

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 5, 2011 5:01 PM
To: Deborah Langelaan
Subject: RE: Communications Material for TCPL Marketview Conference next week

OK

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: Deborah Langelaan
Sent: Jueves, 05 de Mayo de 2011 04:04 p.m.
To: JoAnne Butler
Subject: RE: Communications Material for TCPL Marketview Conference next week

JoAnne;

Nice presentation - I don't see anything that's potentially dangerous. I just wanted to point out that TCE has a 50% ownership in Portlands.

Deb

From: JoAnne Butler
Sent: May 5, 2011 12:33 PM
To: Michael Killeavy; Deborah Langelaan; Kristin Jenkins
Cc: Manuela Moellenkamp
Subject: Communications Material for TCPL Marketview Conference next week

As you know, I will be speaking at a TransCanada event next week. Here are my slides with speaking notes and some general backup comments below.

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“The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan indicates that we do need a plant in this area. While we have been looking at other options with TransCanada, no deal has been finalized”

In general, I can say:

“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”.

Please advise me of any concerns that you might have with this material from a legal or communications standpoint.
Thanks....

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Aleksandar Kojic

From: JoAnne Butler
Sent: May 5, 2011 6:59 PM
To: Kristin Jenkins
Subject: Re: Communications Material for TCPL Marketview Conference next week

Ok..

Can you resend the Comms stuff? It was in an earlier email. Thanks...

JCB

From: Kristin Jenkins
Sent: Thursday, May 05, 2011 06:34 PM
To: JoAnne Butler
Subject: Re: Communications Material for TCPL Marketview Conference next week

When you are asked what disposition means you will have to say terminate

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Sent: Thursday, May 05, 2011 12:33 PM
To: Michael Killeavy; Deborah Langelaan; Kristin Jenkins
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Aleksandar Kojic

From: JoAnne Butler
Sent: May 6, 2011 8:45 AM
To: Brett Baker
Subject: FW: TCE Matter - OPA Response to TCE Letter of 29 April 2011
Attachments: OPA Ltr to TCE 4 May 2011 (Osler comments) 20556161_3.DOCX

Brett, do you know if Colin has had a chance to look at this yet or what his timing might be? Thanks...

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From: Michael Killeavy
Sent: Jueves, 05 de Mayo de 2011 12:35 p.m.
To: Colin Andersen
Cc: JoAnne Butler; Brett Baker; Michael Lyle; Deborah Langelaan
Subject: FW: TCE Matter - OPA Response to TCE Letter of 29 April 2011

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Please relay any comments to me and we'll finalize the letter when you want.

Michael

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From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: May 5, 2011 9:51 AM

To: Michael Killeavy; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011

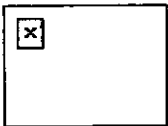
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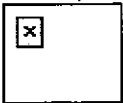
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From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, May 04, 2011 11:45 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: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

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

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

Thank you,
Michael

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May 4, 2011

Dear Alex:

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

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

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

financing model assumptions shared with JoAnne Butler, TCE indicated 20% was being used.

5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.
6. The target costing methodology proposed by the OPA in its April 21, 2011 proposal provides for both TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs, subject to an overall cap. Can you please clarify why you consider this mechanism to be "one-sided"? **[Note: I suspect TCE's view of the one-sidedness of this mechanism is based on the cap, which is lower than their "best estimate" of the CAPEX for the Potential Project. In light of the perceived effect of the cap, consider whether to ask this question.]**
7. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

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

Sincerely,

Colin Andersen

Aleksandar Kojic

From: JoAnne Butler
Sent: May 6, 2011 9:38 AM
To: Brett Baker
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011

OK....we just wanted to know if he had any major changes...we can get it out Monday when everyone is back....

JCB

JoAnne C. Butler
Vice President, Electricity Resources
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Toronto, Ontario M5H 1T1

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joanne.butler@powerauthority.on.ca

From: Brett Baker
Sent: Viernes, 06 de Mayo de 2011 09:22 a.m.
To: JoAnne Butler
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011

He's looking at it now

From: JoAnne Butler
Sent: May 6, 2011 8:45 AM
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Cc: JoAnne Butler; Brett Baker; Michael Lyle; Deborah Langelaan
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Please relay any comments to me and we'll finalize the letter when you want.

