\$8,672,946	\$8,846,405	\$9,023,333	\$9,203,800	\$9,387,876
\$14,859,474	\$15,156,663	\$15,459,797	\$15,768,993	\$16,084,372	\$16,406,060
\$59,723,750	\$59,681,085	\$59,637,567	\$59,593,178	\$59,547,901	\$59,501,719
\$7,962,690	\$7,269,140	\$6,635,998	\$6,058,002	\$5,530,350	\$5,048,657
\$12,940,265	\$13,102,986	\$13,250,392	\$13,383,794	\$13,504,388	\$13,613,266
\$46,783,485	\$46,578,099	\$46,387,174	\$46,209,384	\$46,043,513	\$45,888,453

23	24	25
01-Jul-37	01-Jul-38	01-Jul-39
\$48,306,336	\$44,098,854	\$40,257,844
\$10,310	\$10,310	\$10,310
\$3,985	\$4,064	\$4,146

\$14,294	\$14,374	\$14,455
\$85,764,427	\$86,242,576	\$86,730,287

\$9,575,633	\$9,767,146	\$9,962,489
\$16,734,181	\$17,068,865	\$17,410,242
\$59,454,613	\$59,406,565	\$59,357,556

\$4,608,919	\$4,207,482	\$3,841,010
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\$13,711,424	\$13,799,771	\$13,879,137
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\$45,743,190	\$45,606,794	\$45,478,420
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SCHEDULE “C” – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule “B” is based on an assumption that the capital cost to design and build the Replacement Project will be \$375,000,000 (the “Target Capex”). So long as the actual cost to design and build the Replacement Project (the “Actual Capex”) is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule “B” is subject to adjustment.
 - (i) The OPA’s share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex}) \times 0.50$$
, provided that the OPA Share shall not exceed \$37,500,000
 - (ii) The adjusted capital cost (“Adjusted Capex”) shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.
 - (iii) The adjusted NRR shall be equal to 5185.205289 plus 1.78219×10^{-5} multiplied by the Adjusted Capex.
 - (b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, “Interconnection Costs” and “Oakville Sunk Costs”, as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with “Good Engineering and Operating Practices” (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
 - (c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	\$156,274,358
Main Turbine Additional Scope (excluding change orders)	\$39,198,860
[●]	
 - (d) The determination of the Actual Capex shall be done through an “open book” process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

- (e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Draft & Privileged

Aleksandar Kojic

From: Michael Killeavy
Sent: March 28, 2011 4:36 AM
To: 'safouh@smsenergy-engineering.com'; 'ESmith@osler.com'; Susan Kennedy; 'RSebastiano@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; 'gene.meehan@nera.com'; 'andrew.pizzi@nera.com'
Subject: Re: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR

The sunk cost is just an adder to the NRR to cover the time-value cost. I didn't factor it into the NPV calculation - that's what I'd done originally.

I kept the CAPEX spend profile the same as TCE. There'll be less to argue about.

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120 Adelaide St. West, Suite 1600
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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Sunday, March 27, 2011 11:31 PM
To: Michael Killeavy; 'Smith, Elliot' <ESmith@osler.com>; Susan Kennedy; 'Sebastiano, Rocco' <RSebastiano@osler.com>
Cc: Deborah Langelaan; JoAnne Butler; gene.meehan@nera.com <gene.meehan@nera.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
Subject: RE: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR

Hello Michael:

Few comments for your consideration:

1. The model is using a 4-year schedule to build K-W with COD in July 2015. TCE is using 3.5-year schedule with COD in January 2015. I believe TCE schedule is conservative enough and if used in the model, the PV of CSP payment will go up by over \$20M. That is a significant amount in OPA's favour, so to speak.
2. I believe the proforma schedule should start in July 2011 and 2011\$ is used as basis. August 2009 starting point, used by TCE, is not appropriate in my opinion. Terry Bennett indicated in his last email to JoAnne that TCE is looking into the appropriateness of August 2009. Of course, for July 2011 to work we would escalate OGS NPV to 2011\$. My understanding is that the OPA is incurring interest charges on OGS sunk costs and so they are inherently in 2011\$. If the schedule is started in July 2011 and COD is made in January 2014 (achievable assuming no major objection to the project) the NPV of the Potential Project will be significantly improved. This is something we should keep in mind if TCE asks for COD in Jan 2015 but actually achieved it in Jan 2014. The OPA would have left lots of money at the table unless we have a provision in the contract to adjust NRR to (2014\$). This should take away any economic interest TCE may have in stretching COD for the purpose of the contract with OPA.
3. The model escalates 100% of GD&M charges. Since GD&M forms part of NRR then only the NRRIF portion of such expense should be indexed. At 20% NRRIF, the PV of GD&M will go down by about \$10M. This is another significant charge that works in OPA's favour.

4. Our model shows that when IDC is included in the modelling, as TCE will undoubtedly do in its model, it provides a tax relief such that the NPV of the Potential Project is boosted by about \$10M at 6.50% interest rate.
5. I reviewed the adder and noticed that the cash flows are all based on \$11,873 NRR. In other words are not reflective of the revised NRR (\$12,278 w/t OGS sunk cost adder). If they were we would see the incremental NRR (12,278-11,873=\$405) being subject to indexing at NRRIF. Unless I misunderstood something this suggests that the sunk costs would earn an additional premium over and above YTM (I have to think this little further in the morning).

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 27, 2011 1:59 PM
To: Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR
Importance: High

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

I reviewed how I had incorporated the OGS Sunk Costs into the NRR and I am proposing an alternative approach. I had incorporated them into the OGS NPV and then solved for NRR, which means TCE earns a return on these sunk costs. As an alternative, I am proposing that these sunk costs be amortized over the term of the agreement at TCE's after-tax cost of borrowing (average yield-to-maturity of its long-term debt) and then allocating the amortized amount over the MW of contract capacity on a monthly basis as a sunk cost adder to the NRR. In doing so, TCE only is compensated for the cost of borrowing to fund The adder is \$406/MW-month and this results in a total NRR of \$12,278/MW-month. The equation to convert Adjusted CAPEX into NRR is now:

$$\text{NRR} = 1.93200\text{E-}05 * \text{Adjusted CAPEX} + 5033.277778$$

I would be interested in comments from anyone on this approach. It changes the NRR by about \$600 per MW-month (from \$12,887/MW-month to \$12,278/MW-month), which is significant if the analysis is correct. I am proposing to use the after-tax cost of borrowing to amortize the sunk costs over the term because TCE can deduct the interest payments and gain a tax shield effect.

Thank you,
Michael

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: JoAnne Butler
Sent: March 28, 2011 9:13 AM
To: Colin Andersen
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

Yes, please come to my office at 10:30...thanks...

----- Original Message -----
From: Colin Andersen
Sent: Monday, March 28, 2011 08:45 AM
To: JoAnne Butler
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

I can join at 1030 if you are still meeting

----- Original Message -----
From: JoAnne Butler
Sent: Sunday, March 27, 2011 08:48 PM
To: Colin Andersen; Irene Mauricette
Subject: FW: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

Colin,

This is a heads up for you. As we discussed before I left, I want to get this to TCE tomorrow. I plan to verbally talk to Terry Bennett tomorrow morning and then send it via email. I am meeting with Deb and Michael at ten am as soon as I get back from talking to Rick Jennings about Atikokan. If there is anyway that you could make that, it would be great. If not, I will try to track you down later. I believe that TCE will not be happy - however, this is the start of the negotiation and so hopefully they will come to the table. Their biggest issues will be the financial value of the OGS contract - you can read below - we are starting at \$50 MM, but we can go up, and our CAPEX number, ie. 370MM versus their 540MM. This is also a 25 year contract, not twenty, and with nominal 500 MW's.

JCB

-----Original Message-----
From: Michael Killeavy
Sent: Fri 25/03/2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.
2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at \$375 million. We used the TCE CAPEX spend profile and just pro-rated it down from \$540 million to \$375 million.

3. The resulting NRR is \$12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is \$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be \$10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at \$50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as \$200 million and still be defensible, but that puts the NRR up around \$15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the low NRR. We thought that if they did grudgingly accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS \$50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 30, 2011 1:36 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: RE: NRR Comparison - Confidential

Elliot:

The chart is based on 2015 NRR which is (assumed by OPA & TCE to be) the first year of operation for Cambridge. Therefore, NRRIF doesn't come into play.

However, if we were comparing NPV's or anticipated out-of-market costs for the projects in question then NRRIF will weight in and I expect it to have a significant impact on the results. Of course, the results, WILL NOT be expressed in NRR terms but in \$/MW. Also, it is important to keep in mind that SWGTA can no longer be used in that comparison due to the fact that it has a lower heat rate and higher capacity factor. But we will put it in the chart with a qualifier.

I have asked Orlando Lameda to do what we call the "Ratepayer View" of the projects which is the out-of-market cost based on OPA evaluation model. We will add the results as a separate graph to the spreadsheet I circulated yesterday. I would expect SWGTA and NYR to come below \$1Million/MW. The others will be much higher.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 30, 2011 1:08 PM
To: Safouh Soufi; 'Susan Kennedy'
Cc: 'Michael Killeavy'; 'Deborah Langelaan'; 'JoAnne Butler'
Subject: RE: NRR Comparison - Confidential

Safouh,

Does the "TCE Offer – 20 Year" column take into account the NRRIF being at 50% instead of 20%? In terms of "normalizing" NRRs so they are on the same basis, it would probably make sense to add this back in. This must be worth something in the order of \$1200/MW-month.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Tuesday, March 29, 2011 9:35 PM
To: Smith, Elliot; 'Susan Kennedy'
Cc: 'Michael Killeavy'; 'Deborah Langelaan'; 'JoAnne Butler'
Subject: NRR Comparison - Confidential

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

Susan and Elliot:

Earlier today Micheal Killeavy has asked me to send the attached file to the OPA through you. If you have any questions please feel free to contact me at any time.

JoAnne: the attached is more up-to-date than the one you have and have moved 20-year charts next to each other for easier comparison.

Thanks,

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

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

Aleksandar Kojic

From: Michael Killeavy
Sent: April 1, 2011 3:50 PM
To: Susan Kennedy; 'Sebastiano, Rocco'; 'Smith, Elliot'
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

Importance: High

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

Colin and Alex Pourbaix spoke on the telephone this morning. Colin has asked me to prepare a follow-up email addressing several points that Alex raised during the telephone call. My proposed email is below:

.....

CONFIDENTIAL & WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me this morning. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX build up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around \$750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an average annual contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW Contract Capacity on average was achievable. TCE is free to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degree Celsius, and we recognize that this isn't likely achievable. We're happy to contact the IESO to see if this can be relaxed.

You also raised an issue with the computation of the net present value ("NPV") of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose a capital structure on you for the investment in the facility, any addition of debt to the capital structure will only serve to increase the NPV as your cost of capital decreases with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. This is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR

for the K-W plant. Our position is that, as with the OGS, the residual value of the K-W peaking facility is to TCE account. TCE can make of it what it wishes and value it as it wishes. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will have real value in the future.

It is hard for us to land on a NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and come to a settlement and wind up the OGS contract.

Colin

.....

I appreciate your comments on this proposed response back.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 2, 2011 7:37 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

Looks good to me! Let's see what the lawyers say...

So it's not over??

JCB

From: Michael Killeavy
Sent: Friday, April 01, 2011 03:49 PM
To: Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

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

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Colin

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I appreciate your comments on this proposed response back.

Michael

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

From: JoAnne Butler
Sent: April 2, 2011 8:51 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

Sure, send it on...and then take the rest of the weekend off!!!

Hasta lunes...

JCB

From: Michael Killeavy
Sent: Saturday, April 02, 2011 08:21 AM
To: JoAnne Butler
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

I'm not sure. If they are insisting on a \$500M CAPEX I don't think we've much more to discuss. Our 20-y equivalent NRR is ~\$15,000/MW-mo. We can't go much over this without express authorization to do so.

I did the presentation Friday - do you want to look it over this weekend?

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

From: JoAnne Butler
Sent: Saturday, April 02, 2011 07:37 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

Looks good to me! Let's see what the lawyers say...

So it's not over??

JCB

From: Michael Killeavy
Sent: Friday, April 01, 2011 03:49 PM

To: Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE

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

Colin and Alex Pourbaix spoke on the telephone this morning. Colin has asked me to prepare a follow-up email addressing several points that Alex raised during the telephone call. My proposed email is below:

.....
CONFIDENTIAL & WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me this morning. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX build up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around \$750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an average annual contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW Contract Capacity on average was achievable. TCE is free to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degree Celsius, and we recognize that this isn't likely achievable. We're happy to contact the IESO to see if this can be relaxed.

You also raised an issue with the computation of the net present value ("NPV") of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose a capital structure on you for the investment in the facility, any addition of debt to the capital structure will only serve to increase the NPV as your cost of capital decreases with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. This is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR for the K-W plant. Our position is that, as with the OGS, the residual value of the K-W peaking facility is to TCE account. TCE can make of it what it wishes and value it as it wishes. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will have real value in the future.

It is hard for us to land on a NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and come to a settlement and wind up the OGS contract.

Colin

.....

I appreciate your comments on ths proposed response back.

Michael

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 2, 2011 12:44 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - Proposed 6 April 2011 BOD Presentation
Attachments: OGS_BOD_CM_20110406 v2.ppt

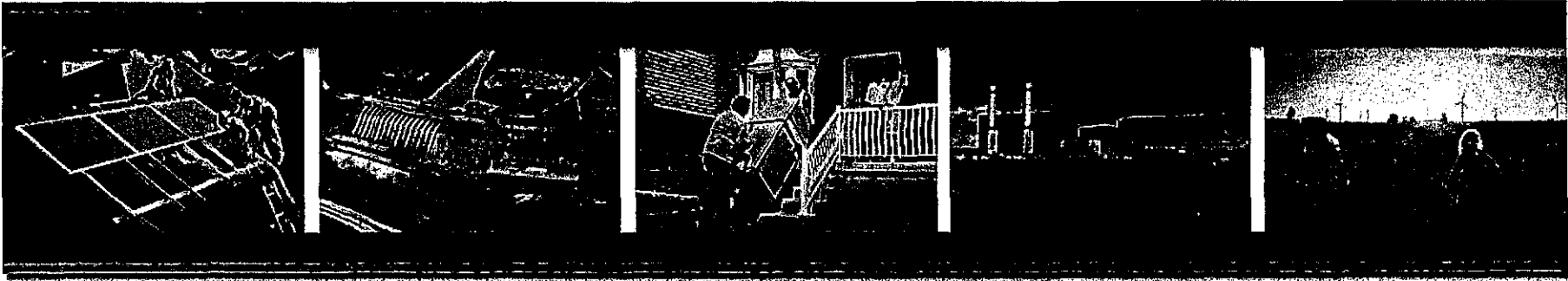
Importance: High

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

Attached is the proposed presentation. Deb's still reviewing it. I have sent a copy to Len Griffiths at BJ but he's not yet responded to my email.

I have asked John Zych for time on 6 April, to which he was amenable. I also explained that the presentation would be late, but we'd try to get it to them in advance.

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Summary

- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- The salient features are:
 1. Net Revenue Requirement (NRR) of \$12,500/MW-month;
 2. 25-year contract term;
 3. 500 MW Contract Capacity;
 4. Payment for \$37M in OGS Sunk Costs over the term;
 5. Separate payment for gas/electrical interconnections;
 6. Assistance on mitigating *Planning Act* approvals risk;

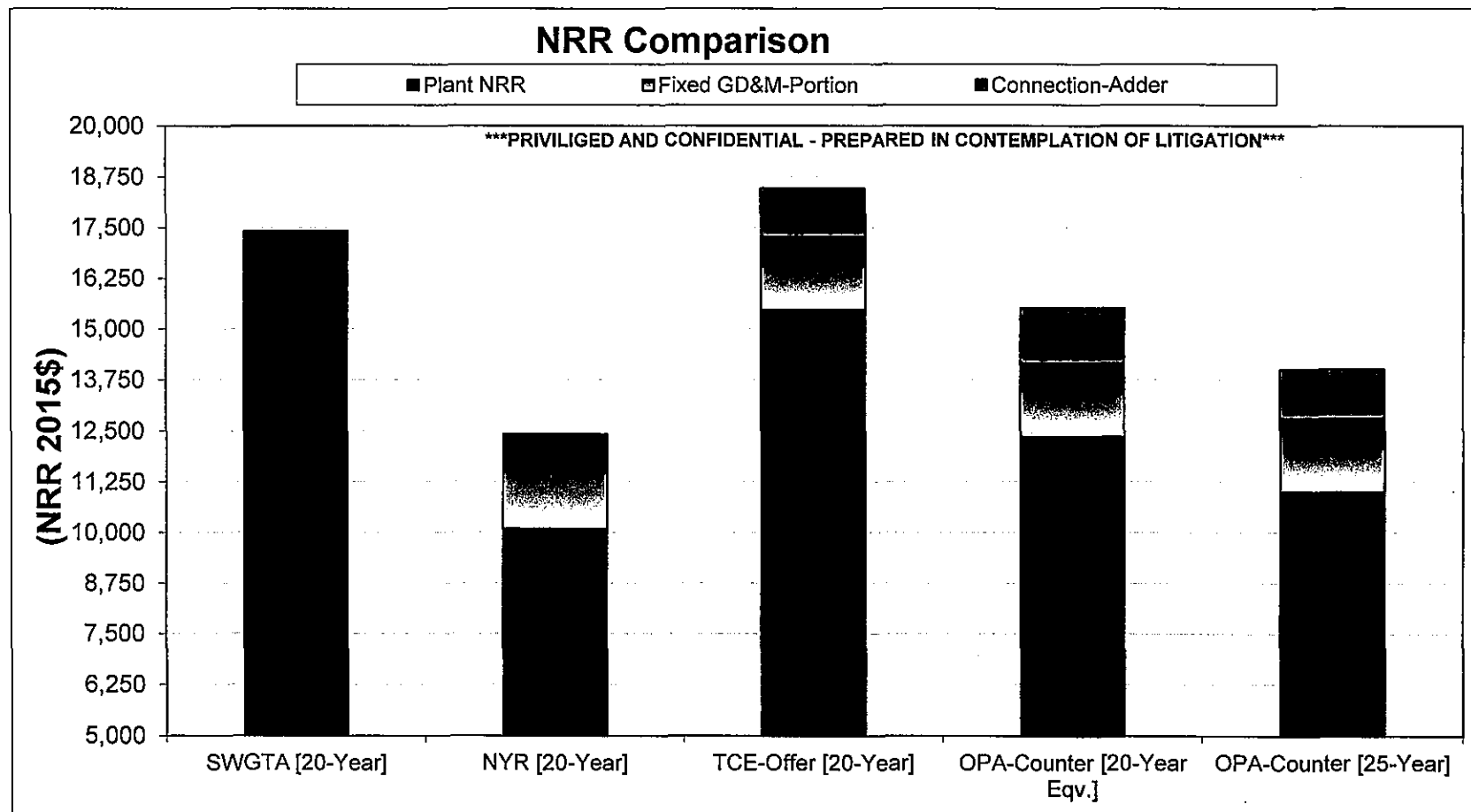
Net Revenue Requirement

- The OPA proposed NRR is based on a targeted capital cost expenditure (CAPEX) of \$400 million and reasonable projected operating expenditures (OPEX). This CAPEX is based on an independent review by our technical expert as well as published information on other similar generation facilities.
- TCE has a much higher proposed CAPEX of \$540 million. TCE could not satisfactorily explain why its CAPEX was so high.
- TCE's \$540 million CAPEX estimate translated into an NRR of \$16,900/MW-month. This is slightly below the OGS NRR of \$17,277/MW-month, which was roughly a \$1 billion projected CAPEX.
- The OPA believes that the TCE NRR is far too high for a plant that is much smaller in size, even when factoring in the anticipated financial value of the OGS

Net Revenue Requirement – Target Costing

- In order to mitigate the CAPEX risk we proposed to TCE that we target cost the CAPEX, where the OPA and TCE would share equally on any CAPEX increases above or decreases below the target CAPEX (gain share/pain share). The final NRR would then be adjusted upwards or downwards depending on final shares based on the actual CAPEX.
- A target cost mechanism with gain share/pain share provides both TCE and the OPA with an incentive to bring the project in below the target CAPEX.
- The target costing approach is commonly used in the energy and infrastructure industries to provide an incentive to both sides to minimize CAPEX. We understand that TCE has used target costing itself and is consequently familiar with the concept.

Net Revenue Requirement



Annual Payments Based on NRR

[NTD: Insert slide showing annual \$ payments based on NRR and state assumptions]

Contract Term

- OPA contracts typically have 20-year terms.
- A longer term allows for CAPEX to be recovered over a longer period of time, which reduces the NRR.
- TCE had asked for a 30 year term. This would set a precedent for gas-fired generation contracts for the OPA.

Contract Term

- The OPA proposed a 25-year term.
- In analyzing the TCE numbers it looked to us as if TCE were actually using a 20-year time horizon for recovering its costs.
- Portlands Energy Centre has an option for an additional five years on the 20-year term to make the contract have a 25-year term.

Contract Capacity

- The Long-term Energy Plan (“LTEP”) indicates the need for a peaking generation facility in the Kitchener-Waterloo-Cambridge area.
- PSP has indicated that at least 450 MW of summer peaking capacity is required.
- The OPA proposed an average 500 MW of Contract Capacity to provide additional system flexibility in the summer months and to reduce the NRR on per MW basis.

Contract Capacity

- The 500 MW we proposed is an average annual Contract Capacity.
- The nameplate capacity the GT units TCE proposes to use is 540 MW.
- We have given TCE the flexibility to nominate seasonal Contract Capacities for the purposes of imputing revenue and performing capacity check tests.

OGS Sunk Costs

- TCE has claimed \$37 million in OGS Sunk Costs.
- The OPA has the Ministry of Finance auditing these costs.
- We proposed to include the amount of OGS Sunk Costs in the NRR provided the costs were reasonable and substantiated.

Interconnection Costs

- The OPA proposed to pay for the gas and electrical interconnection costs on a cost-recovery basis.
- This is done on some other OPA contracts.
- Paying on a cost-recovery basis, i.e., a pass-through cost to the OPA is cheapest for the ratepayer since there is no opportunity to charge an additional risk premium on top of the actual cost.
- The interconnection costs are estimated at about \$100 million

Approvals and Permitting Risk Mitigation

- TCE had proposed to the OPA that it be protected from all permitting and approvals risk.
- This basically puts the OPA in the developer role, a role in which we are not comfortable.
- As a compromise, we proposed to approach the government to have it provide a *Planning Act* approvals exemption, similar to what had been done for the York Energy centre project.

Approvals and Permitting Risk Mitigation

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

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
<i>Ontario Water Resources Act</i> Approvals	Ministry of the Environment	Exempting regulation.
<i>Ontario Energy Board Act</i> Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.
Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
<i>Municipal Act</i> Municipal By-Laws e.g., PM2.5 enacted pursuant to s. 10 and s. 11 of the Act.	Ministry of Municipal Affairs and Housing/Ministry of the Environment	Section 451.1(1) allows for a regulation to impose limits on municipal powers, however, the regulation is deemed to be revoked after 18 months. Legislation might be required to permanently override a municipal by-law.

TCE Response to OPA Counter-Proposal

- TCE has indicated that it does not accept the OPA counter-proposal.
- TCE believes that the financial offering by the OPA is too low and that there isn't sufficient compensation for it to recover its CAPEX and the anticipated financial value of the OGS contract.

Next Steps

- TBD

Aleksandar Kojic

From: Michael Killeavy
Sent: April 4, 2011 4:28 PM
To: Colin Andersen; Brett Baker
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Subject: TCE Matter - Proposed Email Response to Alex Pourbaix
Attachments: Draft email to A Pourbaix 4 Apr 2011.doc

Importance: High

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

Attached is the email which has counsel's comments included. I took a stab at a last paragraph to allow TCE to respond back with something.

Michael

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an annual average contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW annual average contract capacity was achievable. We invited TCE to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degrees Celsius, and we recognize that this may not be achievable using the current turbines. We are happy to contact the IESO to understand how much flexibility there is on this requirement.

You also raised an issue with the computation of the net present value (NPV) of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose or assume a capital structure on TCE for the investment in the facility. Any addition of debt to the capital structure will only serve to increase the NPV as we would expect the cost of capital to decrease with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. We worked with our advisors to determine the appropriate NPV of the OGS contract, taking into account the applicable risks and appropriate discount rates and built this into the NRR in our proposal. As with OGS, the residual value of the K-W peaking facility would be to TCE's account. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will continue to have real value in the future.

It is impossible for us to specify TCE's NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and resolve the issues between us. To this end, it might be helpful if your team could tell us the aspects of our proposal that are giving you the most trouble.

Sincerely,

Colin

Aleksandar Kojic

From: Colin Andersen
Sent: April 4, 2011 6:51 PM
To: JoAnne Butler; Michael Killeavy; Deborah Langelaan
Cc: Brett Baker
Subject: as sent

Minor tweaks to first and last para

Colin Andersen
Chief Executive Officer

Ontario Power Authority
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colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

Please consider your environmental responsibility before printing this email

From: Colin Andersen
Sent: Monday, April 04, 2011 6:50 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com)
Subject:

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I said I would get back to you about today and would like to respond to directly.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an annual average contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW annual average contract capacity was achievable. We invited TCE to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degrees Celsius, and we recognize that this may not be achievable using the current turbines. We are happy to contact the IESO to understand how much flexibility there is on this requirement.

You also raised an issue with the computation of the net present value (NPV) of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose or assume a capital structure on TCE for the investment in the facility. Any addition of debt to the capital structure will only serve to increase the NPV as we would expect the cost of capital to decrease with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. We worked with our advisors to determine the appropriate NPV of the OGS contract, taking into account the applicable risks and appropriate discount rates and built this into the NRR in our proposal. As with OGS, the

residual value of the K-W peaking facility would be to TCE's account. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will continue to have real value in the future.

It is impossible for us to specify TCE's NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and resolve the issues between us. To this end, it might be helpful if your team could tell us the aspects of our proposal that are giving you the most trouble.

Happy to chat further,

Colin

Colin Andersen
Chief Executive Officer

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Please consider your environmental responsibility before printing this email

Aleksandar Kojic

From: Michael Killeavy
Sent: April 8, 2011 11:16 AM
To: Susan Kennedy; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Financial Model Explanation ...
Attachments: OPA Financial Model 8 April 2011.doc

Importance: High

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

Attached is a memorandum explaining how the financial model we used in the settlement negotiations works.

Michael

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Michael.killeavy@powerauthority.on.ca



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

8 April 2011

MEMO TO: Susan Kennedy

FROM: Michael Killeavy

RE: OPA Financial Model for Settlement Negotiations with TCE

Here is a brief explanation of how the financial model we used in the settlement negotiations with TCE works:

1. The model was constructed in an MS-EXCEL 2010 spreadsheet.
2. We modelled each year necessary to build the proposed contract facility plus the 25 years to operate the facility for the 25 year contract term.
3. For each year we calculated cash inflow and subtracted cash outflows to arrive at the net cash that went to TCE for each year of the modelling period. The net cash to TCE was calculated on an after-tax basis using TCE's effective tax rate of 25%.
4. Cash flows occur monthly, but to simplify the model we modelled only each year. We assumed that all cash flows occurred at the mid-point of each year, i.e., 1 July.
5. The net cash accruing to TCE was then discounted back to July 2009. This is the same point in time that TCE was discounting its cash flows back to with its model to arrive at a net present value ("NPV"). This just a simple time-value of money calculation using a discount rate and stream of cash flows.
6. We assumed an all-equity investment by TCE to fund construction and operation of the plant. We used a return on equity of 7.5% for TCE and this is the discount rate we used for the NPV calculation. We arrived at this cost of equity using TCE's published financial statements.
7. The only cash inflow on a yearly basis was the Net Revenue Requirement ("NRR"). We assumed no net market revenues. Accordingly, the only annual cash inflow was $NRR/MW\text{-month} \times 12 \text{ months/year} \times 500 \text{ MW of contract capacity}$.