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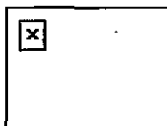
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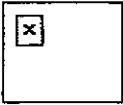
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Aleksandar Kojic

From: Michael Killeavy
Sent: May 6, 2011 10:51 AM
To: JoAnne Butler
Subject: Fw: Communications Material for TCPL Marketview Conference next week

Please Elliot's comments below.

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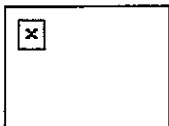
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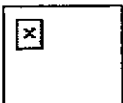
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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, May 05, 2011 12:41 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: FW: Communications Material for TCPL Marketview Conference next week

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Aleksandar Kojic

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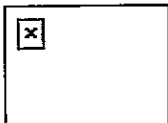
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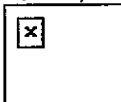
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JCB

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

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Aleksandar Kojic

From: JoAnne Butler
Sent: May 6, 2011 1:37 PM
To: Nimi Visram; John Zych; Irene Mauricette
Cc: Colin Andersen; Brett Baker; Barbara Ellard; Shawn Cronkwright; Michael Killeavy; Kevin Dick; Manuela Moellenkamp; Yvonne Cuellar
Subject: ER Board Presentations for May 17/18
Attachments: BOD_Mtg_20110518Becker.ppt; BOD_OGS_20110518.pptx;
BOD_RESCurtailmentBoard_May2011.pptx; BOD CHP Presentation_May 17 2011_v2.ppt;
BOD_NUGsDraft_May18.ppt; BOD_AtikokanDraft_May 18_v3.ppt

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

Please find attached our presentations for the upcoming Board meeting. We will be making a few tweaks on a few of them over the weekend but wanted to meet the weekend reading deadline...thanks....

JCB

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

Aleksandar Kojic

From: JoAnne Butler
Sent: May 9, 2011 10:50 AM
To: John Zych
Subject: RE: Minutes of Meeting of Board of Directors - March 29, 2011 - JoAnne, Please advise whether this is okay. Print and delete.

Looks good, John... TCE's proposal was sent in on March 10, 2011

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

From: John Zych
Sent: Viernes, 06 de Mayo de 2011 03:47 p.m.
To: JoAnne Butler
Subject: Minutes of Meeting of Board of Directors - March 29, 2011 - JoAnne, Please advise whether this is okay. Print and delete.

MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Tuesday, March 29, 2011 at 5:00 p.m., Toronto time, by teleconference

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning
JoAnne Butler, Vice President, Electricity Resources
Kimberly Marshall, Vice President, Finance and Administration
Andrew Pride, Vice President, Conservation
Kristin Jenkins, Acting Vice President, Communications
Murray Campbell, Director, Corporate Communications

Brett Baker, Senior Advisor, Policy and Strategy
John Zych, Corporate Secretary

1. Constitution of the Meeting

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

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

The Chair advised that there were only two agenda items, namely, the Ontario Government's 2011 budget and the status of the negotiation of TransCanada Energy Inc.'s claims arising out of the cancellation by the government of Ontario of TransCanada Energy's contract with the Ontario Power Authority in respect of the Oakville Generating Station.

2. 2011 Ontario Budget

Mr. Murray Campbell summarized the major elements of the government of Ontario's 2011 budget, which was announced by Minister Dwight Duncan that day. He noted that, despite much speculation, there was no measure in the budget to change the status of the OPA.

3. Oakville Generating Station Update

This section of the minutes is subject to settlement privilege and litigation privilege.

Ms. JoAnne Butler advised the Board that the OPA had made a proposal in response to TransCanada Energy Inc.'s proposal of [date] to settle TransCanada Energy Inc.'s claims arising out of the cancellation by the government of Ontario of TransCanada Energy's contract with the OPA in respect of the Oakville Generating Station. Ms. Butler discussed the terms of the OPA proposal. She advised that management was expecting a counter proposal from TransCanada Energy Inc. in due course.

Board members noted that, since the TransCanada Energy Inc.'s proposal and the OPA's proposal in response to it included provision for a sole-sourced contract for a gas peaker generation plant to be situated in Cambridge, Ontario, the OPA needed to be prepared for the new plant to face same possible objections on environmental grounds from local residents, e.g., the airshed being overtaxed by pollutants and particulate matter, e.g., PM2.5 concerns, and the same types of planning and zoning hurdles as were faced by TransCanada Energy Inc. in respect of the Oakville generating station.