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

8. The NRR revenue only commences once the facility achieves Commercial Operation in Q1 2015.
9. Prior to Q1 2015 TCE is developing the facility and all cash flows are outflows. We assumed a capital expenditure ("CAPEX") for the plant of \$400 million. We allocated the \$400 million over the four years to the develop the facility in the same manner TCE did, i.e., a certain percentage of the CAPEX was incurred each year.
10. TCE had proposed a CAPEX of \$540 million, which we believed to be too high. Our technical expert thought the cost ought to be \$375 million to \$400 million at the very most.
11. During each year of operating the facility, TCE is assumed to have certain operating expenses ("OPEX") and Gas Distribution and Management ("GD&M") expenses. These are deducted from the NRR revenue to yield net operating revenue also known as EBITDA ("Earnings Before Interest, Taxes, Depreciation and Amortization").
12. We assumed an annual inflation rate of 2%, which is consistent with TCE's assumption. OPEX, 20% of the NRR and 20% of the GD&M were inflated annually.
13. We ran the model and solved for a target NPV for the contract facility. We did this by iteratively adjusting the NRR such that the NPV for the contract facility matched the targeted NPV. When the model NPV was very close to the target NPV we stopped the iterations. We used the MS-EXCEL Goalseek function to automate this iterative task.
14. There is no "double dipping" as a I understand the use of this term, i.e., there are no separate returns for OGS and K-W. What we do is we set the NPV target to the level of the desired OGS NPV for the model run and then we solve the model such that the NRR gives us only the target NPV. The only way to get double dipping would be to set the the target NPV at the OPG NPV plus the K-W NPV, to yield a very high target NPV. Our target NPV was established on only the OGS NPV.
15. Our litigation counsel's sub-consultant is experienced in power plant valuation and assess the NPV for OGS at about \$50 million. In doing so, he weighed the probability of the the OGS actually be built, the probability of it being built on time, the probability of it not experiencing cost overruns, etc., to arrive at this \$50 million figure.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 8, 2011 9:49 AM
To: Manuela Moellenkamp
Cc: Deborah Langelaan
Subject: FW: TCE Matter - REVISED BOD Presentation
Attachments: OGS_BOD_CM_20110406 v9.pptx

Importance: High

Please prepare four copies...thanks...

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

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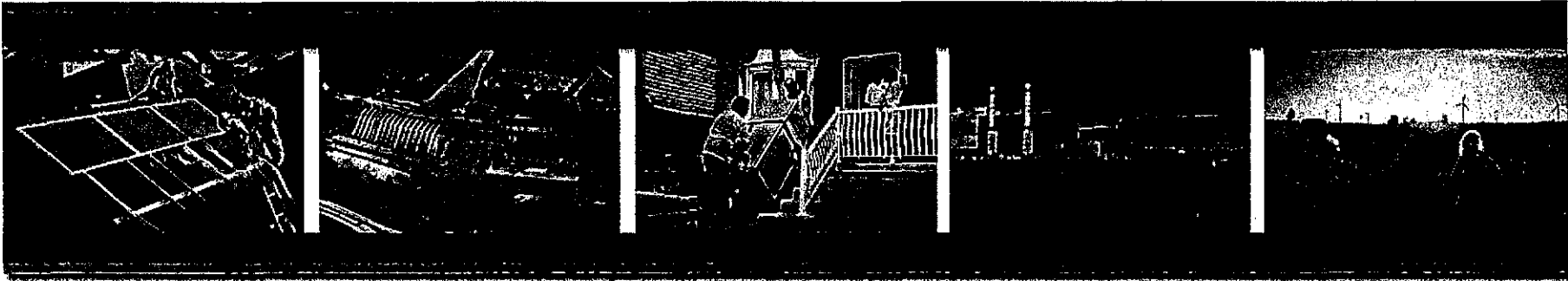
416-969-6005 Tel.
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joanne.butler@powerauthority.on.ca

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

From: Michael Killeavy
Sent: Miércoles, 06 de Abril de 2011 09:36 p.m.
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE Matter - REVISED BOD Presentation
Importance: High

Attached is the BOD presentation with a revised description of the TCE proposed contract term.

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

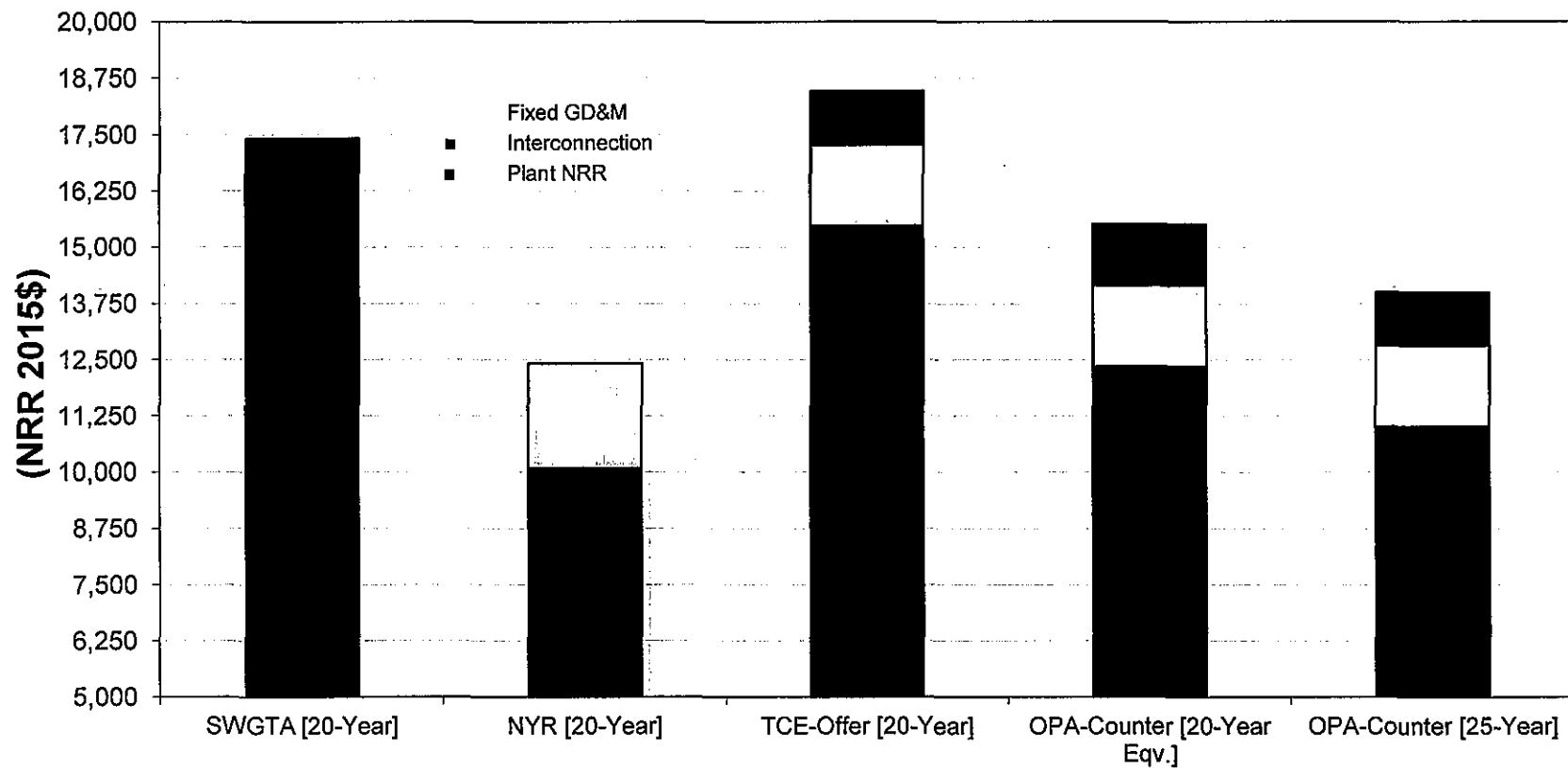
- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- We will wait for specific feedback from TCE.

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years with option to extend for 10 years or 30 Years	25 Years	Precedent – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 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	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	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	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

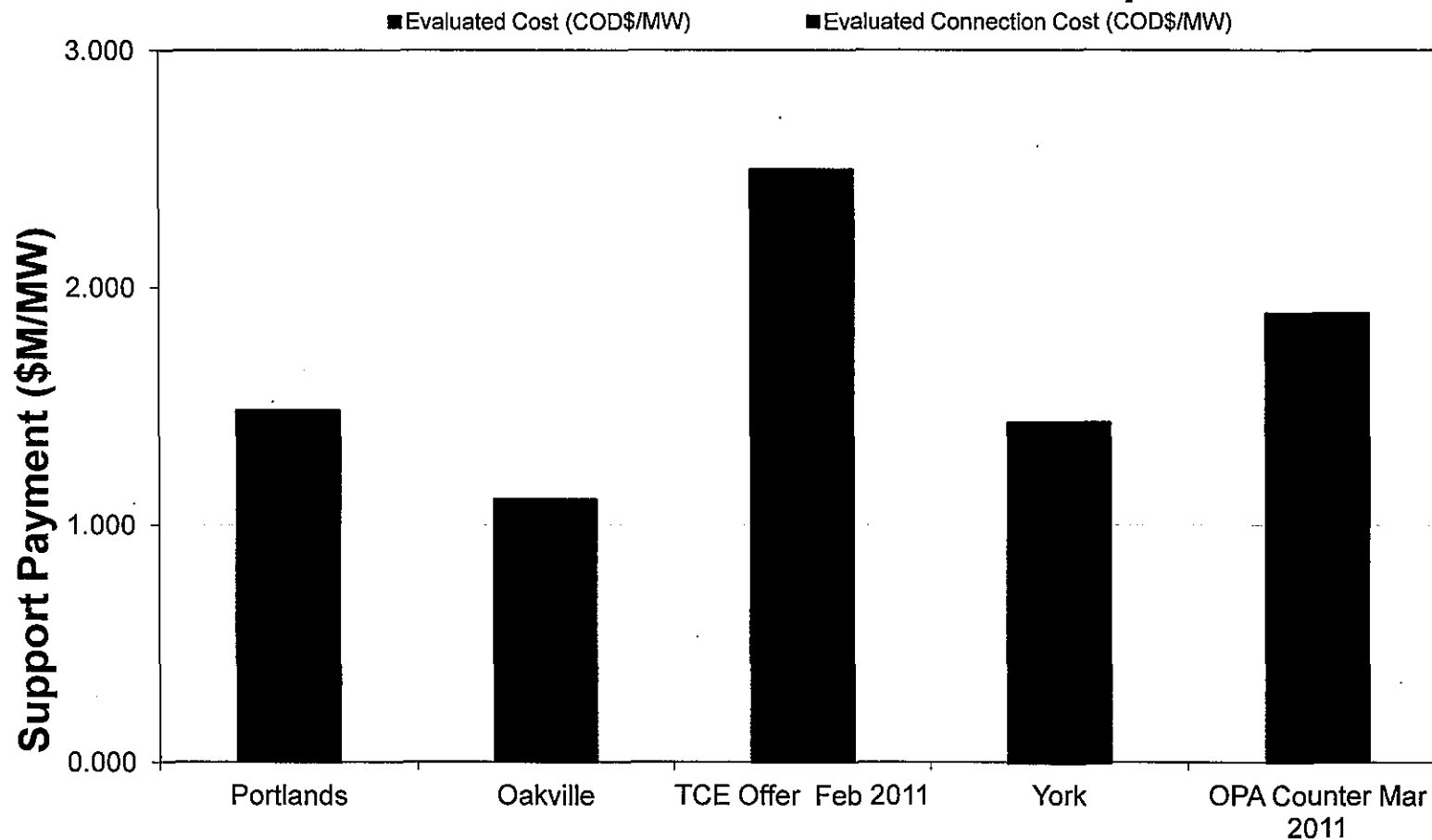
Net Revenue Requirement

NRR Comparison



PV of Annual Payments Based on NRR

OPA Contracts Evaluated Cost Comparison



Development Risk Mitigation

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

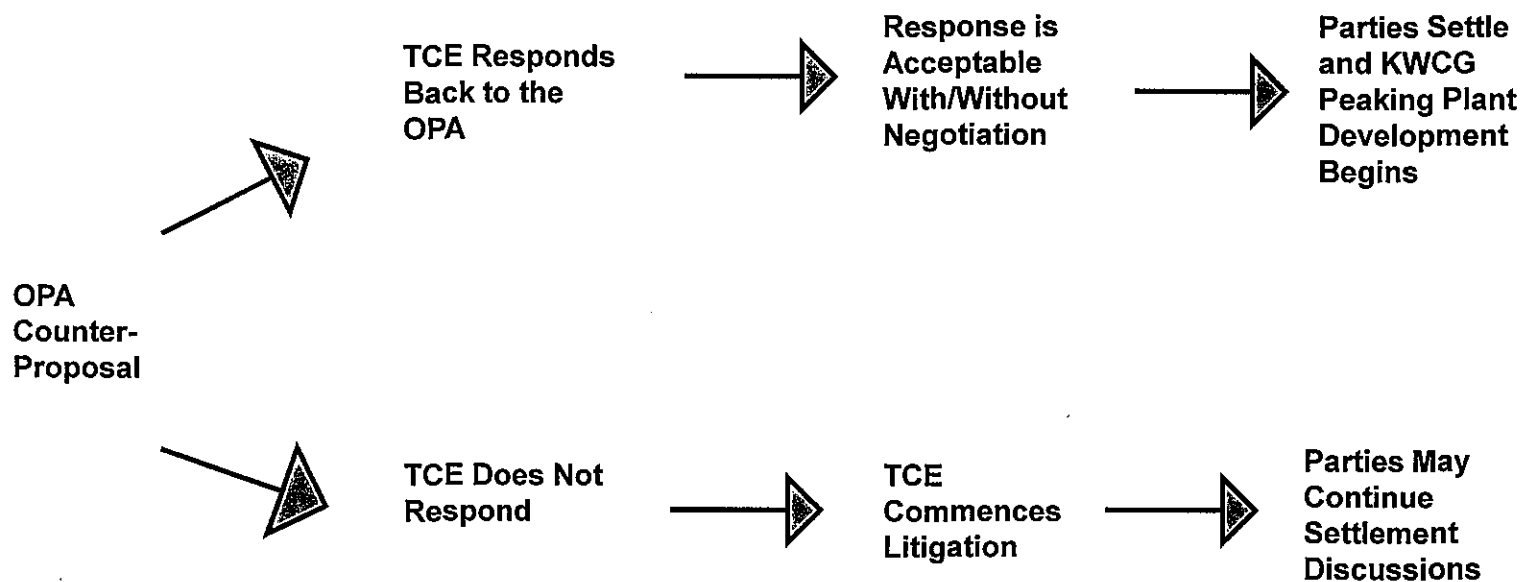
Development Risk Mitigation

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

Development Risk Mitigation

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

Possible Outcomes



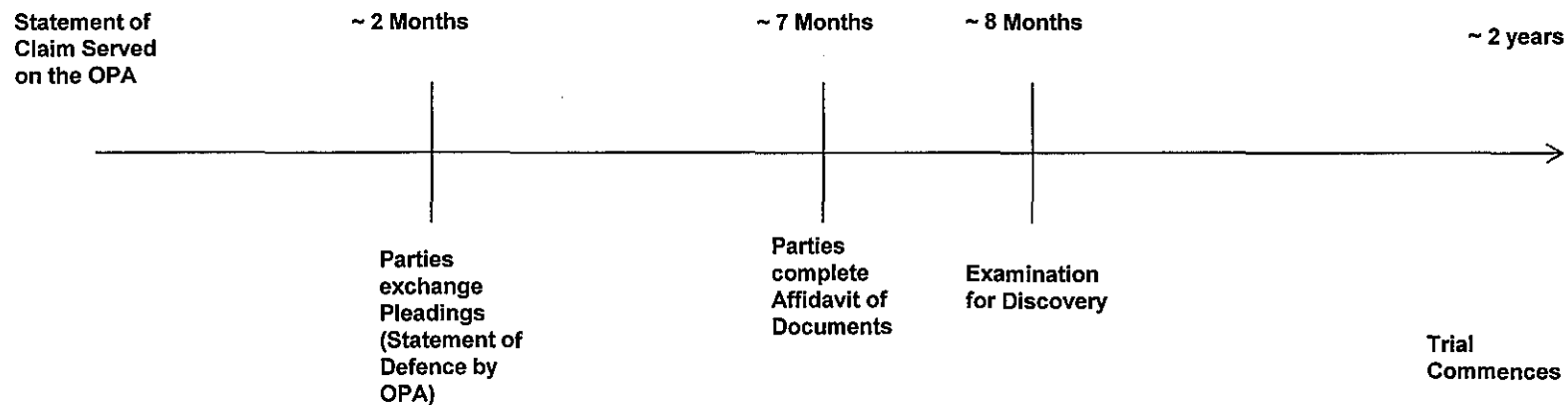
OGS Contract is Not Terminated

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

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- This will include a termination right in favour of the OPA/TCE if a force majeure persists for 2 years. TCE could terminate if the force majeure persisted for more than a year. We would need to pay TCE for OGS if this happened.

Potential Litigation Timeline



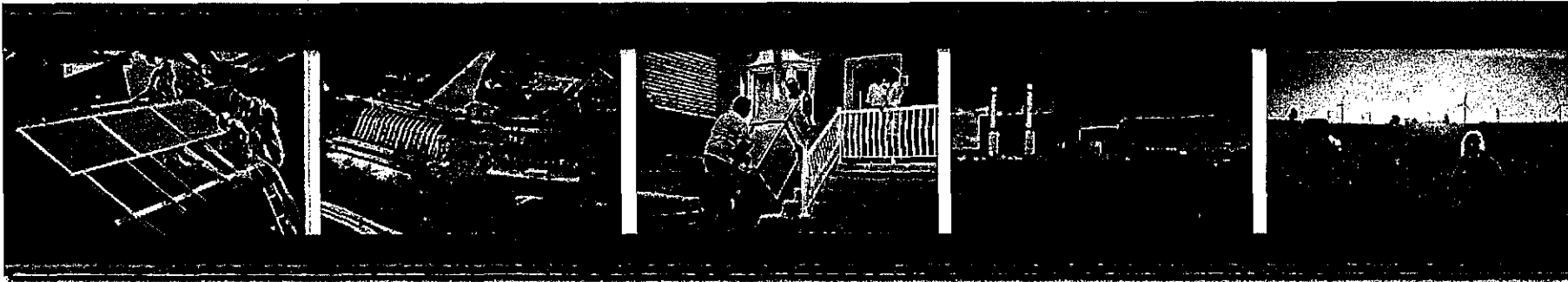
Aleksandar Kojic

From: Michael Killeavy
Sent: April 6, 2011 9:36 PM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE Matter - REVISED BOD Presentation
Attachments: OGS_BOD_CM_20110406 v9.pptx

Importance: High

Attached is the BOD presentation with a revised description of the TCE proposed contract term.

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

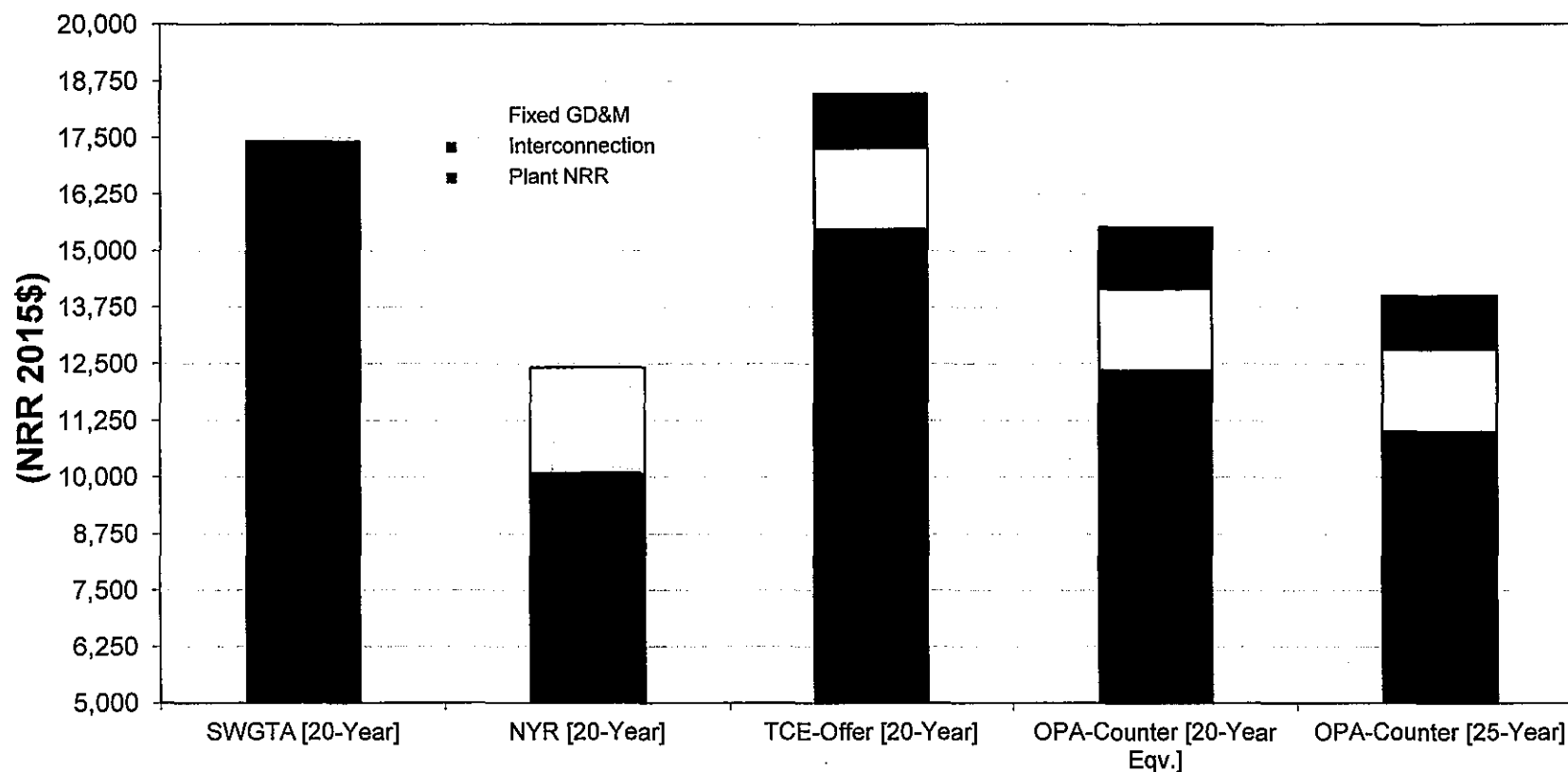
- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- We will wait for specific feedback from TCE.

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years with option to extend for 10 years or 30 Years	25 Years	Precedent – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 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	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	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	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