4. Termination

There being no further business to be brought before the meeting, the meeting terminated at 5:45 p.m.

Approved by the Board of Directors on
the 18th day of May, 2011

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting

Aleksandar Kojic

From: Michael Killeavy
Sent: May 10, 2011 10:02 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: FW: Letter from Colin Andersen
Attachments: Letter Pourbaix response to Apr 29 May 9 2011.pdf

Importance: High

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

The letter to Alex Pourbaix of TCE was sent. You may now contact TCE counsel to discuss the terms of reference for the arbitration.

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 **On Behalf Of** Colin Andersen
Sent: May 10, 2011 9:58 AM
To: 'Alex Pourbaix (alex_pourbaix@transcanada.com)'
Cc: Michael Killeavy
Subject: Letter from Colin Andersen

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Hi Alex - the enclosed letter from Colin Andersen is in response to yours of April 29, 2011 – original to follow by mail – thanks – Irene Mauricette on behalf of Colin Andersen.

Irene Mauricette
Executive Assistant to
The Chief Executive Officer

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

Direct: 416 969 6010
FAX: 416 969 6380
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 9, 2011

Mr. Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Corporation
450 – 1 Street, SW
Calgary, Alberta
T2P 5H1

Dear Alex: 

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

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

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

4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011 financing model assumptions shared with JoAnne Butler, TCE indicated 20% was being used.
5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.
6. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

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

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Andersen", with a long horizontal flourish extending to the right.

Colin Andersen
Chief Executive Officer

Aleksandar Kojic

From: Michael Lyle
Sent: May 10, 2011 1:24 PM
To: Colin Andersen; JoAnne Butler; Amir Shalaby; Kristin Jenkins; Kim Marshall; Brett Baker; Michael Killeavy; Deborah Langelaan; John Zych; Susan Kennedy; Robert Godhue; Nimi Visram; Sarah Diebel; Aaron Cheng
Subject: TCE Potential Litigation
Attachments: TCE Document Retention Memo.doc

Please see the attached memo with respect to the potential litigation with TCE and the need to preserve records relating to that potential litigation. Please read this document carefully. We would be happy to answer any questions that you might have.

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

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May 29, 2012

MEMO TO: Colin Andersen, Kristin Jenkins, Andrew Pride, JoAnne Butler, Amir Shalaby, Kim Marshall, Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram, Aaron Cheng, John Zych, Sarah Diebel

FROM: Michael Lyle

RE: TransCanada Energy Ltd. Oakville Generating Station, Southwest GTA CES
Contract– Document Retention & Preservation

PLEASE READ THIS MEMORANDUM CAREFULLY

Please be advised that Ontario Power Authority (“OPA”) reasonably anticipates the possibility of legal proceedings in relation to matters involving TransCanada Energy Ltd. and the Oakville Generating Station, Southwest GTA project (the “OGS Project”).

As such, all documents and records (both electronic and paper) that relate to the anticipated or pending litigation must be retained until any such proceedings are finally concluded.

As a recipient of this memo, you are required to preserve all documents and records pertaining to the OGS Project, as more clearly described below.

Preservation of Records Relating to Litigation

To assist the OPA in meeting its documentary discovery obligations, in the event that OPA is named as a party in legal proceedings in matters relating to the OGS Project, it is important that you preserve all documents and records that relate in any way, directly or indirectly, to this matter.

A party to litigation is required to disclose the existence of every document relating to any matter in issue in the legal proceedings that is or has been in the party’s possession, control or power, whether or not privilege is claimed in respect of a document.

As such, in order to ensure that the OPA meets its obligations and in order to assist the OPA in legal proceedings, documents and records that relate in any way, directly or indirectly, to the OGS Project should be clearly identified so as to avoid inadvertent destruction and should be kept in a secure location.

Documents Which Must Be Disclosed – “Relevance”

You should be aware that relevancy is a legal consideration and that it is not your job to determine what documents in your possession, control or power are in fact relevant. In that regard, you should not attempt when gathering documents to determine what documents you believe are relevant or covered by any form of privilege. At this time, it is important that all documents relating to the OGS Project be preserved.