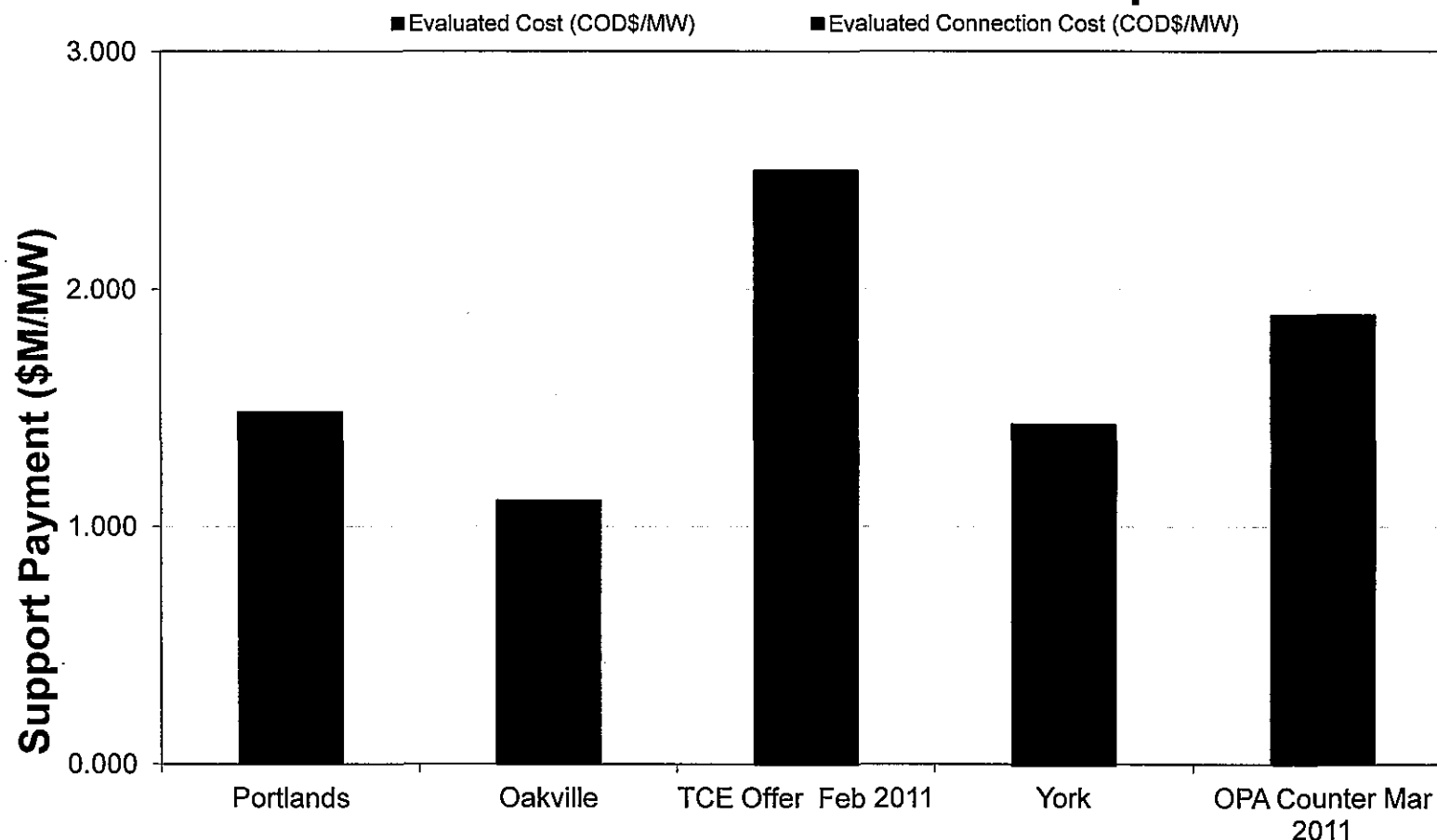
Net Revenue Requirement

NRR Comparison



PV of Annual Payments Based on NRR

OPA Contracts Evaluated Cost Comparison



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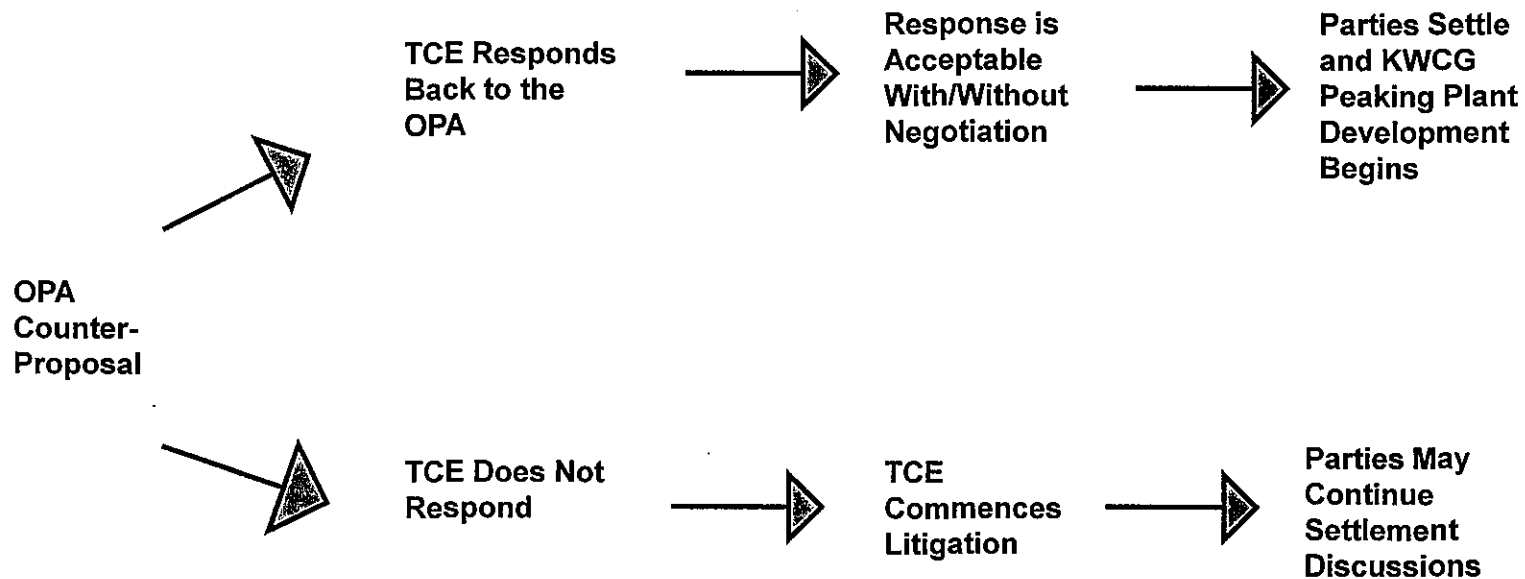
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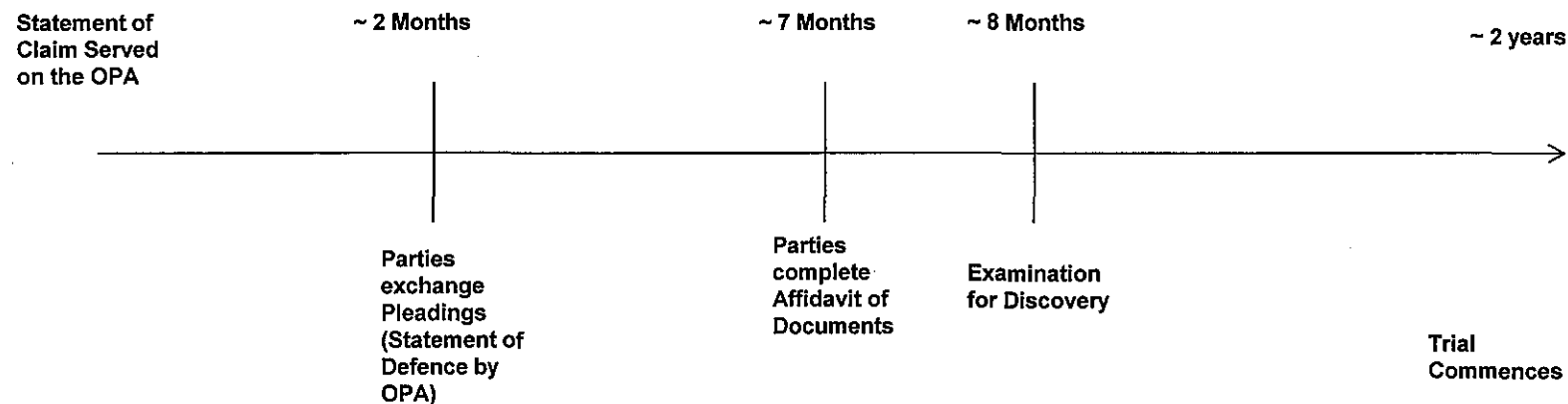
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 8, 2011 11:43 AM
To: Michael Killeavy
Subject: RE: TCE Matter - Financial Model Explanation ...

Good stuff....one question....so we iterated from the OGS \$50 MM (Gene's number)....where does the 9% return on the replacement project come in??

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

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

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

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

From: Michael Killeavy
Sent: Viernes, 08 de Abril de 2011 11:16 a.m.
To: Susan Kennedy; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Financial Model Explanation ...
Importance: High

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

Attached is a memorandum explaining how the financial model we used in the settlement negotiations works.

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

Aleksandar Kojic

From: Michael Killeavy
Sent: April 8, 2011 11:45 AM
To: JoAnne Butler
Subject: Re: TCE Matter - Financial Model Explanation ...

IRR - with cashflows for \$50M.

If you discount these cashflows at 9% you get an NPV of \$0 - this is what IRR is.

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

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 14, 2011 5:17 PM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Arbitration[Privileged and Confidential]

Michael,

Further to our discussion of this afternoon, below please find the text of a draft letter to Alex Pourbaix from Colin regarding the arbitration.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE
To: Mr. Alex Pourbaix

Dear Alex:

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

As you know, the Contract provides that any matter in issue between the parties as to their rights under the Contract may be decided by arbitration in accordance with Section 16.2 of the Contract. The OPA requests that the parties meet to discuss an arbitration of the dispute between the parties and terms of reference of an arbitration. Please have your counsel contact ours in this regard.

[Signed Colin Andersen]

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: TCE Matter - Arbitration

Paul/Rocco,

We are being asked to:

1. Prepare a formal letter to TCE requesting mediation in a formal way, which sets out the reasons for mediation and where we think it might assist us. This will be a counsel to counsel letter; and,

2. Prepare a Notice of Arbitration to TCE.

Can you please start work on this. We want to send the mediation letter tomorrow.

We would like to be in a position to serve the Notice of Arbitration on Monday.

Michael

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

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 14, 2011 7:54 PM
To: Michael Lyle; Susan Kennedy
Cc: JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: OPA - TCE [Privileged and Confidential]

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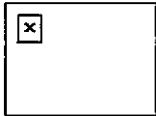
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Sent: April 14, 2011 7:54 PM
To: Michael Lyle; Susan Kennedy
Cc: JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: v3 Common Interest Privilege Agreement, OPA 20420450_3.DOC

Mike and Susan,

Attached please find a draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy. Let me know if you have any questions or would like to discuss.

Regards,

Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the _____ day of _____, 2011 (the “Effective Date”). [NTD: Consider whether this Agreement should be backdated.]

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ENERGY
("ONTARIO")**

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

In consideration of the promises and the mutual covenants and agreements herein, the Parties agree as follows:

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, experts and affiliates.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) **"TCE"** has the meaning defined in paragraph A of the Recitals.
- (f) **"Third Party"** or **"Third Parties"** means any person or entity that is not, with respect to either Party, any corporation, partnership, joint venture or other legal entity that is a direct or indirect parent or subsidiary of such Party or that directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise, and, without limitation, Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

- 2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
- 3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
- 4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
- 5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
- 6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by

Draft & Privileged

law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

10. The Parties shall cooperate in respect of the defence of the Claims, including providing access to information, materials and employees as may be reasonably necessary from time to time, as the case may be, provided that each of the Parties reserves the right to determine what information will be shared and under what circumstances, and no obligation or duty to share any such information is created by this Agreement.

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

17. The Receiving Party acknowledges that disclosure of any Privileged Information to Third Parties in breach of this Agreement will cause the Disclosing Party to suffer irreparable harm for which there is no adequate legal remedy. The Parties therefore agree that immediate injunctive relief is an appropriate and necessary remedy for a breach or threatened or anticipated breach of this Agreement.

NOTICE

18. All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1

Tel. No.: (416) 969-6035
Fax No.: (416) 967-1947
E-Mail: michael.lyle@powerauthority.on.ca

To: Her Majesty the Queen in Right of Ontario as Represented by the Minister
of Energy
Attention: ●

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

Draft & Privileged

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ENERGY**

By: _____

Name: _____

Title: _____

Aleksandar Kojic

From: Susan Kennedy
Sent: April 15, 2011 7:42 AM
To: JoAnne Butler
Cc: Michael Killeavy; Deborah Langelaan; Kristin Jenkins; Brett Baker; Michael Lyle; Colin Andersen; Amir Shalaby
Subject: RE: Arbitration Slides

Privileged and Confidential (Solicitor and Client Privilege)

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

Assuming the plan is to give the slides to, and leave the slides with, the Government, you may [for the purpose of clarity/written record for their future reference] want to consider including some clarifying caveats (maybe footnote or endnote style, so you don't clutter up the slide).

For example, clarify that the comparison slide between Arbitration and Litigation is based on the assumption of essentially similar scope for both proceedings and/or on the assumption that "favorable" [or perhaps "acceptable"] terms of arbitration were agreed between the parties.

To illustrate what I'm worrying about, someone looking at the first slide without context might interpret the line item "Favorable Terms of Reference" to mean "you will get favorable terms of reference with an arbitration and you won't with a litigation". It will be easy to lose the subtlety (which I appreciate we are trying to address in the next slide) that you can agree to scope the terms of reference with an arbitration but would/might only want to proceed with arbitration if you were, in fact, able to agree to favorable/acceptable terms of reference.

Other subtleties, perhaps worth noting:

- re "Private Proposal", as MK pointed out yesterday, private doesn't absolutely guarantee private forever, as there is a possibility for appeal – which is to a court and if you get into an appeal process, what was private in the arbitration will [likely] become a matter of public record in the appeal.
- Re "Government not part of process" – there is the possibility of separate litigation against Government. (Arbitration does not technically preclude TCE from suing them in tort – whether, as a practical matter, they would in fact do so if we were arbitrating is difficult to predict). Also an MK catch from yesterday.

Slide 2, "Avoid Optics of "Money for Nothing" – think it needs to be an "N" in the Arbitration column (this is consistent with what we are saying on Slide 3 in the second line under "Cons").

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: JoAnne Butler
Sent: April 14, 2011 5:26 PM
To: Michael Killeavy; Deborah Langelaan; Kristin Jenkins; Brett Baker; Susan Kennedy; Michael Lyle; Colin Andersen; Amir Shalaby
Subject: Fw: Arbitration Slides

Fyi. Very rough draft from earlier meeting. We can noodle on it tonight and discuss at our morning meeting.

MK, if you think that there is value sending to Rocco/Paul then please do so.

JCB

From: Manuela Moellenkamp
Sent: Thursday, April 14, 2011 04:01 PM

To: JoAnne Butler
Subject: Arbitration Slides

Here you go. I'm going to stick around until 4:30 in case you need me to make changes or add other slides.

Manuela Moellenkamp
Executive Assistant to JoAnne Butler, Vice President, Electricity Resources
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON M5H 1T1
Tel: 416-969-6015
Fax: 416-969-6071
manuela.moellenkamp@powerauthority.on.ca



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Aleksandar Kojic

From: JoAnne Butler
Sent: April 15, 2011 7:47 AM
To: Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; Kristin Jenkins; Brett Baker; Michael Lyle; Colin Andersen; Amir Shalaby
Subject: Re: Arbitration Slides

Great comments, Susan and exactly the type of context we will be needing to provide later to the Gov. BTW, I do not plan on leaving anything with anyone. Only for discussion purposes.

JCB

From: Susan Kennedy
Sent: Friday, April 15, 2011 07:42 AM
To: JoAnne Butler
Cc: Michael Killeavy; Deborah Langelaan; Kristin Jenkins; Brett Baker; Michael Lyle; Colin Andersen; Amir Shalaby
Subject: RE: Arbitration Slides

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: JoAnne Butler
Sent: April 14, 2011 5:26 PM
To: Michael Killeavy; Deborah Langelaan; Kristin Jenkins; Brett Baker; Susan Kennedy; Michael Lyle; Colin Andersen;

Amir Shalaby

Subject: Fw: Arbitration Slides

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From: Manuela Moellenkamp

Sent: Thursday, April 14, 2011 04:01 PM

To: JoAnne Butler

Subject: Arbitration Slides

Here you go. I'm going to stick around until 4:30 in case you need me to make changes or add other slides.

Manuela Moellenkamp
Executive Assistant to JoAnne Butler, Vice President, Electricity Resources
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 14, 2011 9:32 AM
To: Colin Andersen; Michael Lyle; Brett Baker; Kristin Jenkins; Amir Shalaby
Cc: Michael Killeavy; Deborah Langelaan
Subject: FW: TCE Options

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

Another suggestion from Michael....a little more complicated but certainly doable...

JCB

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

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

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

From: Michael Killeavy
Sent: Jueves, 14 de Abril de 2011 09:24 a.m.
To: JoAnne Butler
Subject: Re: TCE Options

What about embedding an option to convert the SC plant to a CC plant at a certain point in time in the future?

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

From: JoAnne Butler
Sent: Thursday, April 14, 2011 09:19 AM
To: Colin Andersen; Michael Lyle; Brett Baker; Kristin Jenkins; Amir Shalaby
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Options

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

On further reflecting on Einstein, I do believe that the option of using one smaller replacement project to counteract the OGS plant will only lead to, in one way or another, some form of embarrassment for the OPA. For the sweetener discussion, could we discuss further:

- 1) the other half of Portlands
- 2) per Amir, moving the 800 MW plant, as is, to a site that we help obtain with government assistance in the KWCG area and let them get on with it.

Yes, I know that OPG may not like it and it would be a change to the LTEP but maybe we all have to swallow hard...

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

Aleksandar Kojic

From: Michael Killeavy
Sent: April 14, 2011 9:32 AM
To: JoAnne Butler; Colin Andersen
Cc: Deborah Langelaan
Subject: RE: TCE Modelling

Also, their deal is effectively a 30-y deal – 20 y with an option in TCE's favour to extend for an additional 10-y.

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

From: JoAnne Butler
Sent: April 14, 2011 9:26 AM
To: Colin Andersen
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Modelling

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

Colin, one thing that I wanted to clarify re. the graphs yesterday afternoon was that was done still using our \$400 MM for Capex. If we use the \$540 MM as proposed by TCE, the NRR's will be significantly higher (I will ask Michael to prepare that companion slide). Also, the TCE deal as they want it includes a significant number of contractual top-ups (that we have said no to as this point) that on an all-in basis, their NRR is really not \$16,900 MW-month but is significantly higher than \$20,000 MW-month. Just fyi, if we are talking about "their deal".

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

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 14, 2011 10:53 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Arbitration and Mediation [Privileged and Confidential]
Attachments: Letter to counsel for TCE 20447708_1.doc

Michael,

Attached for your review is a draft letter to counsel for TCE regarding mediation.

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: TCE Matter - Arbitration

Paul/Rocco,

We are being asked to:

1. Prepare a formal letter to TCE requesting mediation in a formal way, which sets out the reasons for mediation and where we think it might assist us. This will be a counsel to counsel letter; and,
2. Prepare a Notice of Arbitration to TCE.

Can you please start work on this. We want to send the mediation letter tomorrow.

We would like to be in a position to serve the Notice of Arbitration on Monday.

Michael

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

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

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Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

April 14, 2011

Montréal

Paul Ivanoff
Direct Dial: 416.862.4223
PIvanoff@osler.com
Our Matter Number: 1126205

Ottawa

SENT BY FACSIMILE AND EMAIL

Calgary

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

New York

Mr. David Lever
McCarthy Tétrault
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Sir:

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

As you know, we are the solicitors for the OPA.

We have been provided with a copy of an email from Alex Pourbaix to Colin Andersen of the OPA sent on April 13, 2011. Mr. Pourbaix's email was in response to Mr. Andersen's email sent on April 12, 2011, in which Mr. Andersen indicated his belief that TCE and the OPA would benefit from entering into a mediation process in connection with the differences between the parties respecting the Contract and the potential development of a simple cycle natural gas-fired power generation project in the Cambridge area.

Mr. Andersen's request to Mr. Pourbaix was made in good faith and in an effort to work together with TCE to negotiate the definitive form of an agreement in respect of the development of a power generation project in the Cambridge area. As you know, the parties entered into an MOU dated December 21, 2010, in which the parties identified that they were working together co-operatively to identify other generation projects that meet Ontario's electricity system needs. The MOU contains obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU expressly states that "[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the "Definitive Agreement") in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE."

Mr. Andersen's request that the parties continue their negotiations in a mediated process is consistent with the parties' express obligations under the MOU respecting good faith negotiations. A mediated process would allow the parties to advance negotiations on

Draft

OSLER

Page 2

certain key issues including those respecting CAPEX estimates and TCE's alleged damages. Rejecting, outright, the OPA's proposal to continue negotiations in a mediated process forecloses the parties from receiving the benefits of third party facilitation and is inconsistent with TCE's obligations under the MOU. We note that these obligations continue through to June 30, 2011, as stated in the MOU.

Our client expects that your client will meet its obligations under the MOU. The OPA is hopeful that TCE, on reflection, will recognize the benefits of participating in negotiations with the assistance of a mediator, and that TCE will take all steps necessary to comply with its obligations relating to good faith negotiations as set forth in the MOU. On behalf of the OPA, we would ask that your client reconsider its position respecting mediation. The OPA is hopeful that your client's reconsideration will result in an agreement to promptly proceed with mediation to further the negotiations in this regard.

May we please hear from you at your earliest opportunity.

Yours very truly,

Paul Ivanoff
PI:hi

c: C. Andersen
M. Lyle
S. Kennedy
D. Langelaan
R. Sebastiano

Draft

Aleksandar Kojic

From: Kristin Jenkins
Sent: April 14, 2011 11:51 AM
To: Colin Andersen; Brett Baker; Michael Lyle; JoAnne Butler
Subject: FW: TCE-OGS Key Messages - Privileged and Confidential
Attachments: #20433686v2_LEGAL_1_ - TCE-OGS-Key Messages doc.doc; WSComparison_#20433686v1_LEGAL_1_ - TCE-OGS-Key Messages doc.doc; #20433686v2_LEGAL_1_ - TCE-OGS-Key Messages doc.pdf

For discussion at 2:00 pm.

From: Susan Kennedy
Sent: April 14, 2011 10:59 AM
To: Kristin Jenkins
Subject: FW: TCE-OGS Key Messages - Privileged and Confidential

Kristin,

Please see attached. My apologies for the delay, I only just saw this.

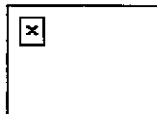
Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: April 12, 2011 11:19 AM
To: Susan Kennedy
Cc: Sebastiano, Rocco
Subject: RE: TCE-OGS Key Messages - Privileged and Confidential

Susan,

Attached is a revised draft of the Key Messages. Let me know if you would like to discuss.

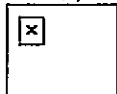
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Tuesday, April 12, 2011 11:01 AM

To: Ivanoff, Paul
Subject: FW: TCE-OGS Key Messages

So, it would appear that the exact messages would/could be released [shows you how much I know] ...

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Kristin Jenkins
Sent: April 12, 2011 10:30 AM
To: Susan Kennedy
Subject: Re: TCE-OGS Key Messages

Yes.

From: Susan Kennedy
Sent: Tuesday, April 12, 2011 09:55 AM
To: Kristin Jenkins
Cc: Michael Lyle
Subject: RE: TCE-OGS Key Messages

Just so I'm clear, there is a possibility that they will be either issued in writing or verbally communicated exactly as written, i.e.:

Press Release:

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 rate payers 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 another needed generation project. This is why OPA has proposed mediation to TCE.

Sorry if I'm being obtuse but the details are important for the legal analysis.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Kristin Jenkins
Sent: April 12, 2011 9:28 AM
To: Kristin Jenkins; Susan Kennedy
Cc: Michael Lyle
Subject: RE: TCE-OGS Key Messages

No decision on whether they would simply be verbally communicated or issued as some kind of statement. Assume both.

From: Kristin Jenkins
Sent: April 12, 2011 9:23 AM
To: Susan Kennedy
Cc: Michael Lyle
Subject: RE: TCE-OGS Key Messages

They are reactive key messages in the event TransCanada files notice and goes public

From: Susan Kennedy
Sent: April 12, 2011 9:21 AM
To: Kristin Jenkins
Cc: Michael Lyle
Subject: RE: TCE-OGS Key Messages

Litigation Privilege/Solicitor and Client Privilege

I understand from Mike that you were following up on these yesterday.

I just got off the phone with Paul Ivanoff at Oslers. He was looking for context prior to providing a mark-up – by context, the question was, "What exactly is the purpose of the key messages. Are they something that gets released potentially in a press release, etc."

It was at that moment, I realized that I wasn't completely sure exactly what the purpose of key messages was (at least contextualized in the way Paul was doing so). Here is what I told him *[if I got it wrong, let me know]*:

1. Not released formally.
2. Provide a touch stone for framing other communication pieces – for example, actual press releases, responses to questions, QA's, etc.
3. Form of "executive summary" for communication packages.
4. Touch stones for speakers (for example, Colin) to keep in mind if dealing with the press. To assist in staying "on message".
5. They often go to MEI as part of a communications package.

With the foregoing in mind, Paul will be providing a mark-up. His specific concerns were items #1 and #5 which reference our attempts to reach/negotiate an agreement. On the premise that TCE would attempt use any available materials against us in litigation, his concern is that this frames the issue as, "well why would you try to negotiate, if you hadn't done anything wrong."

He will provide mark-up to try and convey a similar sentiment without the tacit admission of wrong-doing.

Susan H. Kennedy
Counsel
Director, Corporate/Commercial Law Group

From: Michael Lyle
Sent: April 11, 2011 4:52 PM

To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages

Have we heard back yet? KJ is wondering.

From: Michael Lyle
Sent: Monday, April 11, 2011 12:50 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages

FYI. We should ensure lit counsel has no issues with this.

From: Kristin Jenkins
Sent: Monday, April 11, 2011 10:41 AM
To: Michael Lyle
Subject: TCE-OGS Key Messages

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OPA Key Messages in event TCE Files Notice of Claim

1. TCE is claiming \$1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.
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 believes that it is unreasonable for TCE to claim \$1B against the Ontario ratepayers in connection with the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers 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. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. ~~OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers. TCE is claiming \$1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.~~
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~~OPA believes that it is unreasonable for TCE to claim \$1B against the Ontario ratepayers to pay (\$1 billion) to TCE as compensation for in connection with the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers 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 another needed generation project. This is why OPA has proposed mediation to TCE. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.~~

Aleksandar Kojic

From: JoAnne Butler
Sent: April 12, 2011 12:45 PM
To: Michael Killeavy; 'Ivanoff, Paul'; 'Sebastiano, Rocco'; Susan Kennedy
Cc: Deborah Langelaan; Sarah Diebel; Kristin Jenkins; Brett Baker
Subject: RE: TCE Matter - REVISED DRAFT of the Mediation Email ...

OK by me...

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

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

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

From: Michael Killeavy
Sent: Martes, 12 de Abril de 2011 12:18 p.m.
To: Ivanoff, Paul; Sebastiano, Rocco; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sarah Diebel; Kristin Jenkins; Brett Baker
Subject: TCE Matter - REVISED DRAFT of the Mediation Email ...
Importance: High

Paul/Rocco/Susan

I am just finished with my meeting with Colin. He requested a few changes. Here is my revised draft.

"After considering where OPA and TCE are at in our negotiations, I believe that we might benefit from having a third-party facilitated discussion by jointly engaging the services of a mediator, particularly with respect to sharing information and data. On this point, we would be able to share our information and data with the mediator on a confidential basis. I am recommending this to assist in resolving our differences in a timely manner. If you agree there is merit in entering into a mediation process, we would propose that OPA and TCE take steps to agree on a mediator and proceed with scheduling a mediation session. Please let me know by next week whether TCE is agreeable to mediation."

Colin would like to send this out early this afternoon, so I would appreciate your comments as soon as possible.

Thanks,
Michael

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

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

Aleksandar Kojic

From: Colin Andersen
Sent: April 12, 2011 2:35 PM
To: JoAnne Butler; Kristin Jenkins; Michael Lyle; Michael Killeavy
Subject: FW: Suggestion

As sent

Colin Andersen
Chief Executive Officer

Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
T. 416 969 6399
F. 416 969 6380
colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

Please consider your environmental responsibility before printing this email

From: Colin Andersen
Sent: Tuesday, April 12, 2011 2:35 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com)
Subject: Suggestion

"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE"

Hi Alex

After considering where OPA and TCE are at in our negotiations, I believe that we might benefit from having a third-party facilitated discussion by jointly engaging the services of a mediator. In a mediation, we would be able to share information and data with each other and/or the mediator on a confidential and without prejudice basis. I am recommending this to assist in resolving our differences in a timely manner. If you agree there is merit in entering into a mediation process, we would propose that OPA and TCE take steps to agree on a mediator and proceed with scheduling a mediation session. Please let me know whether TCE is agreeable to mediation.

Colin.

Colin Andersen
Chief Executive Officer

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120 Adelaide Street West, Suite 1600
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colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

Please consider your environmental responsibility before printing this email

Aleksandar Kojic

From: Michael Lyle
Sent: April 13, 2011 5:12 PM
To: 'RSebastiano@osler.com'; Michael Killeavy; 'PIvanoff@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; Susan Kennedy
Subject: Re: TCE Matter - Arbitration

Read Michael's e-mail. In the after meeting we just had, we discussed this issue and the thinking is that we want to draft the terms of reference broadly enough to encompass all of the arguments that could arise in litigation before the courts related to the exclusion of damages in the contract and the challenges the project would have faced to get through all of the regulatory hurdles. We do not anticipate that TCE will accept arbitration.

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Wednesday, April 13, 2011 05:05 PM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Arbitration

Has there been any further thought given to what the terms of reference should be for the arbitration? As we discussed on Monday, we need to make sure that we don't inadvertently end up in an arbitration where the arbitrator can simply make a monetary award as compensation for the mutual termination of the contract.

Thanks, Rocco

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: TCE Matter - Arbitration

Paul/Rocco,

We are being asked to:

1. Prepare a formal letter to TCE requesting mediation in a formal way, which sets out the reasons for mediation and where we think it might assist us. This will be a counsel to counsel letter; and,
2. Prepare a Notice of Arbitration to TCE.

Can you please start work on this. We want to send the mediation letter tomorrow.

We would like to be in a position to serve the Notice of Arbitration on Monday.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600

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Michael.killeavy@powerauthority.on.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 14, 2011 9:24 AM
To: JoAnne Butler
Subject: Re: TCE Options

What about embedding an option to convert the SC plant to a CC plant at a certain point in time in the future?

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

From: JoAnne Butler
Sent: Thursday, April 14, 2011 09:19 AM
To: Colin Andersen; Michael Lyle; Brett Baker; Kristin Jenkins; Amir Shalaby
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Options

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

On further reflecting on Einstein, I do believe that the option of using one smaller replacement project to counteract the OGS plant will only lead to, in one way or another, some form of embarrassment for the OPA. For the sweetener discussion, could we discuss further:

- 1) the other half of Portlands
- 2) per Amir, moving the 800 MW plant, as is, to a site that we help obtain with government assistance in the KWCG area and let them get on with it.

Yes, I know that OPG may not like it and it would be a change to the LTEP but maybe we all have to swallow hard...

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

Aleksandar Kojic

From: JoAnne Butler
Sent: April 14, 2011 9:26 AM
To: Colin Andersen
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Modelling

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

Colin, one thing that I wanted to clarify re. the graphs yesterday afternoon was that was done still using our \$400 MM for Capex. If we use the \$540 MM as proposed by TCE, the NRR's will be significantly higher (I will ask Michael to prepare that companion slide). Also, the TCE deal as they want it includes a significant number of contractual top-ups (that we have said no to as this point) that on an all-in basis, their NRR is really not \$16,900 MW-month but is significantly higher than \$20,000 MW-month. Just fyi, if we are talking about "their deal".