“Documents” includes all Paper, Computer and Electronic Records and Information

“Documents” required to be disclosed are defined broadly and include paper records (such as letters and notes), any data and information in electronic form (such as emails and computerized account records), manuals, business records, sound recordings, videotapes, photographs, charts, graphs, maps, plans, surveys, and books of accounting. Note that this is not an exhaustive list – any record, data and information in any format must be preserved.

An important part of document preservation is to consider electronic records - including electronic versions of documents as well as documents which may only exist electronically and data which may only exist in computer files and records.

As well as preserving all paper documents at your desk and filing cabinets, steps must be taken to preserve all electronic and computerized documents and records. This includes information stored in servers, computers, laptops, palm pilots, blackberries, and cell phones.

IT Personnel

It is imperative that IT personnel preserve the OPA’s e-mail server, back-up tapes and the computer hard drives of all those employees who might reasonably be in possession of documents and records relating in any way directly or indirectly to the OGS Project or issues raised in anticipated or pending legal proceedings. Even if back-up tapes are not readily accessible and will not be reviewed at this juncture, they must be preserved so that in the event there is a need to review those back-up tapes, they will be available.

The General Issues

While all documents relating directly or indirectly to the OGS Project must be preserved, it may be helpful for you to know that, in broad terms, the following issues may be relevant in the anticipated or pending litigation:

1. the procurement and administration of the CES Contract between the OPA and TCE;
2. the OPA’s planning analysis of the needs in Southwest GTA;
3. the communications between the OPA and the Government relating to the OGS;
4. the Minister of Energy’s decision and announcement that the OGS will not proceed;



Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.

If you have any questions or concerns, please contact either:

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

Aleksandar Kojic

From: Michael Lyle
Sent: May 10, 2011 5:22 PM
To: OPA Executive; Brett Baker; Michael Killeavy; Deborah Langelaan
Cc: Susan Kennedy
Subject: TCE

Privileged

Just spoke to Paul Ivanoff from Oslers. He spoke to TCE litigation counsel about arbitration. As expected, they see arbitration terms of reference as having three key elements:

1. Crown, OPA and TCE are all parties to the arbitration.
2. Arbitration starts from premise that OPA is liable to pay TCE for its economic loss (despite contract and challenges that plant was facing).
3. There is no restriction on TCE bidding on other work.

Perhaps we could discuss this further at ETM tomorrow.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
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Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
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Aleksandar Kojic

From: JoAnne Butler
Sent: May 10, 2011 9:28 PM
To: Michael Lyle
Subject: Re: TCE

Sure...I am not there but MK is my delegate...

JCB

From: Michael Lyle
Sent: Tuesday, May 10, 2011 05:22 PM
To: OPA Executive; Brett Baker; Michael Killeavy; Deborah Langelaan
Cc: Susan Kennedy
Subject: TCE

Privileged

Just spoke to Paul Ivanoff from Oslers. He spoke to TCE litigation counsel about arbitration. As expected, they see arbitration terms of reference as having three key elements:

1. Crown, OPA and TCE are all parties to the arbitration.
2. Arbitration starts from premise that OPA is liable to pay TCE for its economic loss (despite contract and challenges that plant was facing).
3. There is no restriction on TCE bidding on other work.

Perhaps we could discuss this further at ETM tomorrow.

Michael Lyle
General Counsel and Vice President
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Aleksandar Kojic

From: Michael Lyle
Sent: May 13, 2011 2:18 PM
To: Colin Andersen
Cc: JoAnne Butler; Kristin Jenkins; Susan Kennedy; Michael Killeavy; Deborah Langelaan
Subject: TCE

Confidential: Solicitor/Client Privilege

Further to our discussion at ETM, when we told you that we would be looking at next steps re moving forward with arbitration discussions, we met with our external counsel yesterday. You will recall that TCE counsel has indicated that they want the Crown involved in the arbitration. We are arranging a lawyer to lawyer meeting with counsel for the Government to discuss their views re the involvement of the Crown in the arbitration. We then anticipate arranging a client and lawyer meeting between TCE and OPA to discuss each of our positions on the Terms of Reference.