JCB

JoAnne C. Butler
Vice President, Electricity Resources
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joanne.butler@powerauthority.on.ca

Aleksandar Kojic

From: Deborah Langelaan
Sent: February 1, 2011 10:02 AM
To: Colin Andersen
Cc: JoAnne Butler; Michael Killeavy; Irene Mauricette

Colin;

I wanted to provide you an update of OGS before your call with Alex this morning.

As you know the suspension of the MPS contract for the gas turbines expired yesterday. Although the OPA's strategy was to have TCE extend the suspension for another month TCE released the MPS contract from suspension and directed them to commence work on converting the turbines to Fast Start, but delayed any decisions on the additional scope of work required for simple cycle operation at the Cambridge project (the cooling system and stacks). It is TCE's opinion that if the plant were not to proceed, the Fast Start conversion will increase the marketability of the turbines for reuse or resale.

OPA's Counsel feels this is a reasoned approach by TCE and is a good result for the OPA. It ramps up the pressure on TCE to get the Implementation Agreement in place, as they do not have a "Reliance Letter" supporting their decision to proceed with the Revised Fast Start Option.

Deb

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

Aleksandar Kojic

From: JoAnne Butler
Sent: January 26, 2011 3:32 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Request for description of 'suspension and delayed delivery'

I also want to say that we have no intention of giving any value over and above the twenty year contract term?? Which needs to be concluded before we lift suspension...

JCB

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

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

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

From: Michael Killeavy
Sent: Miércoles, 26 de Enero de 2011 03:31 p.m.
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Request for description of 'suspension and delayed delivery'

OK, I understand. The messages will be:

1. We know nothing of any express financial commitment to be included into the deal. TCE needs to go to the guys that allegedly made this deal to get instructions in writing to the OPA;
2. No lifting of the suspension until #1 is sorted out;
3. No more talks on the Implementation Agreement until #1 is sorted - thursday afternoon's meeting is cancelled for the time being.

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

From: JoAnne Butler
Sent: Wednesday, January 26, 2011 03:24 PM
To: Deborah Langelaan; Michael Killeavy

Subject: FW: Request for description of 'suspension and delayed delivery'

This is the best that I can do for timing given my schedule...if it is tonight, I will follow what we talked about today and if not, we can gather in my office tomorrow morning....I will keep you posted...

JoAnne C. Butler
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joanne.butler@powerauthority.on.ca

From: JoAnne Butler
Sent: Miércoles, 26 de Enero de 2011 03:23 p.m.
To: 'Terry Bennett'
Subject: RE: Request for description of 'suspension and delayed delivery'

Terry,

I can call you tonight....say after eight pm...or tomorrow morning at nine....what works best for you??

JCB

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

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Toronto, Ontario M5H 1T1

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

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Miércoles, 26 de Enero de 2011 01:51 p.m.
To: JoAnne Butler
Subject: Re: Request for description of 'suspension and delayed delivery'

Actually, can we push this to around 4? I've been pulled into something as well this afternoon and won't get out until then.

From: JoAnne Butler [<mailto:joanne.butler@powerauthority.on.ca>]
Sent: Wednesday, January 26, 2011 11:47 AM
To: Terry Bennett
Subject: RE: Request for description of 'suspension and delayed delivery'

Terry, I might be a little late now....rush meeting...I will keep you posted....

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

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joanne.butler@powerauthority.on.ca

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Miércoles, 26 de Enero de 2011 01:08 p.m.
To: JoAnne Butler
Subject: Re: Request for description of 'suspension and delayed delivery'

Ok. 2:10 works for me. Talk to you then.

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Wednesday, January 26, 2011 11:05 AM
To: Terry Bennett
Subject: RE: Request for description of 'suspension and delayed delivery'

Terry, I have been in meetings all morning and just rushing off to another one. Let's hold the call with MPS until you and I have a call about what took place at the end of yesterday's meeting. Are you around about 2:10 PM and I will give you a call to discuss? Thanks...

JCB

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From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Miércoles, 26 de Enero de 2011 11:14 a.m.
To: JoAnne Butler
Subject: FW: Request for description of 'suspension and delayed delivery'
Importance: High

Good morning JoAnne.

Please see below for MPS's explanation of the makeup of the Suspension and Delay amount they quoted earlier.

Please let me know if you would like to talk to MPS directly to get a bit more color. They have suggested a 2 pm call with you, me and Terri if required. Bill Newsom will be on the phone for MPS.

Also, see the second paragraph of Terri's note to MPS below. I can't recall whether we actually dealt with this in our meeting yesterday or not. In any event, this explains why the large shift in the FS conversion start from MPS's November email to their quote from last week.

Regards,

Terry

From: Terri Steeves
Sent: Wednesday, January 26, 2011 8:24 AM
To: Terry Bennett; John Mikkelsen; Geoff Murray
Subject: Fw: Request for description of 'suspension and delayed delivery'

I'll still see if Bill will talk to JoAnne for a few minutes today.

Terri

From: KNamba@mpshq.com [mailto:KNamba@mpshq.com]
Sent: Tuesday, January 25, 2011 08:27 PM
To: Terri Steeves
Cc: Bill.Newsom@mpshq.com <Bill.Newsom@mpshq.com>; KNamba@mpshq.com <KNamba@mpshq.com>; Phil.Prigge@mpshq.com <Phil.Prigge@mpshq.com>; Bill Small; sueki@mpshq.com <sueki@mpshq.com>
Subject: Re: Request for description of 'suspension and delayed delivery'

Terri-san,

The bucket for suspension and delivery delay includes not only storage, handling and inspection of components but also escalation of manufacturing costs due to deferred manufacturing schedule based on new shipping schedule. Since we did not investigate the cost impacts from delivery schedule change and suspension separately, it is difficult for us to split them into "suspension and delay delivery. In addition to above, this bucket also includes payment interests caused by deferred payment schedule shown in the budgetary commercial proposal submitted on December 16, 2010. This is what we can explain as of now but if you need any clarification or question in above explanation, please let us know.

Best regards,

Namba (MPS)

Terri Steeves <terri_steeves@transcanada.com>

2011/01/25 15:24

To "Newsom, Bill" <Bill.Newsom@mpshq.com>

cc Bill Small <william_small@transcanada.com>, <KNamba@mpshq.com>, <Phil.Prigge@mpshq.com>

Subject Request for description of 'suspension and delayed delivery'

Bill,

A resent request has come from the OPA, asking if MPS can provide a description of what is included in the "suspension/delayed delivery" bucket, as well, if possible, a rationale for not splitting the bucket into 'suspension' and 'delay delivery'. I believe the source of the questions comes from the size of the bucket, which OPA was not expecting. I have already relayed my understanding of what's included; suspension and delay delivery costs for all subcontractors, storage and handling costs for 18 months delay in delivery.

Just for your information, a question was also asked by the OPA regarding why fast start conversion cost was \$15 million in November and was only \$3 million in January. As discussed with MPS in late November (at our technical meeting), the original estimate included the increase in scope for the two stacks, as well as the fast start conversion. This explanation was provided to the OPA.

OPA (JoAnne Butler) would like to have a brief conference call with MPS (yourself) and TransCanada (myself and Terry Bennett), tomorrow – with a time to be confirmed – to make this request for a description. I believe they have sufficient description for the over two buckets from the technical proposal which MPS already provided.

I'll call you to discuss.

Terri



Terri Steeves, Project Manager
TransCanada
450 - 1st Street S.W.
Calgary, AB T2P 5H1
Phone: 403.920.2054
Cell: 403.923.4285

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Aleksandar Kojic

From: JoAnne Butler
Sent: January 27, 2011 8:08 AM
To: Michael Killeavy
Subject: Re: Tomorrow Scheduled Mtg with TCE

In an earlier email, you called this rationale as an "aside" leading me to believe that you had other motives for cancelling your attendance. Just want to talk about that a bit more...

JCB

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

From: Michael Killeavy
Sent: Thursday, January 27, 2011 05:50 AM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: Re: Tomorrow Scheduled Mtg with TCE

We have nothing to talk about with TCE until we get the missing exhibits. We've turned around comments on the first draft of the Implementation Agreement in a day - that was Tuesday's second meeting.

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

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

From: JoAnne Butler
Sent: Thursday, January 27, 2011 05:47 AM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: Re: Tomorrow Scheduled Mtg with TCE

I am not sure if we need to go that far. If MPS does not let TCE extend the suspension on Monday and they cancel the turbine order, we will need to show that we have acted in good faith in front of government. Cancelling the turbines will not be what gov wants. That will cause a huge amount of problems. Anyway in the interim it will be escalated way beyond our paygrades.

We can talk about strategy later.

JCB

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

From: Michael Killeavy
Sent: Wednesday, January 26, 2011 05:21 PM
To: JoAnne Butler

Cc: Deborah Langelaan
Subject: Tomorrow Scheduled Mtg with TCE

Just so you know for tonight's call we've both declined tomorrow's regularly scheduled meeting with TCE.

As an aside, we've really nothing to discuss since TCE has not provided us with the missing exhibits to the Implementation Agreement, which were promised for Monday night/Tuesday.

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

Aleksandar Kojic

From: JoAnne Butler
Sent: January 27, 2011 11:48 AM
To: Michael Killeavy
Subject: Fw: Request for description of 'suspension and delayed delivery'

Deb, should be at the bottom of this long back and forth...

From: Michael Killeavy
Sent: Wednesday, January 26, 2011 03:34 PM
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Request for description of 'suspension and delayed delivery'

Yes. In the absence of an express, written instruction to the contrary, we intend to base negotiations on the financial value of the contract on the 20 year term. Period.

Michael Killeavy, LL.B., MBA, P.Eng.
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From: JoAnne Butler
Sent: Wednesday, January 26, 2011 03:32 PM
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Subject: RE: Request for description of 'suspension and delayed delivery'

I also want to say that we have no intention of giving any value over and above the twenty year contract term?? Which needs to be concluded before we lift suspension...

JCB

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From: Michael Killeavy
Sent: Miércoles, 26 de Enero de 2011 03:31 p.m.

To: JoAnne Butler; Deborah Langelaan

Subject: Re: Request for description of 'suspension and delayed delivery'

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From: JoAnne Butler

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To: Deborah Langelaan; Michael Killeavy

Subject: FW: Request for description of 'suspension and delayed delivery'

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From: JoAnne Butler

Sent: Miércoles, 26 de Enero de 2011 03:23 p.m.

To: 'Terry Bennett'

Subject: RE: Request for description of 'suspension and delayed delivery'

Terry,

I can call you tonight....say after eight pm...or tomorrow morning at nine....what works best for you??

JCB

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Subject: RE: Request for description of 'suspension and delayed delivery'

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Subject: Re: Request for description of 'suspension and delayed delivery'

Ok. 2:10 works for me. Talk to you then.

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To: JoAnne Butler
Subject: FW: Request for description of 'suspension and delayed delivery'
Importance: High

Good morning JoAnne.

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Also, see the second paragraph of Terri's note to MPS below. I can't recall whether we actually dealt with this in our meeting yesterday or not. In any event, this explains why the large shift in the FS conversion start from MPS's November email to their quote from last week.

Regards,

Terry

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To: Terry Bennett; John Mikkelsen; Geoff Murray
Subject: Fw: Request for description of 'suspension and delayed delivery'

I'll still see if Bill will talk to JoAnne for a few minutes today.

Terri

From: KNamba@mpshq.com [mailto:KNamba@mpshq.com]
Sent: Tuesday, January 25, 2011 08:27 PM
To: Terri Steeves
Cc: Bill.Newsom@mpshq.com <Bill.Newsom@mpshq.com>; KNamba@mpshq.com <KNamba@mpshq.com>; Phil.Prigge@mpshq.com <Phil.Prigge@mpshq.com>; Bill Small; sueki@mpshq.com <sueki@mpshq.com>
Subject: Re: Request for description of 'suspension and delayed delivery'

Terri-san,

The bucket for suspension and delivery delay includes not only storage, handling and inspection of components but also escalation of manufacturing costs due to deferred manufacturing schedule based on new shipping schedule. Since we did not investigate the cost impacts from delivery schedule change and suspension separately, it is difficult for us to split them into "suspension and delay delivery. In addition to above, this bucket also includes payment interests caused by deferred payment schedule shown in the budgetary commercial proposal submitted on December 16, 2010. This is what we can explain as of now but if you need any clarification or question in above explanation, please let us

know.

Best regards,

Namba (MPS)

Terri Steeves <terri_steeves@transcanada.com>

2011/01/25 15:24

To "Newsom, Bill" <Bill.Newsom@mpshq.com>

cc Bill Small <william_small@transcanada.com>, <KNamba@mpshq.com>, <Phil.Prigge@mpshq.com>

Subject Request for description of 'suspension and delayed delivery'

Bill,

A resent request has come from the OPA, asking if MPS can provide a description of what is included in the "suspension/delayed delivery" bucket, as well, if possible, a rationale for not splitting the bucket into 'suspension' and 'delay delivery'. I believe the source of the questions comes from the size of the bucket, which OPA was not expecting. I have already relayed my understanding of what's included; suspension and delay delivery costs for all subcontractors, storage and handling costs for 18 months delay in delivery.

Just for your information, a question was also asked by the OPA regarding why fast start conversion cost was \$15 million in November and was only \$3 million in January. As discussed with MPS in late November (at our technical meeting), the original estimate included the increase in scope for the two stacks, as well as the fast start conversion. This explanation was provided to the OPA.

OPA (JoAnne Butler) would like to have a brief conference call with MPS (yourself) and TransCanada (myself and Terry Bennett), tomorrow – with a time to be confirmed – to make this request for a description. I believe they have sufficient description for the over two buckets from the technical proposal which MPS already provided.

I'll call you to discuss.

Terri



Terri Steeves, Project Manager
TransCanada
450 - 1st Street S.W.
Calgary, AB T2P 5H1
Phone: 403.920.2054
Cell: 403.923.4285

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Aleksandar Kojic

From: JoAnne Butler
Sent: February 15, 2011 4:59 PM
To: Deborah Langelaan; Michael Killeavy
Subject: Re: TransCanada Cambridge Capex

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Also, the \$450mm number did not come from me - they "believe" it to be that...

JCB

From: Deborah Langelaan
Sent: Tuesday, February 15, 2011 04:26 PM
To: Michael Killeavy; 'Safouh Soufi' <safouh@smsenergy-engineering.com>
Cc: JoAnne Butler
Subject: FW: TransCanada Cambridge Capex

Fellas...can we discuss this tomorrow?

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 15, 2011 4:23 PM
To: Deborah Langelaan
Cc: Terry Bennett; Geoff Murray; Brandon Anderson
Subject: RE: TransCanada Cambridge Capex

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What are your thoughts on such an analysis? If you are in agreement that such a process is an expeditious approach, the first step is sharing the OPA's Cost Estimate with TCE such that we can identify the gaps and prepare information in response.

If the OPA has a different approach in mind it is critical that the OPA communicate that prior to our meeting(s). As the OPA is looking for TCE to provide complete and detailed information to satisfy the OPA it is important that the OPA advise TCE of exactly what information is required to satisfy the OPA's needs.

We remain willing, interested and available to meet prior to Thursday and believe that assembling a smaller group (the core business teams from each side: Geoff, John, Deb, and Michael) for an initial discussion is required to meet the direction of senior management. Please let us know if the OPA can find a slot for this discussion.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]

Sent: Tuesday, February 15, 2011 2:00 PM

To: John Mikkelsen

Subject: RE: TransCanada Cambridge Capex

John;

JoAnne indicated to us that it is the negotiating team's objective this week to review and understand TCE's capital cost build-up for Cambridge and understand how the figures presented to us on January 25th were derived. TCE has to provide complete and detailed information to satisfy the OPA project review and due diligence process, so that we can understand how the CAPEX was built up. The OPA recognizes the urgency on TCE's behalf in scheduling the next meeting; however, our schedules are such that Thursday afternoon is the earliest we can meet. We are available to meet on Thursday from 2:30 p.m. to 6:00 p.m., if necessary.

Deb

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From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]

Sent: February 15, 2011 11:01 AM

To: Deborah Langelaan
Subject: RE: TransCanada Cambridge Capex

Deborah,

Thanks for getting back. Based on the discussions between Terry, Brandon and JoAnne on Monday we are to have the capital cost issues resolved by Friday for a follow-up meeting with JoAnne next Tuesday. While I appreciate that you need to schedule your team's availability, I don't see how we can meet the Friday deliverable if we start on Thursday afternoon. We believe this discussion needs to start today.

Geoff and I are available now through Friday and we can bring in our team members as required (by phone, by telepresence or in person). Can you please review at your earliest convenience and let us know if a meeting this afternoon is possible?

Also can you please update us on the status of the blackline to the Implementation Agreement, Schedule A (the Technical Requirements), and your capital cost estimate?

Many thanks,

John Mikkelsen, P.Eng.

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From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]

Sent: Tuesday, February 15, 2011 10:39 AM

To: John Mikkelsen

Subject: RE: TransCanada Cambridge Capex

John;

I think it's a good idea that your engineers be at the meeting. OPA attendees will be Michael Killeavy, Safouh Soufi, Anshul Mathur, Rocco Sebastiano and me. Based on everyone's schedules the soonest we can meet is Thursday afternoon at our prearranged time of 2:30 p.m.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |
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T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 14, 2011 5:46 PM
To: Deborah Langelaan
Subject: RE: TransCanada Cambridge Capex

Thank you.

I would like to bring our engineering team out to assist with the discussion of the assumptions. Geoff and I are able to meet tomorrow but we would need a days notice to get Andy Mather and Larry here. We have a telepresence room here which is also an alternative.

Talk to you tomorrow,

Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

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From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Monday, February 14, 2011 5:41 PM
To: John Mikkelsen
Subject: Re: TransCanada Cambridge Capex

John;

We have the same understanding and I will provide you with potential meeting times tomorrow morning.

Deb

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: Monday, February 14, 2011 05:28 PM
To: Deborah Langelaan; Michael Killeavy
Subject: TransCanada Cambridge Capex

Dear Deborah,

I just left you a voice mail. I understand that Brandon Anderson and Terry Bennett met with JoAnne Butler this afternoon. My understanding coming out of that meeting is that we are to get together with your team as soon as possible to review the capital cost build-up for Cambridge. Can you please confirm this is your understanding?

Also assuming this is the plan, can you let me know when and who should be available for such a meeting so I can plan to get the right people here.

Many thanks,

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Aleksandar Kojic

From: JoAnne Butler
Sent: February 15, 2011 5:25 PM
To: 'brandon_anderson@transcanada.com'
Subject: Re: TransCanada Cambridge Capex

Got your voicemail but it is tough for me to call.

We will get some Capex info over to you tomorrow...

JCB

From: Brandon Anderson [mailto:brandon_anderson@transcanada.com]
Sent: Tuesday, February 15, 2011 01:39 PM
To: JoAnne Butler
Cc: Terry Bennett <terry_bennett@transcanada.com>
Subject: FW: TransCanada Cambridge Capex

Joanne -- I left you a voicemail as well, I understand that you are out of the office. Please see the email chain below.

I'd like to talk to you about getting the OPA's capital cost estimate on Cambridge so we can review it and prepare a gap analysis. As we discussed in our meeting on Monday it appears that we are \$100 million apart on capital estimates. In order to perform a line-by-line review as we discussed to try to close the gap or at least understand the differences it would be very helpful to be able to see the OPA's estimates. It is very difficult for us to understand and explain the gap when we don't have any information from the OPA.

Thanks, you can reach me at 403-542-5388 anytime.

Brandon

From: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Tuesday, February 15, 2011 11:45 AM
To: John Mikkelsen
Subject: RE: TransCanada Cambridge Capex

John;

It is TCE's capital cost build-up that will be the topic of discussion at our next meeting and we look forward to reviewing it with you.

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 15, 2011 8:52 AM
To: Deborah Langelaan
Subject: RE: TransCanada Cambridge Capex

Deborah,

Would it be possible for you to share your capital cost build-up in advance of our meeting? This would provide our team with a chance to prepare information for the discussion.

Thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

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Sent: Monday, February 14, 2011 5:41 PM
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Subject: TransCanada Cambridge Capex

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Aleksandar Kojic

From: Michael Killeavy
Sent: February 15, 2011 5:32 PM
To: JoAnne Butler
Subject: Re: TransCanada Cambridge Capex

I don't know if that's the issue. TCE is the developer, not us. We are trying to follow the process used for PEC - they do the build up, we ask questions, and they either provide satisfactory answers or some form of independent substantiation. It worked for PEC, so we've adopted that process here.

I do not want us having the table turned on us and have us on the defensive and having to justify our estimate of costs. We don't have TCE's experience in doing this or access to the data it has.

My understanding from last night is that we were to (a) understand where there are differences and (b) try to figure out why there are differences.

As I said last night, I think (b) is relatively easy - there is no site yet, and there are a lot of contingencies being accounted for in their estimate.

My \$450 million capex estimate was a rule of thumb approximation on a \$/MW cost. It's not a real build up of capex.

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

From: JoAnne Butler
Sent: Tuesday, February 15, 2011 05:23 PM
To: Michael Killeavy
Subject: Re: TransCanada Cambridge Capex

Absolutely, they need to defend it. But I committed to use this week to get to a point on Capex so if Safouh's work is not comprehensive then we need to get it there because if not, how are we ever going to defend our Capex assumptions? If Safouh can't do it, then find someone who can....

JCB

From: Michael Killeavy
Sent: Tuesday, February 15, 2011 05:11 PM
To: JoAnne Butler
Subject: Re: TransCanada Cambridge Capex

It is up to TCE to defend its work, too. Safouh made a very preliminary estimate of capex, which I think was based on PEC to some degree. It is likely nowhere as detailed as what TCE has done. A line by line comparison may not be possible because Safouh's estimate is broken down differently from TCE's.

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Best regards,

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Sent: Tuesday, February 15, 2011 2:00 PM
To: John Mikkelsen
Subject: RE: TransCanada Cambridge Capex

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Aleksandar Kojic

From: Michael Killeavy
Sent: February 16, 2011 3:52 PM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE CAPEX ...

Follow Up Flag: Follow up
Flag Status: Flagged

*** Privileged and Confidential - Prepared in Contemplation of Litigation ***

JoAnne,

We're meeting with Safouh to talk about the CAPEX estimate. We really do not have a build up of the CAPEX yet. What we have is a rule-of-thumb estimate of \$1,000,000/MW. This was based on NYR project cost of \$960,000/MW. The numbers we have in the spreadsheet were "plugged" figures to make the \$960,000/MW work. Safouh's estimate was done at the end of November last year before we had any information at all. In short, the line items were inserted into his spreadsheet to make the rule-of-thumb estimate work.

I am proposing to send this rule-of-thumb estimate of CAPEX to TCE today. Tomorrow we will go through their estimate to see why their estimate is different from this conservative rule-of-thumb.

I will then propose that we handle CAPEX like we do the HESA contracts, with a target NRR based on the Initial Asset Value, which will then be adjusted after construction on the Final Asset Value. I propose that we share overruns 50/50 and underruns 50/50.

Are you in agreement?

Michael

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

Aleksandar Kojic

From: JoAnne Butler
Sent: February 16, 2011 5:03 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: Re: TCE CAPEX ...

Yes, as discussed, we need to have our collective starting points in front of us. Probably, we will never "agree" on a number at this point so then let's focus on the process to get there.

Next hurdle will be discount rates, so as we have also discussed at various times, let's kick off third party to do some homework.

JCB

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

From: Michael Killeavy
Sent: Wednesday, February 16, 2011 03:52 PM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE CAPEX ...

*** Privileged and Confidential - Prepared in Contemplation of Litigation ***

JoAnne,

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416-520-9788 (cell)

Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: February 17, 2011 8:43 PM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE - Update ...

The meeting went well. We went through the TCE CAPEX and discussed why they'd estimated what they had. I think we understand what they've done better now. We will have something for you Tuesday morning in terms of consolidated notes.

We did not raise the issue of a target NRR with sharing overrun and underrun. They are still working at getting the NRR into the range they were given and I felt that we might unnecessarily distract this effort if we gave them something new.

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

Aleksandar Kojic

From: JoAnne Butler
Sent: February 17, 2011 9:20 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: Re: TCE - Update ...

Excellent...thanks...

JCB

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

From: Michael Killeavy
Sent: Thursday, February 17, 2011 08:43 PM
To: JoAnne Butler
Cc: Deborah Langelaan
Subject: TCE - Update ...

The meeting went well. We went through the TCE CAPEX and discussed why they'd estimated what they had. I think we understand what they've done better now. We will have something for you Tuesday morning in terms of consolidated notes.

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: JoAnne Butler
Sent: April 6, 2011 7:02 AM
To: James Hinds; John Zych
Cc: Colin Andersen; Michael Killeavy
Subject: RE: BOD Presentation - TCE Matter Status Update

OK. Jim....mea culpa...however, I fear that given the files that I have, we might be a repeat offender!!

We will address Lynn's concerns verbally, however, we believe the answer to be:
1)if no replacement project, ie. OGS contract does not get wound up and we do not sign a new one, then we start litigation and follow it through to settlement of some sort; 2)if we do have a replacement project, ie. OGS contract does get wound up and we sign a new one for a new plant, then the terms and conditions of that new contract would be similar to all our clean energy contracts. They are on their own to complete it, take the construction and operation risk for the term of the contract and termination provisions would be standard terms and conditions. Unless, of course, we do not have any political intervention that tells us to do otherwise.

JCB

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

From: James Hinds [<mailto:jim.hinds@irish-line.com>]
Sent: Tue 05/04/2011 4:02 PM
To: John Zych
Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
Subject: Re: BOD Presentation - TCE Matter Status Update

You have your first free pass on circulating materials after deadline. But I'm keeping score.

Agree that discussion should happen tomorrow after stakeholders before dinner.

Materials are very good. However, in the materials, the question about "if all else fails" isn't addressed (basically, Lyn's question about what happens to the deal if the alternative site doesn't pan out). It should be addressed.

Regards,

Jim Hinds
(416) 524-6949

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

From: "John Zych" [John.Zych@powerauthority.on.ca]
Date: 04/05/2011 03:20 PM
To: "James Hinds" <jim.hinds@irish-line.com>
CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, "JoAnne Butler" <joanne.butler@powerauthority.on.ca>, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
Subject: BOD Presentation - TCE Matter Status Update

Management feels that it will be useful to brief the Board on this matter this week. There is no opening to do so on Thursday, but on Wednesday, after the Board stakeholders meeting

ends at about 5:00 p.m. we can fit it in. Electricity Resources has prepared a slide deck on this topic.

Colin asks whether you agree to add this matter to the Board agenda after the Board stakeholders meeting ends at about 5:00 p.m. (about 30 minutes is needed) and whether you have any comments on the slide deck.

The dinner for John Beck commences at 6:00 p.m.

As for sending this material to the Board members, we can send it via e-mail today or hand it out to the Board members at the beginning of the Board stakeholders meeting tomorrow, which will leave them time to review it.

Please advise.

John Zych
Corporate Secretary
OntarioPower Authority
Suite1600
120 Adelaide Street West
Toronto, ON M5H 1T1
416-969-6055
416-967-7474 Main telephone
416-967-1947 OPA Fax
416-416-324-5488 Personal Fax
John.Zych@powerauthority.on.ca

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 6, 2011 7:12 AM
To: Michael Killeavy
Subject: RE: BOD Presentation - TCE Matter Status Update

Excellent...thanks....just elaborate a little bit more on the termination provisions....I couldn't quite remember but I know that it is not the anticipated value of the contract!!

JCB

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

From: Michael Killeavy
Sent: Wed 06/04/2011 7:03 AM
To: JoAnne Butler
Subject: Re: BOD Presentation - TCE Matter Status Update

I'll prepare an additional slide based on this when I get in this morning.

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

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

From: JoAnne Butler
Sent: Wednesday, April 06, 2011 07:02 AM
To: James Hinds <jim_hinds@irish-line.com>; John Zych
Cc: Colin Andersen; Michael Killeavy
Subject: RE: BOD Presentation - TCE Matter Status Update

OK. Jim....mea culpa...however, I fear that given the files that I have, we might be a repeat offender!!

We will address Lynn's concerns verbally, however, we believe the answer to be:

1)if no replacement project, ie. OGS contract does not get wound up and we do not sign a new one, then we start litigation and follow it through to settlement of some sort; 2)if we do have a replacement project, ie. OGS contract does get wound up and we sign a new one for a new plant, then the terms and conditions of that new contract would be similar to all our clean energy contracts. They are on their own to complete it, take the construction and operation risk for the term of the contract and termination provisions would be standard terms and conditions. Unless, of course, we do not have any political intervention that tells us to do otherwise.

JCB

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

From: James Hinds [<mailto:jim.hinds@irish-line.com>]
Sent: Tue 05/04/2011 4:02 PM
To: John Zych
Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
Subject: Re: BOD Presentation - TCE Matter Status Update

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Regards,

Jim Hinds
(416) 524-6949

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

From: "John Zych" [John.Zych@powerauthority.on.ca]
Date: 04/05/2011 03:20 PM
To: "James Hinds" <jim.hinds@irish-line.com>
CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, "JoAnne Butler" <joanne.butler@powerauthority.on.ca>, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
Subject: BOD Presentation - TCE Matter Status Update

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 7, 2011 8:11 AM
To: 'jim_hinds@irish-line.com'
Subject: Re: BOD Presentation - TCE Matter Status Update

Yes, I will work something up and find an opportunity to show the Board later today and finalize for our meeting at the end of the day.

JCB

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

From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Thursday, April 07, 2011 06:27 AM
To: JoAnne Butler
Subject: RE: BOD Presentation - TCE Matter Status Update

Do you think it would be beneficial to the Board to just run through the simple NPV calculation we did @ cocktails last night?

Jim Hinds
(416) 524-6949

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

From: "JoAnne Butler" [joanne.butler@powerauthority.on.ca]
Date: 04/06/2011 07:02 AM
To: "James Hinds" <jim_hinds@irish-line.com>, "John Zych" <John.Zych@powerauthority.on.ca>
CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
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Date: 04/05/2011 03:20 PM

To: "James Hinds" <jim_hinds@irish-line.com>

CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, "JoAnne Butler"

<joanne.butler@powerauthority.on.ca>, "Michael Killeavy"

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Aleksandar Kojic

From: JoAnne Butler
Sent: April 7, 2011 8:40 AM
To: 'jim.hinds@irish-line.com'
Subject: Re: BOD Presentation - TCE Matter Status Update

Absolutely!

JCB

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

From: jim.hinds@irish-line.com [<mailto:jim.hinds@irish-line.com>]
Sent: Thursday, April 07, 2011 08:19 AM
To: JoAnne Butler
Subject: Re: BOD Presentation - TCE Matter Status Update

Patrick has to leave @ 2 pm. Can we do it before?

Sent from my BlackBerry device on the Rogers Wireless Network

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

From: "JoAnne Butler" <joanne.butler@powerauthority.on.ca>
Date: Thu, 7 Apr 2011 08:10:34
To: <jim.hinds@irish-line.com>
Subject: Re: BOD Presentation - TCE Matter Status Update

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CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
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Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 11, 2011 3:54 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

OK...

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

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

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

From: Michael Killeavy
Sent: Lunes, 11 de Abril de 2011 03:52 p.m.
To: JoAnne Butler; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

Then have them just avoid #1 – it's way too technical for them.

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

From: JoAnne Butler
Sent: April 11, 2011 3:51 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

Hmmm...getting too close to them trying to be our negotiators....maybe just stay silent and let TCE bring it up??

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

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

416-969-6005 Tel.
416-969-6071 Fax.

joanne.butler@powerauthority.on.ca

From: Michael Killeavy
Sent: Lunes, 11 de Abril de 2011 03:48 p.m.
To: JoAnne Butler; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

We don't recommend #1.

Could we instead ask, "how has TCE factored in the probability of the OGS not proceeding into their numbers?"

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

From: JoAnne Butler
Sent: April 11, 2011 3:45 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Potential Questions for Tomorrow's Meeting

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

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

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

From: Kristin Jenkins
Sent: Lunes, 11 de Abril de 2011 12:50 p.m.
To: Colin Andersen; Michael Lyle; JoAnne Butler
Subject: Potential Questions for Tomorrow's Meeting

- 1) We don't know the specifics of all the numbers, nor do we need to. We do know that at this point that OPA and TCE are far apart. One area that I have a question on is the costs for the new plant. Given the previous issues with the turbines, we know they make up almost half the capital costs. Assuming that's correct, how can OPA and TCE be so far apart on what a new facility in KWC would cost?
- 2) You have expressed concern about how the sunk costs are paid out under the OPA proposal. Are there alternatives that are acceptable to you, beyond cutting a cheque.

- 3) You said that OPA has not disclosed all the information you have requested. We've heard the same thing about TCE from OPA. Do you see a process how this could be constructively resolved?
- 4) OPA has suggested mediation. What's your view on this? Do you see any value for TCE to pursue mediation?

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

Aleksandar Kojic

From: JoAnne Butler
Sent: April 11, 2011 3:57 PM
To: Kristin Jenkins; Colin Andersen; Michael Lyle
Cc: Michael Killeavy; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

We are a little leery about No. 1. I am sure that TCE will bring this up anyway so maybe Craig and Sean could broach this turbine issue as a fact and not a question, ie. let's not get them get drawn into a discussion on plant costing...

2, 3 and 4 look good...

JCB

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

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

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

From: Kristin Jenkins
Sent: Lunes, 11 de Abril de 2011 12:50 p.m.
To: Colin Andersen; Michael Lyle; JoAnne Butler
Subject: Potential Questions for Tomorrow's Meeting

- 1) We don't know the specifics of all the numbers, nor do we need to. We do know that at this point that OPA and TCE are far apart. One area that I have a question on is the costs for the new plant. Given the previous issues with the turbines, we know they make up almost half the capital costs. Assuming that's correct, how can OPA and TCE be so far apart on what a new facility in KWC would cost?
- 2) You have expressed concern about how the sunk costs are paid out under the OPA proposal. Are there alternatives that are acceptable to you, beyond cutting a cheque.
- 3) You said that OPA has not disclosed all the information you have requested. We've heard the same thing about TCE from OPA. Do you see a process how this could be constructively resolved?
- 4) OPA has suggested mediation. What's your view on this? Do you see any value for TCE to pursue mediation?

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

Aleksandar Kojic

From: JoAnne Butler
Sent: April 11, 2011 3:57 PM
To: Michael Killeavy
Subject: RE: TCE Matter - DRAFT Email - Mediation ...

Perfect...thanks...

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

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

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

From: Michael Killeavy
Sent: Lunes, 11 de Abril de 2011 03:57 p.m.
To: Colin Andersen
Cc: JoAnne Butler; Susan Kennedy; Michael Lyle; Deborah Langelaan; Sarah Diebel
Subject: TCE Matter - DRAFT Email - Mediation ...

Colin,

Here's the text of an email requesting that TCE engage in mediation with the OPA:

.....
"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

It appears that the parties have reached an impasse in respect of the discussions relating to the SWGTA contract. In the circumstances, the OPA believes that it would be useful to jointly engage the services of a Mediator to assist in resolving the differences between the parties. If you agree that there is merit in entering into a mediation process at this time, we would propose that the parties promptly take steps to agree on a candidate and proceed with the scheduling of a mediation session.

Please let me know within the next two days as to whether you are agreeable to mediation."

.....
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)

Aleksandar Kojic

From: JoAnne Butler
Sent: April 11, 2011 4:16 PM
To: 'david.lindsay@ontario.ca'; 'MacLennan, Craig (MEI)'; 'sean.mullin@ontario.ca'
Cc: Kristin Jenkins; Michael Lyle; Colin Andersen; Irene Mauricette
Subject: FW: Potential Questions for Tomorrow's Meeting

Per Colin's request....can discuss particulars on call at five thirty....

JCB

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

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

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

From: Kristin Jenkins
Sent: Lunes, 11 de Abril de 2011 12:50 p.m.
To: Colin Andersen; Michael Lyle; JoAnne Butler
Subject: Potential Questions for Tomorrow's Meeting

- 1) We don't know the specifics of all the numbers, nor do we need to. We do know that at this point that OPA and TCE are far apart. One area that I have a question on is the costs for the new plant. Given the previous issues with the turbines, we know they make up almost half the capital costs. Assuming that's correct, how can OPA and TCE be so far apart on what a new facility in KWC would cost?
- 2) You have expressed concern about how the sunk costs are paid out under the OPA proposal. Are there alternatives that are acceptable to you, beyond cutting a cheque.
- 3) You said that OPA has not disclosed all the information you have requested. We've heard the same thing about TCE from OPA. Do you see a process how this could be constructively resolved?
- 4) OPA has suggested mediation. What's your view on this? Do you see any value for TCE to pursue mediation?

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

OPA Key Messages in event TCE Files Notice of Claim

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 rate payers through the development and deliver 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 another needed generation project. This is why OPA has proposed mediation to TCE.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 15, 2011 10:38 AM
To: JoAnne Butler
Attachments: Draft Offer to Engage in Arbitration 14 Apr 2011.pdf; TCE Response to Mediation.pdf

As requested.

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

Michael Killeavy

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 14, 2011 5:17 PM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Arbitration[Privileged and Confidential]

Michael,

Further to our discussion of this afternoon, below please find the text of a draft letter to Alex Pourbaix from Colin regarding the arbitration.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE
To: Mr. Alex Pourbaix

Dear Alex:

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

As you know, the Contract provides that any matter in issue between the parties as to their rights under the Contract may be decided by arbitration in accordance with Section 16.2 of the Contract. The OPA requests that the parties meet to discuss an arbitration of the dispute between the parties and terms of reference of an arbitration. Please have your counsel contact ours in this regard.

[Signed Colin Andersen]

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: TCE Matter - Arbitration

Paul/Rocco,

We are being asked to:

1. Prepare a formal letter to TCE requesting mediation in a formal way, which sets out the reasons for mediation and where we think it might assist us. This will be a counsel to counsel letter; and,

2. Prepare a Notice of Arbitration to TCE.

Can you please start work on this. We want to send the mediation letter tomorrow.

We would like to be in a position to serve the Notice of Arbitration on Monday.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
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Michael.killeavy@powerauthority.on.ca

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 15, 2011 12:36 PM
To: Amir Shalaby
Cc: JoAnne Butler
Subject: FW: TCE Matter - Financial Model Explanation ...
Attachments: OPA Financial Model 8 April 2011.doc

Importance: High

Amir,

JoAnne asked me to send this to you. It's a memo explaining how the financial model used in the settlement discussions works.

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)

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

From: Michael Killeavy
Sent: April 8, 2011 11:16 AM
To: Susan Kennedy; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Financial Model Explanation ...
Importance: High

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

Attached is a memorandum explaining how the financial model we used in the settlement negotiations works.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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Ontario Power Authority
120 Adelaide St. West, Suite 1600
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416-520-9788 (cell)

Michael.killeavy@powerauthority.on.ca



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

8 April 2011

MEMO TO: Susan Kennedy

FROM: Michael Killeavy

RE: OPA Financial Model for Settlement Negotiations with TCE

Here is a brief explanation of how the financial model we used in the settlement negotiations with TCE works:

1. The model was constructed in an MS-EXCEL 2010 spreadsheet.
2. We modelled each year necessary to build the proposed contract facility plus the 25 years to operate the facility for the 25 year contract term.
3. For each year we calculated cash inflow and subtracted cash outflows to arrive at the net cash that went to TCE for each year of the modelling period. The net cash to TCE was calculated on an after-tax basis using TCE's effective tax rate of 25%.
4. Cash flows occur monthly, but to simplify the model we modelled only each year. We assumed that all cash flows occurred at the mid-point of each year, i.e., 1 July.
5. The net cash accruing to TCE was then discounted back to July 2009. This is the same point in time that TCE was discounting its cash flows back to with its model to arrive at a net present value ("NPV"). This just a simple time-value of money calculation using a discount rate and stream of cash flows.
6. We assumed an all-equity investment by TCE to fund construction and operation of the plant. We used a return on equity of 7.5% for TCE and this is the discount rate we used for the NPV calculation. We arrived at this cost of equity using TCE's published financial statements.
7. The only cash inflow on a yearly basis was the Net Revenue Requirement ("NRR"). We assumed no net market revenues. Accordingly, the only annual cash inflow was NRR/MW-month x 12 months/year x 500 MW of contract capacity.



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

8. The NRR revenue only commences once the facility achieves Commercial Operation in Q1 2015.
9. Prior to Q1 2015 TCE is developing the facility and all cash flows are outflows. We assumed a capital expenditure ("CAPEX") for the plant of \$400 million. We allocated the \$400 million over the four years to develop the facility in the same manner TCE did, i.e., a certain percentage of the CAPEX was incurred each year.
10. TCE had proposed a CAPEX of \$540 million, which we believed to be too high. Our technical expert thought the cost ought to be \$375 million to \$400 million at the very most.
11. During each year of operating the facility, TCE is assumed to have certain operating expenses ("OPEX") and Gas Distribution and Management ("GD&M") expenses. These are deducted from the NRR revenue to yield net operating revenue also known as EBITDA ("Earnings Before Interest, Taxes, Depreciation and Amortization").
12. We assumed an annual inflation rate of 2%, which is consistent with TCE's assumption. OPEX, 20% of the NRR and 20% of the GD&M were inflated annually.
13. We ran the model and solved for a target NPV for the contract facility. We did this by iteratively adjusting the NRR such that the NPV for the contract facility matched the targeted NPV. When the model NPV was very close to the target NPV we stopped the iterations. We used the MS-EXCEL Goalseek function to automate this iterative task.
14. There is no "double dipping" as I understand the use of this term, i.e., there are no separate returns for OGS and K-W. What we do is we set the NPV target to the level of the desired OGS NPV for the model run and then we solve the model such that the NRR gives us only the target NPV. The only way to get double dipping would be to set the target NPV at the OPG NPV plus the K-W NPV, to yield a very high target NPV. Our target NPV was established on only the OGS NPV.
15. Our litigation counsel's sub-consultant is experienced in power plant valuation and assesses the NPV for OGS at about \$50 million. In doing so, he weighed the probability of the OGS actually being built, the probability of it being built on time, the probability of it not experiencing cost overruns, etc., to arrive at this \$50 million figure.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 15, 2011 3:47 PM
To: Michael Lyle
Subject: Re: Draft letter

I like it, Mike...I wouldn't wait for Colin....he might not see this until tonight...we said by four and I would at least get it to Jim by then...then let Jim advise us to send on...

JCB

From: Michael Lyle
Sent: Friday, April 15, 2011 03:31 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: Draft letter

I have pasted this into the e-mail for your ease of reading Colin. Susan and I are in a meeting with Government and Oslers counsel for the next hour. Colin: do you want this to go to Jim Hinds before it goes to Government?

In your email of April 13, 2011, you questioned the merit of the parties entering into a mediation process. I can assure you that the OPA's proposal to mediate was made in good faith and in an effort to work together with TCE to negotiate the definitive form of an agreement in respect of the development of a power generation project in the Cambridge area.

A mediated process would allow the parties to advance negotiations on certain key issues including those respecting CAPEX estimates and TCE's alleged damages. It would also permit a process whereby TCE could provide information that it considers commercially sensitive to a mediator (and any expert engaged by the mediator) who could then maintain confidentiality of such information from the OPA while facilitating further discussions between the parties. TCE's rejection of the OPA's proposal to continue negotiations in a mediated process forecloses the parties from receiving the benefits of third party facilitation.

The OPA is hopeful that, on reflection, you will recognize the benefits of participating in negotiations with the assistance of a mediator. We believe that TCE should take all steps necessary to comply with its obligations relating to good faith negotiations and reconsider its position respecting mediation. We continue to be prepared to proceed promptly with a mediation to further the negotiations and we reiterate our request to you in that regard.

As you know, the Contract provides that any matter in issue between the parties as to their rights under the Contract may be decided by arbitration in accordance with Section 16.2 of the Contract. If you are not prepared to continue negotiations in a mediated process, the OPA requests that the parties meet to discuss an arbitration of the dispute between the parties and terms of reference of an arbitration. In that case, we would ask you to have your legal counsel contact ours.

May we please hear from you at your earliest opportunity.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs

Ontario Power Authority
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Direct: 416-969-6035
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Aleksandar Kojic

From: Michael Lyle
Sent: April 15, 2011 4:20 PM
To: 'Sean.Mullin@ontario.ca'; 'craig.maclennan@ontario.ca'; 'david.lindsay@ontario.ca'; 'James Hinds'
Cc: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Subject: TCE
Attachments: 20455701_2.doc

SOLICITOR/CLIENT PRIVILEGE

Attached per our earlier conversation is the draft letter with respect to mediation and arbitration.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 18, 2011 5:24 PM
To: Michael Killeavy; 'ESmith@osler.com'
Cc: 'rsebastiano@osler.com'
Subject: Re: TCE Matter - OPA Second Counter-Proposal

It was discussed in the recognition that both TCE and ourselves had a true up mechanism for the capital costs; however, how the mechanism worked was not discussed. If we need to change the factor then we should, however, as I recall, it helped us with the sunk cost true up as well.

JCB

From: Michael Killeavy
Sent: Monday, April 18, 2011 05:10 PM
To: 'ESmith@osler.com' <ESmith@osler.com>
Cc: 'RSebastiano@osler.com' <RSebastiano@osler.com>; JoAnne Butler
Subject: Re: TCE Matter - OPA Second Counter-Proposal

As I recall, this was TCE's conversion factor, not mine.

Put a bullet in there for now and I'll do some work tonight on it.

JoAnne, am I correct in presuming that this NRR-CAPEX conversion factor wasn't discussed today at any of the MO/PO meetings?

Michael

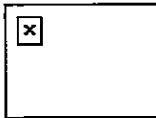
Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Monday, April 18, 2011 04:53 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Michael,
We're working on the revised counter-proposal and should be able to get you a draft by 10 AM tomorrow as requested.

Since the CAPEX has changed quite significantly from the original proposal, can you confirm whether the conversion factor from CAPEX to NRR of 0.000 012 681 3 is still accurate? This value is used to adjust for both Oakville Sunk Costs and as part of the Target Cost adjustment.

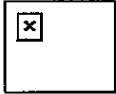
Thanks,
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, April 18, 2011 04:23 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>
Cc: Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Subject: TCE Matter - OPA Second Counter-Proposal

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

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

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

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

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

Thank you,

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 18, 2011 8:21 PM
To: Sebastiano, Rocco; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - OPA Second Counter-Proposal - NRR-CAPEX Adjustment Factor ...
Attachments: OPA Self-Negotiation NRR Model 18 Apr 2011 COUNTER-PROPOSAL.xls

Importance: High

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

I worked on the NRR-CAPEX adjustment factor analysis this evening, and the adjustment of NRR in relation to the adjusted CAPEX is:

$$\text{NRR} = 0.0000152133 * \text{ADJUSTED_CAPEX} + 7695.388889$$

In this analysis I set the TCE/OPA share to be 50/50 on both the upside and downside of the new \$475 million Target CAPEX.

I am attaching the spreadsheet I used in the analysis for ease of reference.

Michael

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

Target Costing Allocation of Actual CAPEX

Target CAPEX = \$475,000,000

CAPEX Sharing:	Overrun	Underrun
OPA	50%	50%
TCE	50%	50%

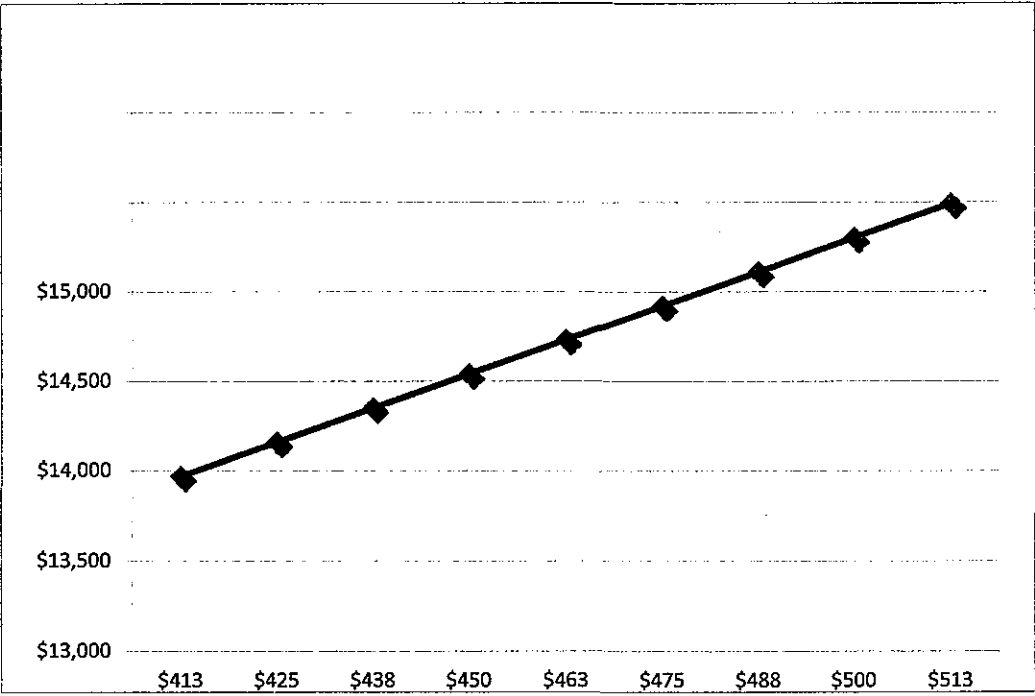
FINAL CAPEX = \$550,000,000
 Overrun (Underrun) = \$75,000,000
 OPA Share \$37,500,000
 TCE Share \$37,500,000
 Adjusted CAPEX = \$512,500,000 Target CAPEX + OPA Share

Initial NRR \$14,500
 Final NRR \$15,492

m = 1.52133E-05
 b = 7695.388889

ADJUSTED CAPEX		FINAL NRR	FITTED LINE
\$412,500,000	\$413	\$13,971	\$13,971
\$425,000,000	\$425	\$14,161	\$14,161
\$437,500,000	\$438	\$14,351	\$14,351
\$450,000,000	\$450	\$14,541	\$14,541
\$462,500,000	\$463	\$14,732	\$14,732
\$475,000,000	\$475	\$14,922	\$14,922
\$487,500,000	\$488	\$15,112	\$15,112
\$500,000,000	\$500	\$15,302	\$15,302
\$512,500,000	\$513	\$15,492	\$15,492

0.0000152133



Aleksandar Kojic

From: Michael Killeavy
Sent: April 18, 2011 8:21 PM
To: Sebastiano, Rocco; Susan Kennedy; Ivanoff, Paul; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - OPA Second Counter-Proposal - NRR-CAPEX Adjustment Factor ...
Attachments: OPA Self-Negotiation NRR Model 18 Apr 2011 COUNTER-PROPOSAL.xls

Importance: High

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$$\text{NRR} = 0.0000152133 * \text{ADJUSTED_CAPEX} + 7695.388889$$

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I am attaching the spreadsheet I used in the analysis for ease of reference.

Michael

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

Aleksandar Kojic

From: JoAnne Butler
Sent: April 18, 2011 9:01 PM
To: Michael Killeavy; 'rsebastiano@osler.com'; Susan Kennedy; 'PIvanoff@osler.com'; 'ESmith@osler.com'
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OPA Second Counter-Proposal - NRR-CAPEX Adjustment Factor ...

Michael, Rocco,

Thanks for all your work tonight. We will finalize in the morning.

JCB

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

From: Michael Killeavy
Sent: Monday, April 18, 2011 08:20 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Susan Kennedy; Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - OPA Second Counter-Proposal - NRR-CAPEX Adjustment Factor ...

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

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$$\text{NRR} = 0.0000152133 * \text{ADJUSTED_CAPEX} + 7695.388889$$

In this analysis I set the TCE/OPA share to be 50/50 on both the upside and downside of the new \$475 million Target CAPEX.

I am attaching the spreadsheet I used in the analysis for ease of reference.

Michael

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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 9:19 AM
To: Michael Killeavy; 'Sebastiano, Rocco'; 'Ivanoff, Paul'; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OPA Second Counter-Proposal

Please note that this was not the recommendation of the ER team working on the replacement project negotiations. This was directed to us to do verbally by the government. This is as far as we can go and we will be taking to our Board for their approval shortly.

JCB

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

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

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

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

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

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

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

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

Thank you,

Michael

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Aleksandar Kojic

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

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

JCB

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

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

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

Sorry. I didn't mean otherwise.

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

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

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416-967-1947 (FAX)

Aleksandar Kojic

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

PRIVATE AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION.

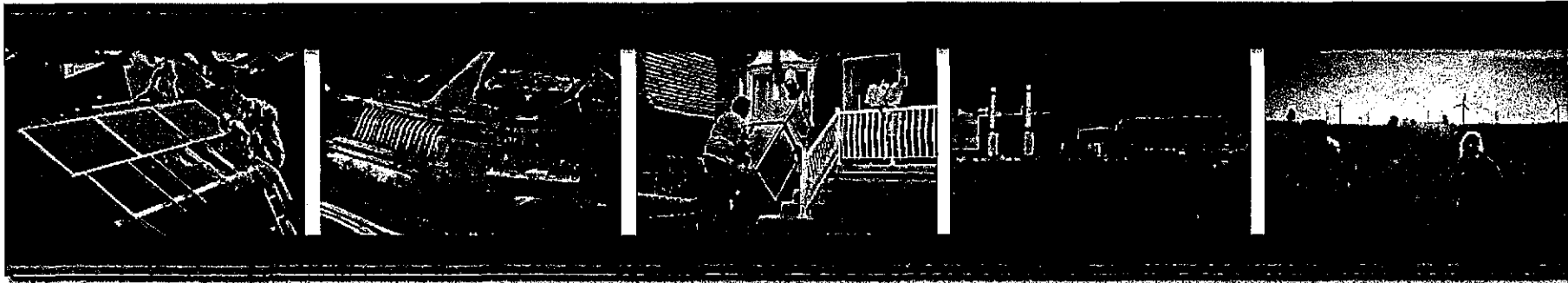
Please review for any gaps....thanks...