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

From: JoAnne Butler
Sent: June 7, 2011 8:28 AM
To: Kristin Jenkins
Subject: FW: Greenfield South Chronology - 06-6-11
Attachments: Greenfield South Table (3).doc; RE: Greenfield South Chronology - 06-6-11

Did you get this?

JoAnne C. Butler
Vice President, Electricity Resources
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416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Derek Leung
Sent: Lunes, 06 de Junio de 2011 08:22 p.m.
To: JoAnne Butler
Subject: FW: Greenfield South Chronology - 06-6-11

JoAnne this is the comparison and my answers to the 2 questions. I have noted I had a typo in my answer the Greenfield North was located at 407 and Hwy 10 (not 427 and Hwy 10).

Derek

Derek Leung, P.Eng., C.Eng., PMP
Manager - Contract Management
Electricity Resources
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, ON, Canada M5H 1T1
T: 416-969-6388

From: Kulendran, Jesse (MEI) [<mailto:Jesse.Kulendran@ontario.ca>]
Sent: 06 June 2011 17:47
To: Kristin Jenkins; Feairs, Jon (MEI); Jennings, Rick (MEI); McKeever, Garry (MEI); Botond, Erika (MEI); MacLennan, Craig (MEI); Block, Andrew (MEI)
Cc: Patricia Phillips; Mary Bernard; Tim Butters; Derek Leung; Michael Lyle; King, Ryan (MEI); Kovesfalvi, Sylvia (MEI)
Subject: RE: Greenfield South Chronology - 06-6-11

Revised comparison attached (adding reference to steam turbines/connection agreement).

There are a few follow up questions regarding the chronology:

1. Why was the Greenfield North contract terminated? What was the reason?
2. In August 2005, why was the in-service date moved for Greenfield South to July 2009?

There will be NO call tonight, but we will need the answers to the above questions please. There may be another call tomorrow morning.

Thanks all for working quickly to gather this information.

-Jesse

Jesse Kulendran - Senior Coordinator, Policy & Special Projects
Office of the Deputy Minister - Ministry of Energy
Tel.: 416-327-7025 - Blackberry: 416-206-1394

From: Kristin Jenkins [<mailto:Kristin.Jenkins@powerauthority.on.ca>]
Sent: June 6, 2011 5:19 PM
To: Kulendran, Jesse (MEI); Feairs, Jon (MEI); Jennings, Rick (MEI); McKeever, Garry (MEI); Botond, Erika (MEI); MacLennan, Craig (MEI); Block, Andrew (MEI)
Cc: Patricia Phillips; Mary Bernard; Tim Butters; Derek Leung; Michael Lyle
Subject: RE: Greenfield South Chronology - 06-6-11

Jesse – under current status for Greenfield, you might want to add that the steam turbine has been purchased and delivered (in storage) as well as something on the status of the connection agreement with Hydro One.

Kristin

From: Kulendran, Jesse (MEI) [<mailto:Jesse.Kulendran@ontario.ca>]
Sent: June 6, 2011 5:13 PM
To: Kristin Jenkins; Feairs, Jon (MEI); Jennings, Rick (MEI); McKeever, Garry (MEI); Botond, Erika (MEI); MacLennan, Craig (MEI); Block, Andrew (MEI)
Cc: Patricia Phillips; Mary Bernard; Tim Butters; Derek Leung; Michael Lyle
Subject: RE: Greenfield South Chronology - 06-6-11

Attached is the comparison chart developed by Rick's shop. Will be adding a row on what percentage of time the plant was/is expected to operate (ie. X% of hrs/year).

Thanks, Jesse

From: Kristin Jenkins [<mailto:Kristin.Jenkins@powerauthority.on.ca>]
Sent: June 6, 2011 4:45 PM
To: Feairs, Jon (MEI); Kulendran, Jesse (MEI); Jennings, Rick (MEI); McKeever, Garry (MEI); Botond, Erika (MEI); MacLennan, Craig (MEI); Block, Andrew (MEI)
Cc: Patricia Phillips; Mary Bernard; Tim Butters; Derek Leung; Michael Lyle
Subject: Greenfield South Chronology - 06-6-11

Attached is the chronology. We still have to dig out some dates –specific months. Will send revised version shortly.