JCB

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

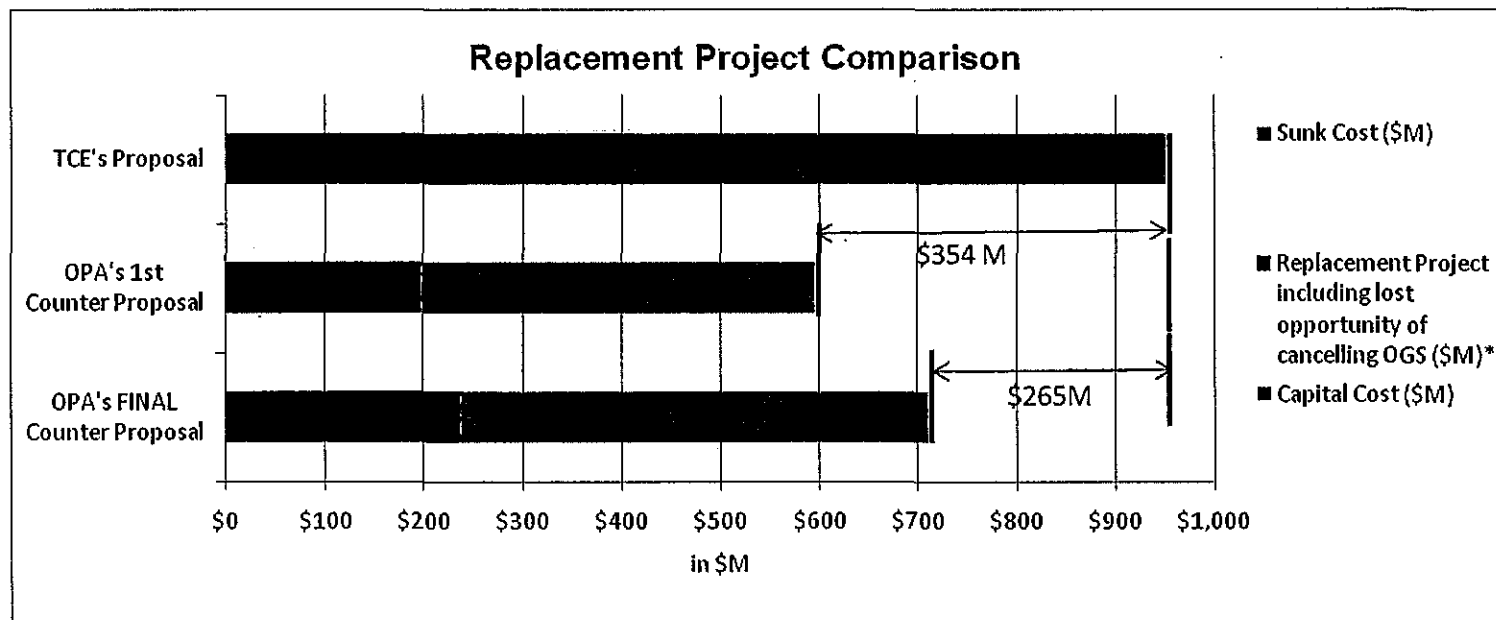
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- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our offer and more threat of litigation.
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- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another offer.
- We believe that this offer closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.

OPA Second Counter-Proposal

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

Quantum Comparison

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

Next Steps

- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – send out letter to sit down to prepare terms of reference for arbitration. This will show that we have used all reasonable efforts to get to a resolution.
- Large possibility that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 19, 2011 1:28 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: FW: TransCanada Energy Ltd. and Ontario Power Authority
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF

Please see the attached letter.

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

From: Irene Mauricette
Sent: April 19, 2011 1:27 PM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Michael Killeavy; 'jim_hinds@irish-line.com'
Subject: FW: TransCanada Energy Ltd. and Ontario Power Authority

From Colin fyi. Clare for Irene x 6010

From: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: April 19, 2011 11:02 AM
To: Colin Andersen; brad.duguid@ontario.ca
Cc: craig.maclennan@ontario.ca; jamison.steve@ontario.ca; sean.mullin@ontario.ca
Subject: TransCanada Energy Ltd. and Ontario Power Authority

Dear Sirs,

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee Gorgichuk



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Thornton Grout Finnigan LLP
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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Attn: Colin Andersen
Chief Executive Officer

Attn: The Honourable Brad Duguid
Minister of Energy

Dear Sirs:

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

We have been retained by TCE to represent its interests in connection with the termination of the Contract by letter dated October 7, 2010. That termination occurred following a public announcement by Minister Duguid. We are uncertain whether the Minister issued a directive to the OPA regarding the termination.

In the termination letter, the OPA stated to TCE, "the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated value of the Contract." The letter also identified the OPA's "wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers."

We have been briefed on the unsuccessful attempts to resolve this matter on the basis suggested in the termination letter, despite several months of negotiations. Our instructions are to commence the formal legal process of identifying the appropriate mechanism to determine the reasonable damages, including the anticipated value of the Contract and an appropriate mechanism for transferring that value from the OPA and the Province of Ontario to TCE. In order to facilitate this process, we would request that you have your legal counsel contact us in order to discuss the manner of proceeding.



Thornton Grout Finnigan LLP

2.

We would be available to meet with counsel to begin this process this week. We would request that your counsel contact us no later than Tuesday, April 26, 2011. Our client has instructed us to move forward with reasonable expedition. We understand that a counterproposal will be delivered to TCE by the close of business on Wednesday, April 20, 2011 as part of the informal settlement discussions. While this formal process of dispute resolution moves forward, our client remains willing to discuss alternatives, but is not willing to suspend the formal process.

We look forward to hearing from your counsel.

Yours very truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'MBarrack', written over a horizontal line.

Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
Jamison Steve, Principal Secretary to the Premier
Sean Mullin, Director of Policy, Office of the Premier

Aleksandar Kojic

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

Importance: High

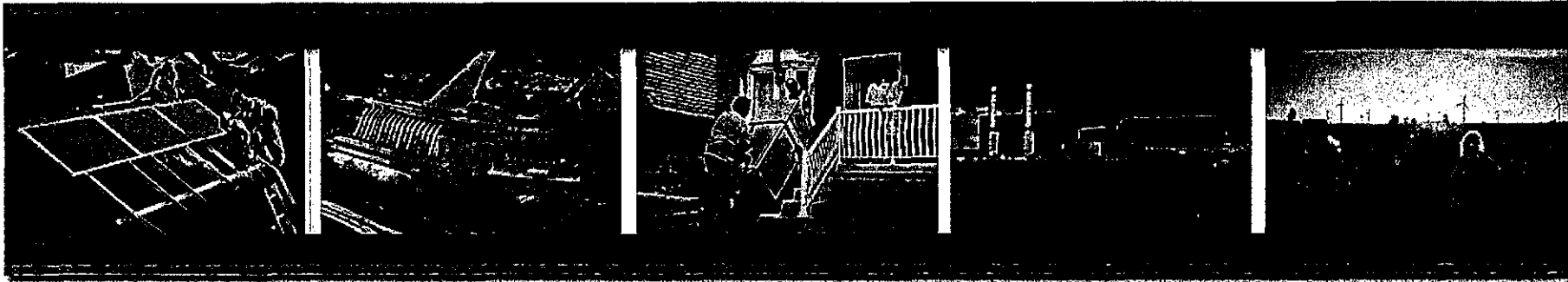
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JCB

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

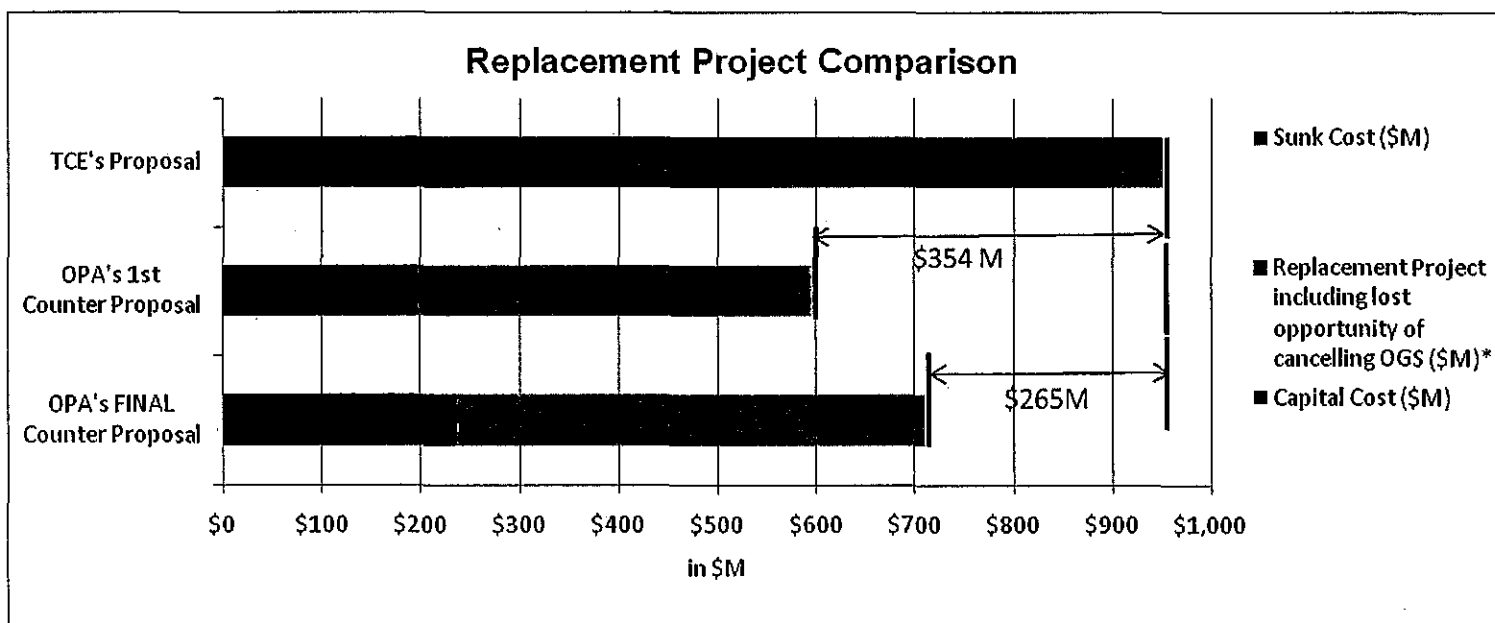
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Aleksandar Kojic

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

John,

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

JCB

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

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2 typos p 3 – "Extention" row 3, col2, and "howp ever" row 7, col 5
Add the share over/under to the \$475m cap ex box
How are we addressing the Boards confusion from strategy day?
What about "Sean's way" – I'm guessing Jim will ask – variation on "walkaway" (sunk cost +turbines+lost profit = money for nothing) vs "all in for ratepayer" (same but adds in KW as still have to do a KW plant eventually) – noting that in both cases the turbine cost will be < 215 since they will be sold/repurposed for something on the dollar

Colin Andersen
Chief Executive Officer

Ontario Power Authority
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Please consider your environmental responsibility before printing this email

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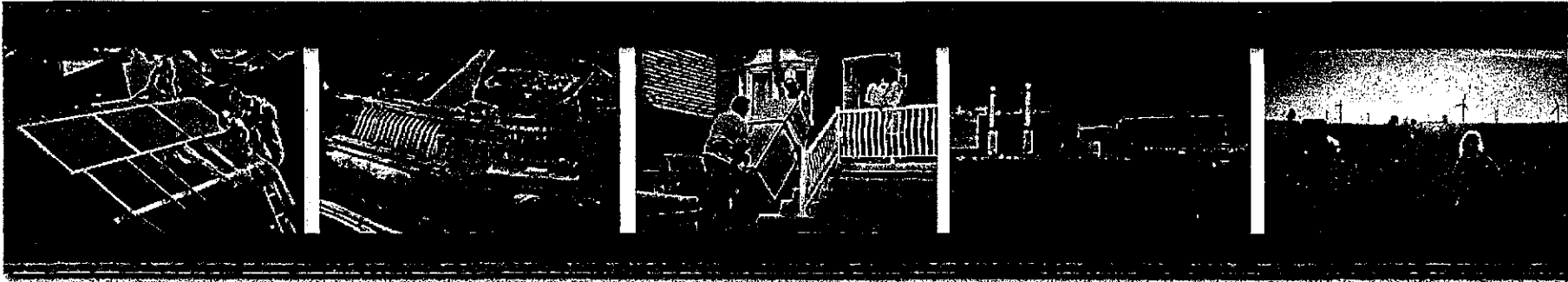
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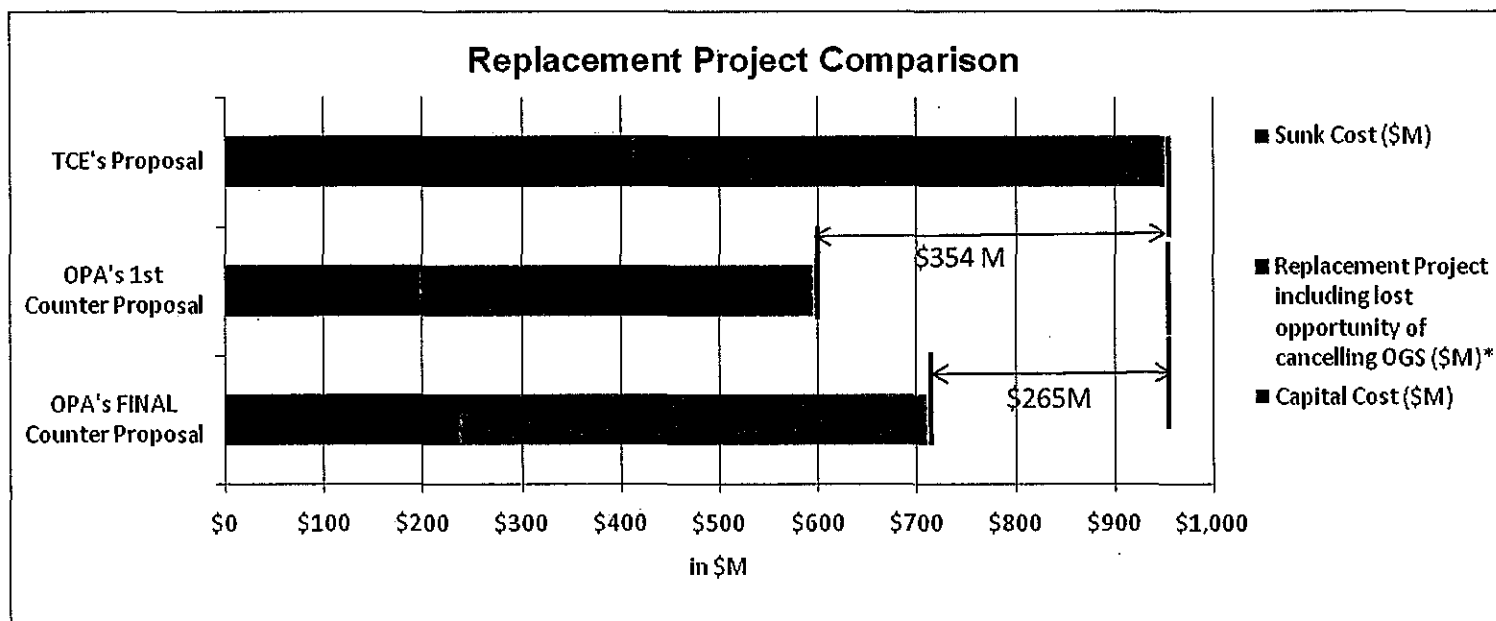
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Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%
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Aleksandar Kojic

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

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

A slide deck is attached.

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

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

The call-in number particulars are as follows:

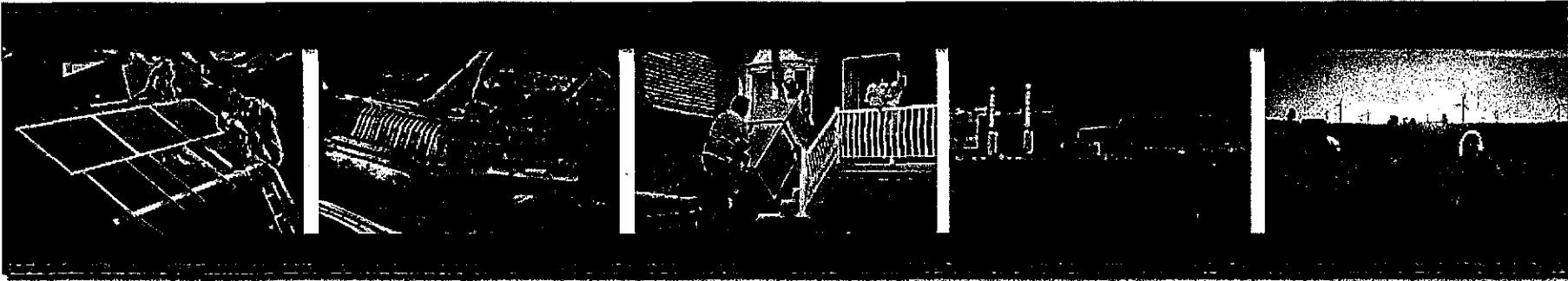
Toll Free: 1-877-320-7617

OPA Board Members' Access Code: 6802847

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

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

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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

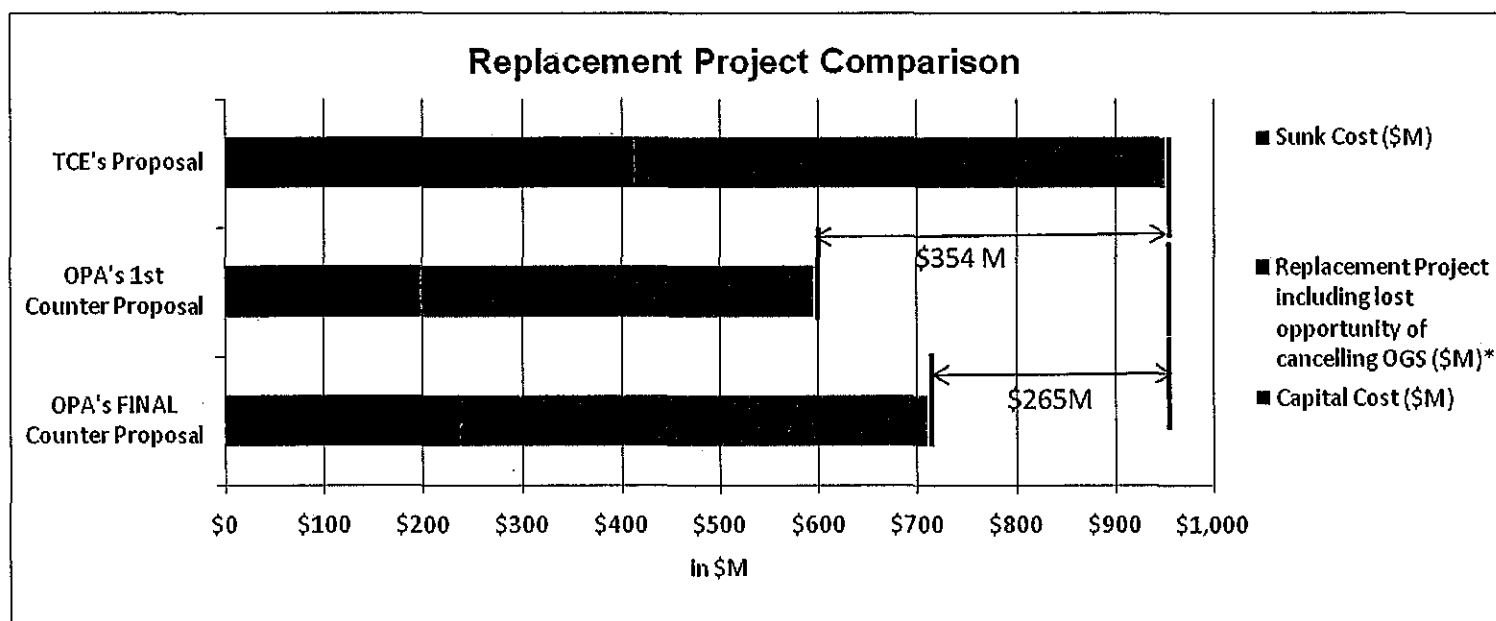
- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
- TCE's approach of "divide and conquer" has worked as Government is now integrally involved and being lobbied by Government Relations rep from TransCanada.
- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal.
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Aleksandar Kojic

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

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

JCB

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

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

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

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

I can make any other desired changes tomorrow.

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

Aleksandar Kojic

From: JoAnne Butler
Sent: April 20, 2011 9:06 AM
To: Brett Baker
Subject: Fw: BOARD TELECONFERENCE MEETING - WEDNESDAY, APRIL 20, 2010 AT 5:30 P.M., TORONTO TIME
Attachments: OGS_BOD_CM_20110420 v1.pptx

From: John Zych
Sent: Tuesday, April 19, 2011 08:21 PM
To: Colin Andersen; ceb1618@aol.com <ceb1618@aol.com>; jim.hinds@irish-line.com <jim.hinds@irish-line.com>; jmichaelcostello@hotmail.com <jmichaelcostello@hotmail.com>; rfitzgerald7@sympatico.ca <rfitzgerald7@sympatico.ca>; rfitzgerald7@sympatico.ca <rfitzgerald7@sympatico.ca>; ferrari@execulink.com <ferrari@execulink.com>; blourie@ivey.org <blourie@ivey.org>; pjmon@yorku.ca <pjmon@yorku.ca>; lynandneil@sympatico.ca <lynandneil@sympatico.ca>
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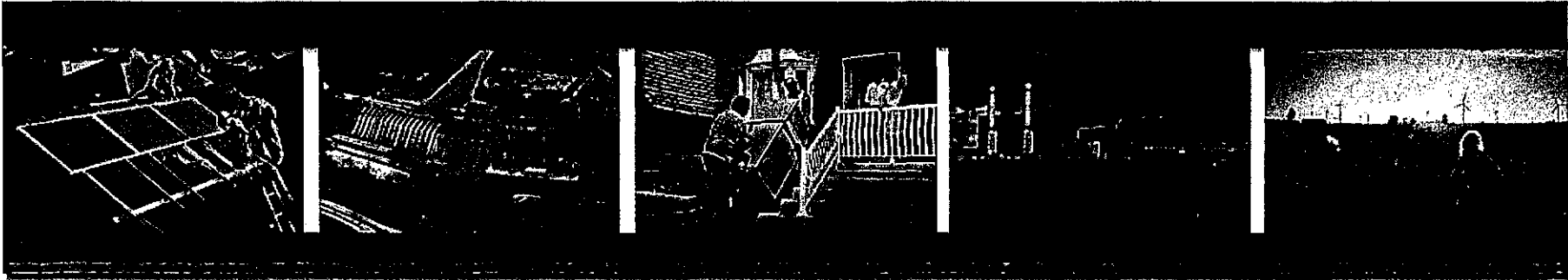
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John Zych
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Board of Directors – For Information

April 20, 2011

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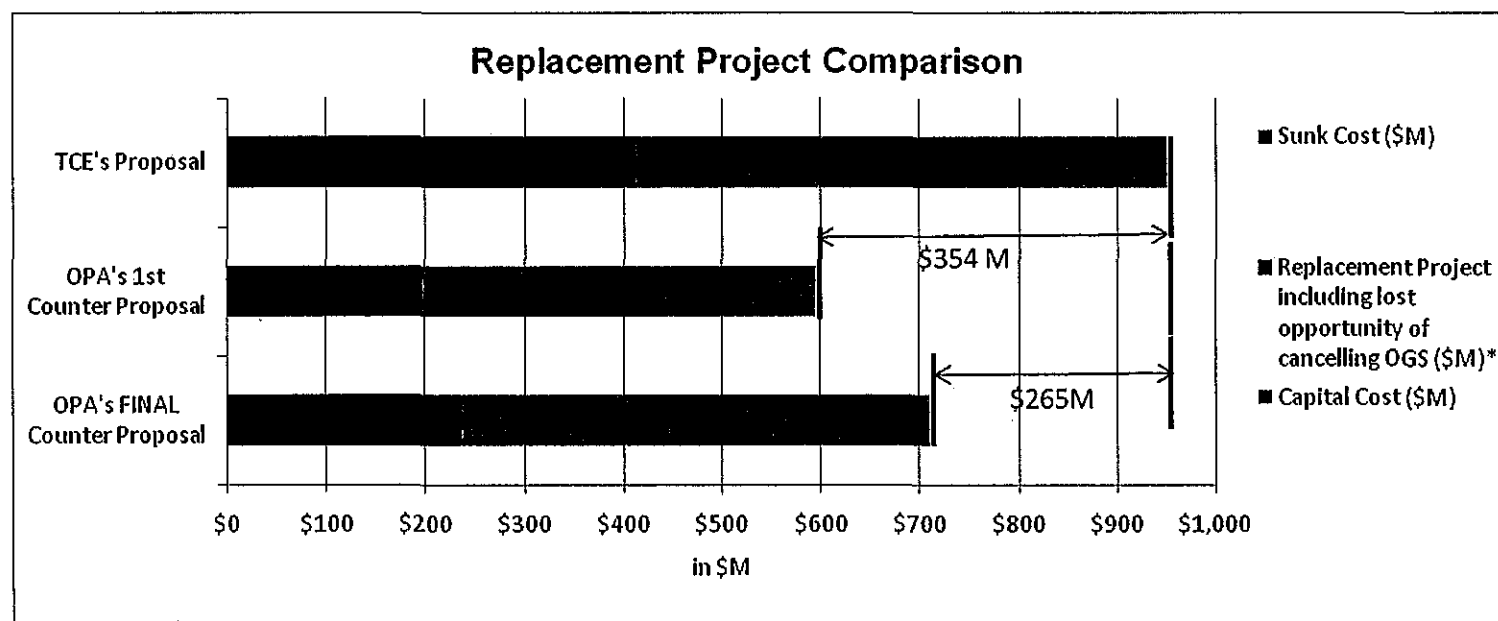
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Aleksandar Kojic

From: Michael Killeavy
Sent: April 20, 2011 1:33 PM
To: Susan Kennedy; 'Sebastiano, Rocco'; 'Smith, Elliot'; 'pivanoff@osler.com'
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Comparison of Scenarios - 20 April 2011 VERSION
Attachments: SWGTA Scenarios 20 Apr 2011.xls; SWGTA Contract Potential Outcome 20 Apr 2011.pdf

Importance: High

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

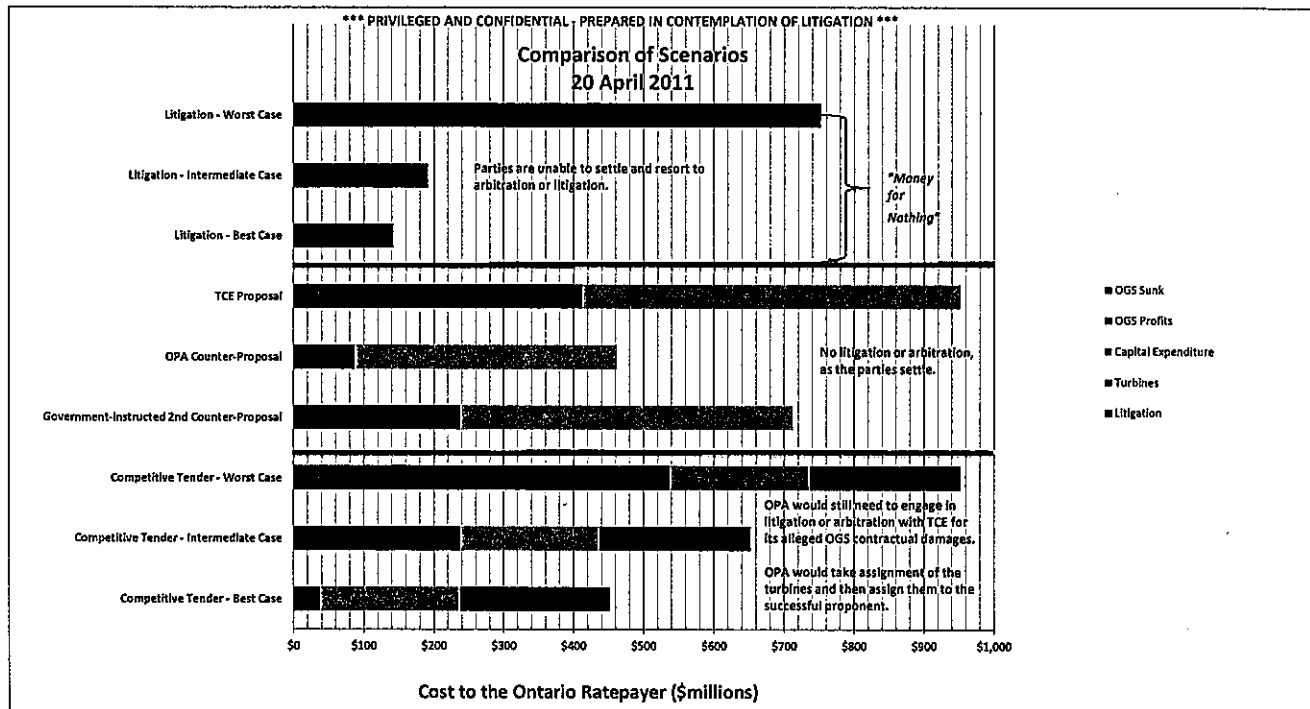
The attached graphic is an elaboration of what I sent last night. I added in a few more scenarios, too.

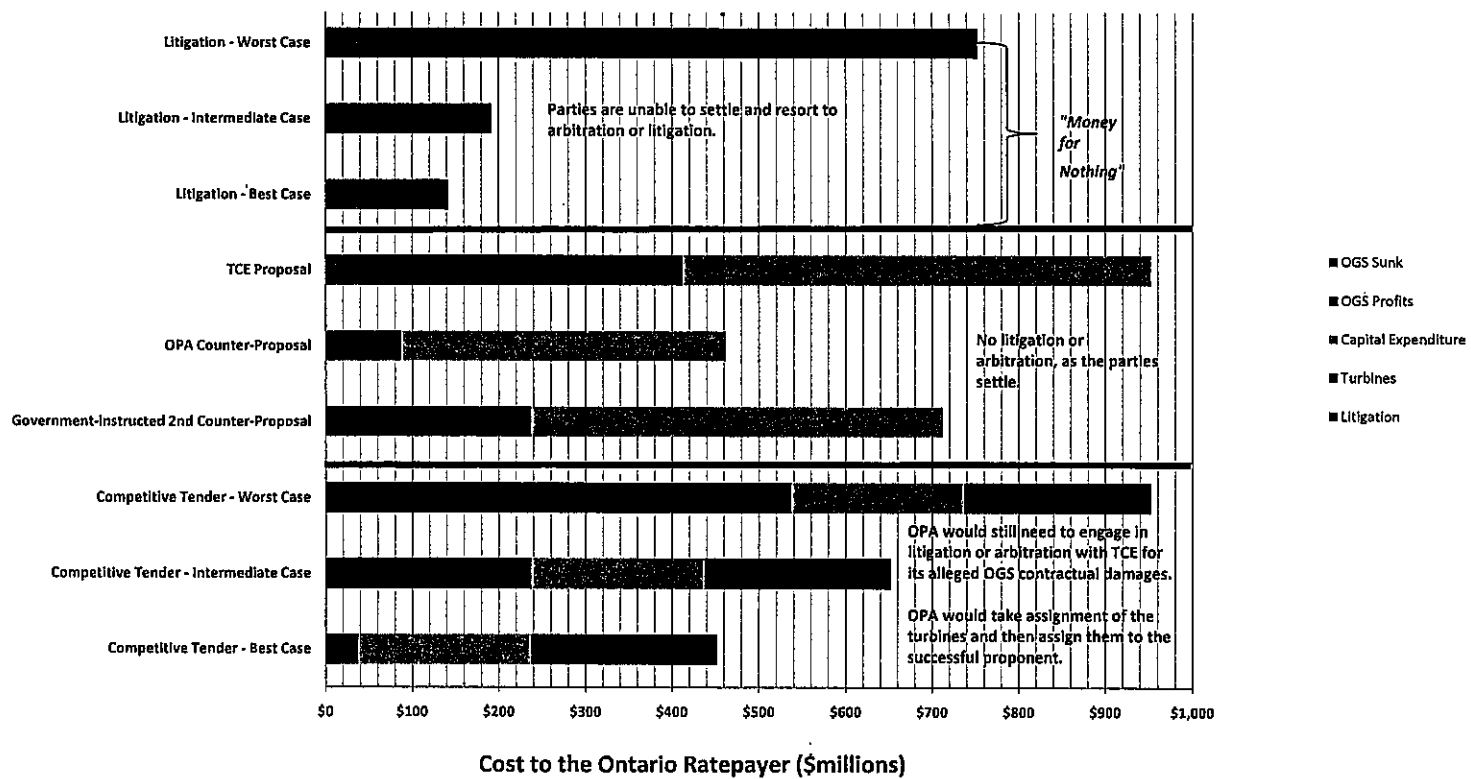
Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
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416-969-6288
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*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

SWGTA Potential Outcomes

	OGS Sunk	OGS Profits	Capital Expen	Turbines	Litigation	
Competitive Tender - Best Case	\$37	\$0	\$200	\$210	\$5	\$452
Competitive Tender - Intermediate Case	\$37	\$200	\$200	\$210	\$5	\$647
Competitive Tender - Worst Case	\$37	\$500	\$200	\$210	\$5	\$947
Government-instructed 2nd Counter-Proposal	\$37	\$200	\$475	\$0		\$712
OPA Counter-Proposal	\$37	\$50	\$375			\$462
TCE Proposal	\$37	\$375	\$540	0		\$952
Litigation - Best Case	\$37	0	0	100	\$5	\$142
Litigation - Intermediate Case	\$37	\$50		100	\$5	\$192
Litigation - Worst Case	\$37	\$500	\$0	\$210	\$5	\$752



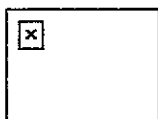


Aleksandar Kojic

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

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

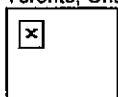
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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de le divulguer sans autorisation.

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

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

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

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

Draft & Privileged

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

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

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

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

Draft & Privileged

Aleksandar Kojic

From: JoAnne Butler
Sent: April 20, 2011 3:32 PM
To: OPA Executive
Cc: John Zych
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

This is the letter that I referred to this morning and was noted as the last bullet in the slide deck. I think that it is worth a conversation at the Board tonight, although it does not have to be sent to the Board.

JCB

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

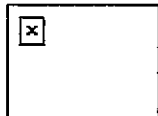
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

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

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

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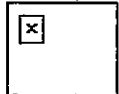
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
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Toronto, Ontario, Canada M5X 1B8



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[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

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

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

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

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

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

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

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

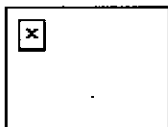
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Aleksandar Kojic

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

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

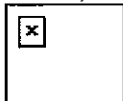
Elliot



Elliot Smith
Associate

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

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

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

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

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

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

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

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

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

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

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

Yours very truly,

JoAnne Butler

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

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

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

VI. Emissions Requirements.

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

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

VII. Fuel Supply

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

VIII. Project Major Equipment.

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

SCHEDULE “B” – FINANCIAL PARAMETERS

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

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

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

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

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

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

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

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

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

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

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

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

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

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

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

- (a) be able to provide a minimum of ~~[250 MW]~~ at 35-30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
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- (c) have a Season 3 Contract Capacity of not less than ~~[480 MW]~~; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

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

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

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

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

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

VII. Fuel Supply

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

VIII. Project Major Equipment.

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

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SCHEDULE “B” – FINANCIAL PARAMETERS

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

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

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule “B”, plus the OPA Share multiplied by ~~{0.000 012 681 3}~~ 0.015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule “B”.
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, “Interconnection Costs”, as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with “Good Engineering and Operating Practices” (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

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

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

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

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

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

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

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

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

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

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

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

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

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by ~~0.000 042 684 015 213~~ $\frac{1}{3}$ multiplied by the amount by which such costs are less than \$37,000,000.
3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess HI Amount".
4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.
7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a

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

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

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

Yours very truly,

JoAnne Butler

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

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

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

VI. Emissions Requirements.

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

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

VII. Fuel Supply

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

VIII. Project Major Equipment.

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

SCHEDULE “B” – FINANCIAL PARAMETERS

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

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

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

$$\text{OPA Share} = (\text{Actual Capex} - \text{Target Capex} + \$25,000,000) \times 0.50$$
 - (c) The adjusted NRR shall be equal to the NRR set out in Schedule “B”, plus the OPA Share multiplied by ~~0.000 012 681~~0.15 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule “B”.
2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, “Interconnection Costs”, as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with “Good Engineering and Operating Practices” (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.
3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

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

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

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

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

Draft & Privileged

Aleksandar Kojic

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

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

JCB

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

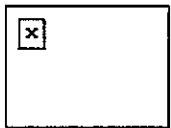
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

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

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

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

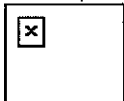
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

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

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

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

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

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

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

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

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Aleksandar Kojic

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

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

JCB

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

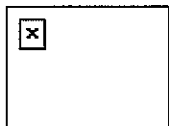
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

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

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

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

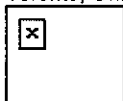
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

Osler, Hoskin & Harcourt LLP
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

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

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

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

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

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

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

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

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

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.
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4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.
5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.
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If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

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SCHEDULE "A" – TECHNICAL REQUIREMENTS

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The Replacement Project shall:

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

II. Contract Capacity

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

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VI. Emissions Requirements.

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

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

VII. Fuel Supply

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

VIII. Project Major Equipment.

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

SCHEDULE “B” – FINANCIAL PARAMETERS

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

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

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

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

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

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

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

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

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

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

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

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

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

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II. Contract Capacity

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

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

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

VI. Emissions Requirements.

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

Draft & Privileged

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

VII. Fuel Supply

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

VIII. Project Major Equipment.

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

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SCHEDULE “B” – FINANCIAL PARAMETERS

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

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

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

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

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

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

- (c) The adjusted NRR shall be equal to the NRR set out in Schedule “B”, plus the OPA Share multiplied by ~~0.000 042 681 015 213~~ 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule “B”.

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

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

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

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

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

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

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 21, 2011 12:12 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
....
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments or concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

Thanks,
Michael

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

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

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

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

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

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

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

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

Draft & Privileged

Aleksandar Kojic

From: JoAnne Butler
Sent: April 21, 2011 12:58 PM
To: Michael Killeavy
Subject: Fw: TCE Contract
Attachments: TCE Contract (April 21, 2011).pdf

Please resend on to the rest of the team as you deem appropriate.

JCB

From: Colin Andersen
Sent: Thursday, April 21, 2011 12:50 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com) <alex_pourbaix@transcanada.com>
Cc: Colin Andersen; Irene Mauricette; JoAnne Butler; Michael Killeavy
Subject: TCE Contract

Please see attached.

Colin Andersen
Chief Executive Officer

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

Direct: 416 969 6010
FAX: 416 969 6380
Web: www.powerauthority.on.ca




120 Adelaide Street West
Suite 1600
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T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

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

Dear Mr. Pourbaix: 

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

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

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

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

Ontario Power Authority

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

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

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

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

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

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

Ontario Power Authority

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

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

Yours very truly,



Colin Andersen

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

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

II. Contract Capacity

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

- (a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; [NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]
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- (c) have a Season 3 Contract Capacity of not less than [480 MW]; and
- (d) have a Contract Capacity of not more than 550 MW in any Season.

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- (b) TCE will provide evidence to support the stated emission levels of NO_x and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NO_x and CO.
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OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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

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SCHEDULE "B" – FINANCIAL PARAMETERS

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Net Revenue Requirement Indexing Factor	20 %
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Nameplate Capacity	[●] MW
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Start-Up Maintenance Cost	\$30,000/start-up
O&M Costs	\$0.89 / MWh
OR Cost	\$0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
<u>Contract Capacity</u> Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 481 MW.	[●] MW	[●] MW	[●] MW	[●] MW
<u>10nORCC</u>	0 MW	0 MW	0 MW	0 MW
<u>Contract Ramp Rate</u>	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE “C” – ADJUSTMENT METHODOLOGY

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

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

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

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

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: April 25, 2011 2:08 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]
Attachments: Letter to Michael Barrack April 25, 2011 20041578_1.pdf

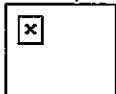
Attached is a copy of the letter sent this afternoon to counsel for TCE.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]
Sent: Thursday, April 21, 2011 5:23 PM
To: Michael Killeavy; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

Ok with content. Want before it goes out to loop back with Colin on Monday morning re his discussion with Minister's Office on their role going forward.

From: Michael Killeavy
Sent: Thursday, April 21, 2011 05:21 PM
To: 'PIvanoff@osler.com' <PIvanoff@osler.com>; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com' <RSebastiano@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

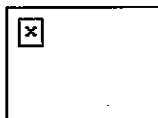
I am fine with this. Susan and Mike are alright with it?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1

416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Thursday, April 21, 2011 05:16 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps[Privileged and Confidential]

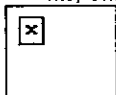
Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments of concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

Thanks,
Michael

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

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Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto

April 25, 2011

Montréal

Paul A. Ivanoff
Direct Dial: 416.862.4223
pivanoff@osler.com
Our Matter Number: 1126205

Ottawa

SENT BY FACSIMILE

Calgary

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

New York

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200 / P.O. Box 329
Toronto ON M5K 1K7

Dear Mr. Barrack:

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

We are in receipt of your letter dated April 19, 2011, which the OPA forwarded to us.

The OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under the Confidentiality Agreement. We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, you sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and refrain from any further discussions with the Government of Ontario or others on matters that are the subject of the Confidentiality Agreement. We are hereby putting TCE on notice that the OPA reserves all of its rights and remedies against TCE respecting the actions referred to above.

OSLER

Page 2

Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

ORIGINAL SIGNED BY
PAULA A. IVANOFF

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
✓ JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Aleksandar Kojic

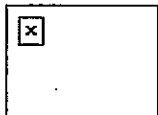
From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: April 26, 2011 7:44 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot
Subject: FW: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

In our discussions with TCE's counsel, as requested, we raised the good faith negotiations issue in connection with the terms of the MOU. Michael Barrick restated the assertion in his letter that his client embarked on these discussions with the Province at the urging of "senior representatives of the OPA". He suggested that TCE does not view their discussions with the Province as an attempt to circumvent the terms of the MOU.

It also appears from the letter that TCE wants to try to stop Osler from representing the OPA in any potential litigation or arbitration. They have alleged (without providing any specifics) that Osler has a conflict of interest that TCE is not willing to waive as it relates to litigation or arbitration. When we spoke to TCE's counsel, we asked him what he is referring to when he claims Osler has a "conflict of interest" in representing the OPA. He said he didn't have any specifics regarding this and would ask his client. For your information, TCE is not a client of the firm, and therefore Osler does not have a conflict in representing the OPA in this dispute, irrespective of whether it ends up in litigation or arbitration. It is our view that this is a baseless assertion on TCE's part and an attempt to frustrate the OPA.

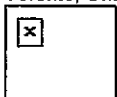
Regards,



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul

Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

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

We are in receipt of your letter of April 25, 2011.

The Confidentiality Agreement dated October 8, 2010 does not prevent TCE from communicating with the Government of Ontario. A review of the Confidentiality Agreement, the relevant legislation, and the actions of the parties all support an intention that the Government of Ontario would have full access to all relevant information. The definition of "Confidential Information" included in that Agreement means "all information that has been identified as confidential and which is disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives..." As you are aware, the Government of Ontario is a Representative of the OPA. This provision is consistent with subsection 25.26 of the *Electricity Act, 1998* which provides, "The OPA shall submit to the Minister such reports and information as the Minister may require from time to time."

You are also aware that the genesis of this entire matter is the announcement by the Minister of Energy that the Province would not be proceeding with the construction of the Oakville Generating Station. As Mr. Andersen, Chief Executive Officer of OPA, wrote to TCE in his letter of October 7, 2010, "As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in the southwest GTA. The OPA will not proceed with the Contract..."

In subsequent discussions between senior representatives of the OPA and TCE, the senior officials of OPA have directly and forcefully urged representatives of TCE to deal directly with the Government of Ontario in order to resolve the issue of the entitlement of TCE to "reasonable



Thornton Grout Finnigan LLP

2.

damages from the OPA, including the anticipated value of the Contract.” In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA “upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario).”

While there exists no legal impediment to TCE sharing information with the Government of Ontario, no “Confidential Information” as defined in the Confidentiality Agreement is identified in your letter.

Perhaps most fundamentally, the position taken in your letter does not promote the efforts of the relevant parties to engage in a meaningful, constructive dialogue aimed at determining whether there is a mutually beneficial solution to the entire matter or significant steps which can be taken to mitigate the damage suffered by TCE. There is absolutely no harm suffered by OPA by sharing information which the Government of Ontario has a right to obtain.

With respect to the matter of representation, we have been informed by TCE that Osler is subject to a conflict of interest with respect to its representation of the OPA in any litigation or dispute resolution process which may ensue. TCE is not willing to waive that conflict.

We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'MBarrack'.

Michael E. Barrack
MEB/slg

Aleksandar Kojic

From: JoAnne Butler
Sent: April 26, 2011 8:25 PM
To: Michael Lyle
Cc: Michael Killeavy
Subject: Re: TransCanada and Ontario Power Authority

Sure...

JCB

From: Michael Lyle
Sent: Tuesday, April 26, 2011 07:48 PM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Fw: TransCanada and Ontario Power Authority

I suggest that we bring this to ETM tomorrow.

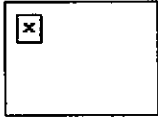
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

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Regards,



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-
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Aleksandar Kojic

From: JoAnne Butler
Sent: April 27, 2011 8:50 AM
To: Manuela Moellenkamp
Subject: Fw: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

Please make six copies. Thanks...

JCB

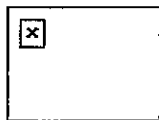
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Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
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Regards,



Paul Ivanoff
Partner

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pivanoff@osler.com

Osler, Hoskin & Harcourt LLP

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



From: Sharonlee Gorgichuk [<mailto:SGorgichuk@tgf.ca>]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

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Regards,
Sharonlee



Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP |
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Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

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We are in receipt of your letter of April 25, 2011.

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Thornton Grout Finnigan LLP

2.

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We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'MBarrack', written over the printed name of Michael E. Barrack.

Michael E. Barrack
MEB/slg

Aleksandar Kojic

From: Susan Kennedy
Sent: April 28, 2011 4:36 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Lyle; Michael Killeavy
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF; PAC s. 7 Notice April 27.PDF; Letter to Pourbaix from OPA dated October 7, 2010.PDF; Oct. 7, 2010 Press Release.PDF

They've been served, so to speak.

Susan H. Kennedy
Director, Corporate/Commercial Law Group



Thornton Grout Finnigan LLP
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Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Attn: Colin Andersen
Chief Executive Officer

Attn: The Honourable Brad Duguid
Minister of Energy

Dear Sirs:

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

We have been retained by TCE to represent its interests in connection with the termination of the Contract by letter dated October 7, 2010. That termination occurred following a public announcement by Minister Duguid. We are uncertain whether the Minister issued a directive to the OPA regarding the termination.

In the termination letter, the OPA stated to TCE, "the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated value of the Contract." The letter also identified the OPA's "wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers."

We have been briefed on the unsuccessful attempts to resolve this matter on the basis suggested in the termination letter, despite several months of negotiations. Our instructions are to commence the formal legal process of identifying the appropriate mechanism to determine the reasonable damages, including the anticipated value of the Contract and an appropriate mechanism for transferring that value from the OPA and the Province of Ontario to TCE. In order to facilitate this process, we would request that you have your legal counsel contact us in order to discuss the manner of proceeding.



Thornton Grout Finnigan LLP

2.

We would be available to meet with counsel to begin this process this week. We would request that your counsel contact us no later than Tuesday, April 26, 2011. Our client has instructed us to move forward with reasonable expedition. We understand that a counterproposal will be delivered to TCE by the close of business on Wednesday, April 20, 2011 as part of the informal settlement discussions. While this formal process of dispute resolution moves forward, our client remains willing to discuss alternatives, but is not willing to suspend the formal process.

We look forward to hearing from your counsel.

Yours very truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'Barrack', written over a horizontal line.

Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
 Jamison Steve, Principal Secretary to the Premier
 Sean Mullin, Director of Policy, Office of the Premier

Notice Pursuant to Section 7 of the *Proceedings Against the Crown Act*

TransCanada Energy Limited hereby provides notice to Her Majesty the Queen in right of Ontario of its claim for damages arising out of the termination on October 7, 2010 of the Southwest GTA Clean Energy Supply Contract between TransCanada Energy Ltd. ("TransCanada") and the Ontario Power Authority ("OPA") dated October 9, 2009 (the "Contract"). On October 7, 2010 the Minister of Energy, the Honourable Brad Duguid publicly announced that the Province would not proceed with the construction of the power plant that was the subject matter of the Contract. Subsequently, by letter also dated October 7, 2010, the OPA informed TransCanada that it would not complete the Contract. TransCanada accepted the OPA's repudiation of the Contract. As a result of the termination of the Contract, TransCanada has suffered damages including the anticipated financial value of the Contract.

Please find attached the following documents dated October 7, 2010: (a) the press release from the Ministry of Energy; and (b) the letter from the OPA to TransCanada repudiating the Contract.



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

October 7, 2010

TransCanada Energy Ltd.
450-1st Street
Calgary, AB T2P 5H1

Attn: Alex Pourbaix,
President,
Energy and Oil Pipelines

Dear Mr Pourbaix :

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

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in southwest GTA.

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. We would like to begin negotiations with you to reach mutual agreement to terminate the Contract.

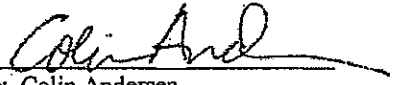
Given Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers.

You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

We undertake that we will not disclose this letter without giving you prior notice and we request that you do the same.

Sincerely,

ONTARIO POWER AUTHORITY

Per: 
Name: Colin Andersen
Title: Chief Executive Officer



- Facebook
-

Oakville Power Plant Not Moving Forward

October 7, 2010 1:15 AM

McGuinty Government to Invest in Transmission to Meet Local Power Demands

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.

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.

CONTACTS

- Andrew Block
Minister's Office
416-327-6747
- Anne Smith
Communications Branch
416-327-7226

Ministry of Energy
ontario.ca/energy

"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

Site Help

Notices

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 - IMPORTANT NOTICES

LAST MODIFIED: FEBRUARY 14, 2011

Aleksandar Kojic

From: Michael Killeavy
Sent: April 29, 2011 1:40 PM
To: JoAnne Butler
Subject: FW: Worst-Case Scenario

Ronak did a model run for the absolute worst case – if we had to increase the settlement proposal to the exact same value as the worst case in litigation – the NRR is increased by about \$800/MW-month.

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: Ronak Mozayyan
Sent: April 29, 2011 1:27 PM
To: Michael Killeavy; Deborah Langelaan
Subject: RE: Worst-Case Scenario

As requested:

	Government-Instructed 2nd Counter Proposal	Litigation - Worst Case
CAPEX Spend:	\$475,000,000	\$475,000,000
Plant Capacity (MW)	481	481
Fixed O&M	\$5,500,000	\$5,500,000
GD&M	\$10,000,000	\$10,000,000
TCE Cost of Capital	5.25%	5.25%
NRR	\$14,500	\$15,326
OGS Sunk Cost Adder	\$422	\$422
Total NRR (with OGS Sunk Cost)	\$14,922	\$15,748
Target OGS NPV	\$200,130,253	\$240,000,000
XNPV for K-W Peaking Plant	\$200,130,253	\$240,000,000
Target IRR	9%	9%
XIRR	9.10%	9.77%

From: Michael Killeavy
Sent: Friday, April 29, 2011 12:45 PM

To: Ronak Mozayyan; Deborah Langelaan
Subject: Re: Worst-Case Scenario

Ok. We need to run the model with the OPEX and other financial parameters the same as our counter-counter proposal. That's why there is an anomaly. We can discuss this when I return from lunch. Sorry for the confusion.

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

From: Ronak Mozayyan
Sent: Friday, April 29, 2011 12:42 PM
To: Deborah Langelaan; Michael Killeavy
Subject: Worst-Case Scenario

I tried to include all scenarios using the Baseline NRR tab as I wasn't sure of the other parameters to be included. Also, I may be wrong, but when I ran through the counter- counter offer numbers and got an NRR of \$14,919/MW Month versus the \$14,922/MW Month.

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
CAPEX Spend:	\$475,000,000	\$475,000,000	\$475,000,000	\$475,000,000
Plant Capacity (MW)	500	481	500	481
Fixed O&M	\$5,500,000	\$5,500,000	\$29,000,000	\$29,000,000
GD&M	\$10,000,000	\$10,000,000	\$0	\$0
TCE Cost of Capital	5.25%	5.25%	5.25%	5.25%
NRR	\$14,744	\$15,326	\$18,082	\$18,797
OGS Sunk Cost Adder	\$406	\$422	\$406	\$422
Total NRR (with OGS Sunk Cost)	\$15,149	\$15,748	\$18,488	\$19,218
Target OGS NPV	\$240,000,000	\$240,000,000	\$240,000,000	\$240,000,000
XNPV for K-W Peaking Plant	\$240,000,000	\$240,000,000	\$240,000,000	\$240,000,000
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Ronak Mozayyan
Business Analyst Contract Management, Electricity Resources
Ontario Power Authority
120 Adelaide St. W. Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6057
F: 416.967.1947

Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 1:42 PM
To: Michael Killeavy
Subject: RE: Worst-Case Scenario

Ok...good to know...

JCB

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

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

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

From: Michael Killeavy
Sent: Viernes, 29 de Abril de 2011 01:40 p.m.
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Ronak Mozayyan
Business Analyst Contract Management, Electricity Resources
 Ontario Power Authority
 120 Adelaide St. W. Suite 1600
 Toronto, ON M5H 1T1
 T: 416.969.6057
 F: 416.967.1947

Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

Let's meet internally first...I am ready whenever everyone else is...

JCB

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

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

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

From: Brett Baker
Sent: Viernes, 29 de Abril de 2011 02:03 p.m.
To: Colin Andersen
Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: TCE

Hi Colin,

The rejection has come ... Michael L is suggesting a short meeting later this afternoon to discuss ... might you be available to participate? Also, you will note, I have copied folks here, but wonder about broader distribution to the DMO, MO, other? Your thoughts?

B.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 2:16 PM
To: Brett Baker
Subject: RE: TCE

Sure...

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

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

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

From: Brett Baker
Sent: Viernes, 29 de Abril de 2011 02:12 p.m.
To: JoAnne Butler; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Irene Mauricette; Nimi Visram
Subject: RE: TCE

Might 2:45 work??

From: JoAnne Butler
Sent: April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

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B.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 29, 2011 3:43 PM
To: Colin Andersen
Cc: Brett Baker
Subject: FW: TCE

Colin,

Brett has probably already indicated this to you, however, we have just spent a little more time on the letter. It looks suspiciously similar to their original proposal, however, we need to review it all more carefully and so do not want to say that just yet. We plan to review it more fully over the weekend and meet with our external counsel on Monday. I think that, at a minimum, we will need to get some clarifications back. If you want me to phone anyone at the Gov, ie. Craig or the DM, I can do that. It would just be to say that we have received a detailed response and are reviewing it.

Please let me know. I have Craig's cell but not the DM's...

JCB

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

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Toronto, Ontario M5H 1T1

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

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Sent: Viernes, 29 de Abril de 2011 02:12 p.m.
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Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Irene Mauricette; Nimi Visram
Subject: RE: TCE

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Sent: April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

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From: Brett Baker

Sent: Viernes, 29 de Abril de 2011 02:03 p.m.

To: Colin Andersen

Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy

Subject: TCE

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B.

Aleksandar Kojic

From: Michael Killeavy
Sent: May 1, 2011 4:52 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Documented NRR Analysis Model
Attachments: OPA-TCE Settlement Negotiations - NRR Analysis Model 1 May 2011.xls

Importance: High

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

I have embedded comments in cells throughout the NRR model to make it a bit easier to use. I also removed a lot of stuff that isn't being used at all now (it had been previously). I have colour-coded the inputs - all yellow highlighted cells in the various worksheets in the attached workbook are inputs into the model. Derived and calculated values are highlighted in green.

I tried protecting the worksheets cells, but since the macro changes the cells when it runs, I really can't lock the cells - if I can figure a way around this problem I will update the workbook and resend later. I can hide the calculation cells to protect them and get the macros to run, but you don't get to see the effect of the changes except for the changed NRR value. I'm not sure there's a lot of value in doing this, but I'm open to comments from the user group. So for now, just only make changes to the input (yellow) cells.

Thanks,

Michael

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

Target CAPEX = \$475,000,000

Note: All model inputs are in yellow cells.

CAPEX Sharing:	Overrun	Underrun
OPA	50%	50%
TCE	50%	50%

Note: All derived values are in green cells.

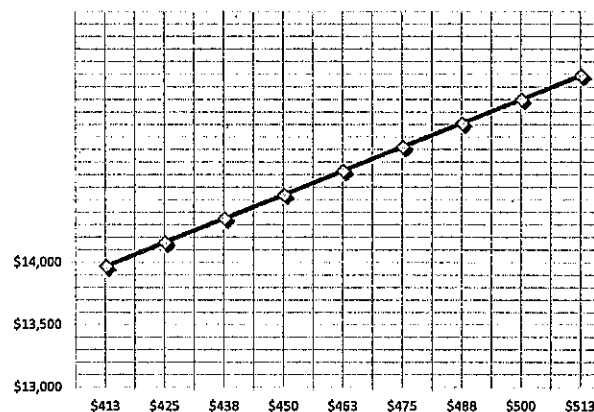
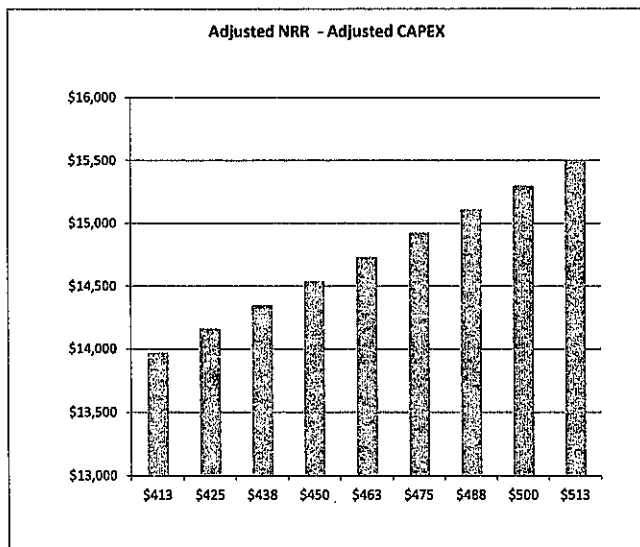
FINAL CAPEX = \$550,000,000
 Overrun (Underrun) = \$75,000,000
 OPA Share = \$37,500,000
 TCE Share = \$37,500,000
 Adjusted CAPEX = \$512,500,000 Target CAPEX + OPA Share

Initial NRR = \$14,500
 Final NRR = \$15,492

m = 1.52193E-05
 b = 7695388889

ADJUSTED CAPEX		FINAL NRR	FITTED LINE
\$412,500,000	\$413	\$13,971	\$13,971
\$425,000,000	\$425	\$14,161	\$14,161
\$437,500,000	\$438	\$14,351	\$14,351
\$450,000,000	\$450	\$14,541	\$14,541
\$462,500,000	\$463	\$14,732	\$14,732
\$475,000,000	\$475	\$14,922	\$14,922
\$487,500,000	\$488	\$15,112	\$15,112
\$500,000,000	\$500	\$15,302	\$15,302
\$512,500,000	\$513	\$15,492	\$15,492

0.0000152133



Aleksandar Kojic

From: JoAnne Butler
Sent: May 1, 2011 5:19 PM
To: Michael Killeavy; 'rsebastiano@osler.com'; 'pivanoff@osler.com'; 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan; Ronak Mozayyan; Brett Baker; Michael Lyle; Amir Shalaby
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Michael,

Thanks for spending your Sunday afternoon on this. Great observations and suggestions. I look forward to a good strategy session tomorrow at our three o'clock.

JCB

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

From: Michael Killeavy
Sent: Sunday, May 01, 2011 04:08 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com <pivanoff@osler.com>; Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

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

I have reviewed the 29 April 2011 letter from TCE ("TCE letter"), which responds to our letter of 21 April 2011 ("OPA letter"). Here are some observations and suggestions:

1. The TCE letter and it doesn't, in my opinion, propose any alternative or revised settlement terms. It merely reiterates that which we've all heard for the past several months.
2. TCE has incorrectly characterized our letter of 21 April 2011 to have been a settlement "offer."
3. TCE wants the permitting and approval protection set out in the OPA letter be expanded for all permits and approvals. We had indicated that it would apply only to Planning Act approvals, i.e., municipal approvals. Furthermore, we had indicated that we'd reserve the right to terminate the Replacement Contract if a permitting force majeure were to arise. TCE wants this right be mutual. Not surprisingly, TCE wants to fix the quantum of any such contract termination payment in the event of a force majeure, as opposed to a commitment to good faith negotiation of the quantum. It further clarifies that the termination payments for the MPS contracts need to be included in the OGS sunk costs. This will depend on the disposition of these contracts and to what extent TCE has mitigated its potential damages, so we need to be careful in considering inclusion of the MPS gas turbines in sunk costs.
4. TCE claims that the contract capacities in the OPA letter are inconsistent with the MPS gas turbines. I suggest that we ought to have SMS Energy conduct yet another review of the MPS information in light of TCE's latest comments. We revised our AACC based on information TCE shared with the government. We have stated to TCE in the past that we are not particularly wedded to any technical specifications in Schedule A, and that we are willing to discuss these.

5. TCE characterizes the Capital Cost Adjustment Methodology as providing the OPA with "significant latitude in approving or disproving (sic) costs..." I'm not sure that this is correct. We set out in s. 3 of Schedule C in the OPA letter what is to be included in the Actual CAPEX. TCE claims that it is a "one-sided" mechanism, which it certainly is not, since TCE and the OPA share deviations from the target on a 50/50 basis. TCE's comments are not, however, an outright rejection of the target costing methodology.
6. TCE has an issue with testing ramp rates and sees it as being counterproductive, but doesn't explain it's issue beyond that fact that it is a "new" requirement. TCE draws an analogy to the CES contract, which the Replacement Contract will not be based upon. Being able to ramp consistently is important for a peaking plant.
7. TCE indicates that the target CAPEX in the OPA letter is ~\$65M less than its "best estimate" for the Replacement Plant. TCE has never clarified what the \$42 M in CAPEX spend in 2009 and 2010 are for in its model. I had raised the issue at our last meeting with TCE and the question was never answered. The 2009/2010 CAPEX spend amounts from TCE are very close to the estimated OGS sunk costs of \$37 M. If there is double counting in the TCE model for OGS sunk costs, the difference if CAPEX is only about ~ \$28M now.
8. With regard to the claimed sub-standard returns, using the parameters in the OPA letter the IRR for the Replacement Project is 9.1%, and not 5.3%. Deb, Ronak and I will get together Monday morning and see if we can figure out what TCE is getting at here.
9. TCE re-proposes a 30-year contract term and NRRIF (% of the NRR to index) of 50%. We had rejected both of these purported value propositions earlier.
10. TCE claims to have provided a "cash flow model" to the OPA. It provided a project pro forma income statement for OGS in December 2010. There was no "model" in the sense that the inputs to the model and calculation of the derived values was not disclosed to the OPA.
11. TCE wants either the NPV we used in our analysis or for us to disclose our model to them. It might be time to tell them what NPV we used and why we used what we used.
12. TCE continually seems to conflate the notion of OGS contract and OGS project in terms of its expectations for the financial value of the OGS contract. I think that we need to be careful that we separate the two. Our offering of foregone OGS profits is very near the full value of the profits under the OGS contract, i.e., excluding OGS residual value.

Michael

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

Aleksandar Kojic

From: Michael Killeavy
Sent: May 1, 2011 6:19 PM
To: Amir Shalaby; JoAnne Butler
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Thank you.

I am not suggesting sharing modelling - just the NPV and our rationale for discounting - this does disclose a defence, though. I think we accept counsel's advice.

I'm sure our model is close to their model absent the input assumptions - CAPEX, OPEX, etc. Our model is based on everything they've disclosed to us that we agree with and their unique firm-specific data, which has been disclosed, such as tax rate, composition of CAPEX for calculating CCA, CAPEX spend profile over time, etc.

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

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

From: Amir Shalaby
Sent: Sunday, May 01, 2011 06:07 PM
To: JoAnne Butler; Michael Killeavy
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Thanks. I am glad you are on our side.
Excellent review.

You suggest sharing our NPV modeling . Is this consistent with the legal/litigation approach ?

See you all tomorrow

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

From: JoAnne Butler
Sent: Sunday, May 01, 2011 05:18 PM
To: Michael Killeavy; 'rsebastiano@osler.com' <rsebastiano@osler.com>; 'pivanoff@osler.com' <pivanoff@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>; Susan Kennedy
Cc: Deborah Langelaan; Ronak Mozayyan; Brett Baker; Michael Lyle; Amir Shalaby
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

Michael,

Thanks for spending your Sunday afternoon on this. Great observations and suggestions. I look forward to a good strategy session tomorrow at our three o'clock.

JCB

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

From: Michael Killeavy

Sent: Sunday, May 01, 2011 04:08 PM

To: Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com <pivanoff@osler.com>; Smith, Elliot <ESmith@osler.com>; Susan Kennedy

Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan

Subject: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011

....

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

I have reviewed the 29 April 2011 letter from TCE ("TCE letter"), which responds to our letter of 21 April 2011 ("OPA letter"). Here are some observations and suggestions:

1. The TCE letter and it doesn't, in my opinion, propose any alternative or revised settlement terms. It merely reiterates that which we've all heard for the past several months.
2. TCE has incorrectly characterized our letter of 21 April 2011 to have been a settlement "offer."
3. TCE wants the permitting and approval protection set out in the OPA letter be expanded for all permits and approvals. We had indicated that it would apply only to Planning Act approvals, i.e., municipal approvals. Furthermore, we had indicated that we'd reserve the right to terminate the Replacement Contract if a permitting force majeure were to arise. TCE wants this right be mutual. Not surprisingly, TCE wants to fix the quantum of any such contract termination payment in the event of a force majeure, as opposed to a commitment to good faith negotiation of the quantum. It further clarifies that the termination payments for the MPS contracts need to be included in the OGS sunk costs. This will depend on the disposition of these contracts and to what extent TCE has mitigated its potential damages, so we need to be careful in considering inclusion of the MPS gas turbines in sunk costs.
4. TCE claims that the contract capacities in the OPA letter are inconsistent with the MPS gas turbines. I suggest that we ought to have SMS Energy conduct yet another review of the MPS information in light of TCE's latest comments. We revised our AACC based on information TCE shared with the government. We have stated to TCE in the past that we are not particularly wedded to any technical specifications in Schedule A, and that we are willing to discuss these.
5. TCE characterizes the Capital Cost Adjustment Methodology as providing the OPA with "significant latitude in approving or disproving (sic) costs..." I'm not sure that this is correct. We set out in s. 3 of Schedule C in the OPA letter what is to be included in the Actual CAPEX. TCE claims that it is a "one-sided" mechanism, which it certainly is not, since TCE and the OPA share deviations from the target on a 50/50 basis. TCE's comments are not, however, an outright rejection of the target costing methodology.
6. TCE has an issue with testing ramp rates and sees it as being counterproductive, but doesn't explain its issue beyond that fact that it is a "new" requirement. TCE draws an analogy to the CES contract, which the Replacement Contract will not be based upon. Being able to ramp consistently is important for a peaking plant.

7. TCE indicates that the target CAPEX in the OPA letter is ~\$65M less than its "best estimate" for the Replacement Plant. TCE has never clarified what the \$42 M in CAPEX spend in 2009 and 2010 are for in its model. I had raised the issue at our last meeting with TCE and the question was never answered. The 2009/2010 CAPEX spend amounts from TCE are very close to the estimated OGS sunk costs of \$37 M. If there is double counting in the TCE model for OGS sunk costs, the difference if CAPEX is only about ~ \$28M now.
8. With regard to the claimed sub-standard returns, using the parameters in the OPA letter the IRR for the Replacement Project is 9.1%, and not 5.3%. Deb, Ronak and I will get together Monday morning and see if we can figure out what TCE is getting at here.
9. TCE re-proposes a 30-year contract term and NRRIF (% of the NRR to index) of 50%. We had rejected both of these purported value propositions earlier.
10. TCE claims to have provided a "cash flow model" to the OPA. It provided a project pro forma income statement for OGS in December 2010. There was no "model" in the sense that the inputs to the model and calculation of the derived values was not disclosed to the OPA.
11. TCE wants either the NPV we used in our analysis or for us to disclose our model to them. It might be time to tell them what NPV we used and why we used what we used.
12. TCE continually seems to conflate the notion of OGS contract and OGS project in terms of its expectations for the financial value of the OGS contract. I think that we need to be careful that we separate the two. Our offering of foregone OGS profits is very near the full value of the profits under the OGS contract, i.e., excluding OGS residual value.

Michael

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

Aleksandar Kojic

From: Michael Killeavy
Sent: May 2, 2011 8:09 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments: TCE Matter - Comparison Matrix 2 May 2011.docx

Importance: High

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

Attached is a preliminary draft of a matrix comparing the various settlement proposals made by the parties. You can see that the 29 April 2011 TCE response to the 21 April 2011 OPA letter, which outlines the government-instructed second counter-proposal, really does not constitute a separate, identifiable settlement proposal.

Michael

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SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter- Proposal March 28, 2011	Government- instructed Second Counter Proposal April 21, 2011	TCE Response to Government- instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first-20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter- Proposal March 28, 2011	Government- instructed Second Counter Proposal April 21, 2011	TCE Response to Government- instructed Second Counter-Proposal 29 April 2011	Comments
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we suspect it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.DOC;
WSComparison_#20420450v3_LEGAL_1_ - v3 Common Interest Privilege Agreement,
OPA-#20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.pdf

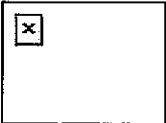
Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."
- the definition of "Third Party" has been simplified.
- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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



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**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the “**Effective Date**”).

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ENERGY
("ONTARIO")**

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

Draft & Privileged

below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

In consideration of the promises and the mutual covenants and agreements herein, the Parties agree as follows:

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) **"TCE"** has the meaning defined in paragraph A of the Recitals.
- (f) **"Third Party"** or **"Third Parties"** means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

10. The Parties shall cooperate in respect of the defence of the Claims, including providing access to information, materials and employees as may be reasonably necessary from time to time, as the case may be, provided that each of the Parties reserves the right to determine what information will be shared and under what circumstances, and no obligation or duty to share any such information is created by this Agreement.

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

17. The Receiving Party acknowledges that disclosure of any Privileged Information to Third Parties in breach of this Agreement will cause the Disclosing Party to suffer irreparable harm for which there is no adequate legal remedy. The Parties therefore agree that immediate injunctive relief is an appropriate and necessary remedy for a breach or threatened or anticipated breach of this Agreement.

NOTICE

18. All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
Tel. No.: (416) 969-6035
Fax No.: (416) 967-1947
E-Mail: michael.lyle@powerauthority.on.ca

To: Her Majesty the Queen in Right of Ontario as Represented by the Minister
of Energy

Attention: ●

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ENERGY**

By: _____

Name: _____

Title: _____

Draft & Privileged

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the _____^{1st} day of April, 2011 (the “Effective Date”).
~~{NTD: Consider whether this Agreement should be backdated.}~~

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF ENERGY
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RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
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- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

Draft & Privileged

below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

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 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, and experts ~~and affiliates~~.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;

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- (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and
 - (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) ~~"Third Party" or "Third Parties" means any person or entity that is not, with respect to either Party, any corporation, partnership, joint venture or other legal entity that is a direct or indirect parent or subsidiary of such Party or that directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise, and, without limitation, a Party.~~ Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.
7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

10. The Parties shall cooperate in respect of the defence of the Claims, including providing access to information, materials and employees as may be reasonably necessary from time to time, as the case may be, provided that each of the Parties reserves the right to determine what information will be shared and under what circumstances, and no obligation or duty to share any such information is created by this Agreement.

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party

prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

17. The Receiving Party acknowledges that disclosure of any Privileged Information to Third Parties in breach of this Agreement will cause the Disclosing Party to suffer irreparable harm for which there is no adequate legal remedy. The Parties therefore agree that immediate injunctive relief is an appropriate and necessary remedy for a breach or threatened or anticipated breach of this Agreement.

NOTICE

18. All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1

Tel. No.: (416) 969-6035
Fax No.: (416) 967-1947
E-Mail: michael.lyle@powerauthority.on.ca

To: Her Majesty the Queen in Right of Ontario as Represented by the Minister
of Energy
Attention: ●

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

Draft & Privileged

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF ENERGY**

By: _____

Name: _____

Title: _____

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 8:49 AM
To: JoAnne Butler
Subject: FW: TCE Arbitration
Attachments: TCEarbitration.ppt

FYI

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

From: Robert Godhue **On Behalf Of** Michael Lyle
Sent: May 3, 2011 8:34 AM
To: Michael Killeavy
Cc: Susan Kennedy; Michael Lyle
Subject: TCE Arbitration

Good Morning All,
Mike Lyle will be in meetings all day *but* can be pulled out if necessary.
-Robert

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058
Robert.Godhue@powerauthority.on.ca

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
 - » Opening discussions on the terms of reference for an arbitration
 - » Continuing negotiations re substantive matters

Arbitration – Benefits for TCE

- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
 - » Private arbitration of benefit to TCE
 - » Arbitration will provide speedier resolution

Arbitration – OPA Perspective

- OPA will attempt to negotiate three key points in arbitration terms of reference:
 - » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)
 - » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)
 - » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

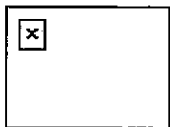
Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: May 3, 2011 11:10 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Susan Kennedy; Smith, Elliot
Subject: RE: TCE Matter - IPSP Q&A Document

Michael,

Please see our revised suggested wording below.

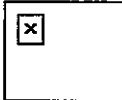
"TransCanada and the OPA are currently discussing the disposition of the SWGTA contract. Costs, if any, associated with the disposition of the SWGTA contract are undetermined at this time."



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Friday, April 29, 2011 9:59 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - IPSP Q&A Document
Importance: High

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

I have been asked to help answer the following question that will be included in a Q&A document for the IPSP consultations. The question and my proposed answer are below. Can you please review my answer and advise if it poses any problems vis-a-vis any defences we might have in any arbitration or litigation?

Question: "We haven't heard yet what the cost will be for the failed Oakville Generating Station. Whether or not its covered by the IPSP, what financial impact will cleaning up that mess and building the transmission that the Southwest GTA now needs have on ratepayers?"

Proposed Answer: "TransCanada and the OPA are currently discussing the termination of the SWGTA contract. The costs associated with the termination of the contract are still being discussed and have not yet been finalized." [NTD: Others will answer whether the OGS is in the IPSP and the Tx part of the question]

Thank you,
Michael

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

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

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

Aleksandar Kojic

From: Michael Killeavy
Sent: May 3, 2011 11:59 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments: TCE Matter - Comparison Matrix 2 May 2011.docx

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

Attached is a revised draft of a matrix comparing the various settlement proposals made by the parties. It also has a number of potential questions to ask about the 29 April 2011 letter from TCE.

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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SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10- Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
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 <i>Planning Act</i> .	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Questions

1. Please clarify the Annual Average Contract Capacity (“AACC”) used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
2. Please clarify the 2009 and 2010 CAPEX amounts detailed in your 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA? These amounts total to \$42 million. We believe that these amounts are actually OGS sunk costs. Is this correct?
3. Please clarify TCE cost of capital used in its financial model, including how it is arrived at, i.e., proportion and cost of both debt and equity portions.
4. Please clarify the NRRIF used in your financial model? In your 29 April 2011 letter to Colin Andersen, you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA, you indicate 20%.
5. Can you please specify your concerns about testing ramp rates for the Replacement Plant?
6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e. 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your 29 April 2011 letter where you state that it is “one-sided”?
7. In your letter of 29 April 2011 you mention that TCE has shared its cash-flow model with the OPA. Actually, you shared a pro-forma income statement for the project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?
- 8.

DRAFT

Aleksandar Kojic

From: JoAnne Butler
Sent: May 3, 2011 2:32 PM
To: Deborah Langelaan; Michael Killeavy
Subject: TCE Information for Tomorrow's Meeting
Attachments: TCEarbitration.ppt; TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

Deb, MK – would welcome changes/comments before I send off to Colin and rest of team later....please start with the TCE Observations Recommendations note....I can meet after 3:30 PM if you want....

JCB

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

I have compiled in this email all that material that we have available for tomorrow's Exec meeting.

They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter
- TCE is attempting to pursue three tracks:
 - » Getting 60 day “clock” to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
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- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
 - » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss
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- Arbitration will only address issue of financial loss for OGS project
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DRAFT 1

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF
LITIGATION

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We are very disappointed that your letter does not really constitute a separate, identifiable settlement proposal. Indeed, it seeks only to confirm and amplify your asks in your proposal of March 10, 2011

In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to pursue arbitration of this issue. It is apparent that a two pronged approach will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A
PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF
LITIGATION

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We are very disappointed that your letter does not really constitute a separate, identifiable settlement proposal. Indeed, it seeks only to confirm and amplify your asks in your proposal of March 10, 2011.

However, we have some questions to seek clarifications on your proposition as follows:

1. Please clarify the Annual Average Contract Capacity (“AACC”) used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
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7. In your letter of 29 April 2011 you mention that TCE has shared its cash flow model with the OPA. Actually, you shared a pro forma income statement for the

project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?

While we can continue to try and resolve the commercial terms, we will be contacting your legal counsel to pursue potential legal resolution of this issue.

Sincerely,

Colin Andersen

May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

OBSERVATIONS

- 1) This matter is clearly not a commercial discussion anymore. The conversation is around strategies and tactics to see “who blinks first”, ie. Government for fear of litigation and thereby, instructing the OPA to accede to TCE’s demands through a further proposal or TCE for fear of litigation and mindful of the long term relationships and numerous contracts that they currently have through the OPA. The clock has effectively started ticking through TCE’s notice to Government to commence litigation within 60 days. Offer was sent on April 27, 2011.
- 2) The OPA Commercial Team has prepared a government instructed counter offer which has been authorized by the Board as our limit as to when we start to completely erode rate payer value. We cannot and will not move further to meet TCE’s demands unless we are directed to do so.
- 3) TCE submitted a proposal on March 10, 2011, and submitted a subsequent letter on April 30 where they have not backed down in any way from their original value proposition, indeed, it could be said that they have asked for further premiums be asking to be absolved of all permitting matters and reducing their turbine output from previous correspondence. See **Comparison Matrix**.
- 4) It is time to commence arbitration discussions with TCE so as to determine to what course the arbitration will take and is it with or without the KWCG plant and just exclusive to the OGS lost profits.
- 5) The question remains do we continue to pretend to work towards a commercial settlement by asking for clarifying questions or do we simply stop commercial matters and move it directly to the Legal Department. Two draft letters are attached depending on which strategy pursued.

RECOMMENDATIONS

- 1) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 2) Ask one round of clarifying questions from TCE; however, this will not impact or drive us towards sending another counter proposal. **Draft Letter 1A**.

OR

- 3) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 4) Send a clear message that since they are unwilling to move on their proposal that all commercial discussions will end and only the legal dispute mechanisms of arbitration or litigation will be pursued. **Draft Letter 1.**

Items in Bold are send as Attachments to this Memo.

Aleksandar Kojic

From: JoAnne Butler
Sent: May 3, 2011 4:23 PM
To: OPA Executive; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Susan Kennedy
Subject: TCE Material PRIVILEGED AND CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION
Attachments: TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCEarbitration.ppt; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

We have worked up this material to facilitate our discussion tomorrow at ETM. They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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

DRAFT 1
PRIVILEGED , CONFIDENTIAL AND WITHOUT PREJUDICE

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Indeed, your letter seeks only to confirm and amplify your original settlement proposal.

In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to commence discussions on arbitration of our dispute. It is apparent that continued settlement discussions will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Indeed, your letter seeks only to confirm and amplify your original settlement proposal.

However, we have some questions to seek clarifications on some of the matters you raised in your letter, as follows:

1. Please clarify the Annual Average Contract Capacity ("AACC") used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
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- From perspective of TCE, there are some key potential advantages to arbitration over litigation:
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- OPA will attempt to negotiate three key points in arbitration terms of reference:
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KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

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SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10- Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW-basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
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 <i>Planning Act</i> .	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.

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May 3, 2011

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

OBSERVATIONS

- 1) The OPA Commercial Team prepared a government instructed counter proposal and delivered it to TCE on April 21, 2001. This proposal was authorized by the Board as our limit and any further changes in TCE's favour would start to completely erode rate payer value.
- 2) TCE submitted an original proposal on March 10, 2011, and submitted a subsequent letter on April 29 after receiving the government instructed counter proposal, where they have not backed down in any way from their original March 10th value proposition. Indeed, it could be said that they have asked for further premiums by asking to be absolved of all permitting matters and reducing their turbine output from previous correspondence. See **Comparison Matrix**.
- 3) We have used the disclosed TCE financial parameters, including CAPEX of \$540 million, and financial value of the OGS contract of \$375 million, and we can get a project return (IRR) of 5.1%, whereas TCE states it gets a 5.3% project return. Consequently, the two models seem to be calibrated correctly.
- 4) The two main issues we need to resolve with TCE are (i) the financial value of the OGS contract and (ii) CAPEX for the Replacement Plant. Only the financial value of the OGS contract is something that arbitration can resolve. If we still cannot come to either a resolution on CAPEX or a resolution on how to handle differences in CAPEX, we will not be able to conclude our settlement discussions and have a Replacement Contract.
- 5) The Commercial team does not recommend any further offers to meet TCE's demands. We would have to be directed to do so. The question remains do we continue to pretend to work towards a commercial settlement by asking for clarifying questions or do we simply stop commercial matters and move it directly to the Legal Department? **Two draft letters** are attached depending on which strategy is pursued.
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- 7) This matter is clearly not a commercial discussion anymore. The conversation is around strategies and tactics to see "who blinks first", ie. Government for fear of litigation and thereby, instructing the OPA to accede to TCE's demands

through a further proposal, or TCE for fear of litigation and mindful of the long term relationships and numerous contracts that they currently have through the OPA. The clock has effectively started ticking through TCE's notice to Government to commence litigation within 60 days. Proposal was sent on April 27, 2011.

RECOMMENDATIONS

- 1) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 2) Ask one round of clarifying questions from TCE; however, this will not impact or drive us towards sending another counter proposal. **Draft Letter 1A.**

OR

- 3) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
- 4) Send a clear message that since they are unwilling to move on their proposal that all commercial discussions will end and only the legal dispute mechanisms of arbitration or litigation will be pursued. **Draft Letter 1.**

Items in Bold are send as Attachments to this Memo.

Aleksandar Kojic

From: JoAnne Butler
Sent: May 3, 2011 4:23 PM
To: OPA Executive; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Susan Kennedy
Subject: TCE Material PRIVILEGED AND CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION
Attachments: TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCEarbitration.ppt; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

We have worked up this material to facilitate our discussion tomorrow at ETM. They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

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

DRAFT 1
PRIVILEGED , CONFIDENTIAL AND WITHOUT PREJUDICE

May 3, 2011

Dear Alex,

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In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to commence discussions on arbitration of our dispute. It is apparent that continued settlement discussions will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A

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