Kristin

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	GREENFIELD SOUTH	OAKVILLE
Owner	Eastern Power	TransCanada Corporation
Capacity	280 MW	900 MW
Procurement	Clean Energy Supply RFP (Contract in April 2005)	Southwest GTA RFP (Contract Sept 2009)
Technology	Combined cycle natural gas	Combined cycle natural gas
Connection Agreement	Not yet completed	Not completed
Current Status	Environmental approvals complete. Municipal building permit obtained. Equipment being moved to site with construction beginning in July. Steam turbine purchased and delivered.	Cancelled. Had not received environmental or municipal approvals.
<i>In-Service Date</i> CONFIDENTIAL	Q3 2014	2013 (<i>projected</i>)
Setbacks	200 m to nearest residence, 700 m to nearest hospital, 1.1 km to nearest school.	400 m to nearest residence, 3 km to nearest hospital, 300 m to nearest school (academy).
Plant size	2 hectares of a 4.5 hectare property.	6 hectare property
Expected operation	Intermediate: 10% to 45% of the time	Intermediate: 10% to 45% of the time

Aleksandar Kojic

From: Michael Killeavy
Sent: June 16, 2011 2:10 PM
To: Deborah Langelaan; JoAnne Butler
Subject: FW: Memo re Strategic Options for Arbitration with TCE
Attachments: Memo re Strategic Considerations for Arbitration with TCE 20838721_2.DOC

FYI ...

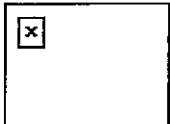
Michael Killeavy, LL.B., MBA, P.Eng.
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416-969-6288
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416-967-1947 (FAX)

From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Sebastiano, Rocco
Subject: Memo re Strategic Options for Arbitration with TCE

Michael and Michael,

Further to your meeting earlier this week with Paul and Rocco, please find attached a draft memo we have prepared setting out strategic considerations for a possible arbitration with TCE. If you have any questions, please let us know.

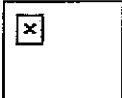
Elliot



Elliot Smith
Associate

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Memorandum

Privileged & Confidential

To: Michael Lyle, *OPA*

Date: June 16, 2011

c: Michael Killeavy, *OPA*

From: Elliot Smith and Paul Ivanoff

Tel: 416.862.6435 and
416.862.4223

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

Matter No: 1126205

1. Background

TCE and the OPA are currently in a dispute over the proper compensation to be paid to TCE in exchange for the mutual termination of the Contract. This memorandum is intended to set out strategic considerations relevant to the resolution of the dispute by an arbitrator.

Both TCE and the OPA have an interest in resolving the dispute by way of arbitration rather than litigation as this could permit the dispute to be resolved on a confidential basis. TCE has set out three conditions that must be satisfied before it will agree to arbitration. These conditions were relayed in a telephone conversation on May 10, 2011 between Michael Barrack, litigation counsel to TCE, and Paul Ivanoff, counsel to the OPA, with Elliot Smith also in attendance. We understand that TCE has not communicated these conditions to the OPA in writing and therefore this memo is based on the recollections of Mr. Smith and Mr. Ivanoff from such call with TCE's litigation counsel. We understand that Mr. Barrack has also conveyed these conditions to counsel for the Ministry of Energy.

The conditions set by TCE are that any arbitration (i) be a three-party arbitration between TCE, the OPA and Her Majesty in right of Ontario (the "Crown"), (ii) recognize the terms of the October 7, 2010 letter from Colin Andersen to Alex Pourbaix (the "October 7 Letter") and (iii) not preclude TCE from participating in future OPA procurements. Each of these conditions is discussed in greater detail below.

2. Conditions for TCE to Agree to Arbitration

(a) Arbitration Must Include the Crown

We remain unclear on TCE's motivation to include the Crown in any arbitration of the dispute, but have two hypotheses. Firstly, TCE may wish to include the Crown as a party to the dispute in order to have the benefit of document production from the Crown. TCE may believe or

Draft & Privileged

suspect that there is correspondence or other documents in the Crown's possession which either contain certain promises to TCE regarding compensation for the mutual termination of the Contract or which provide evidence to support a favourable interpretation of the words in the October 7 Letter. As we do not have the Crown's records for review, it is difficult to comment on how important this factor is to TCE; however, we would note that to the extent the terms of the arbitration concede liability to TCE for loss of profits, there is less value in whatever documents the Crown may have as the only determination for the arbitrator in such case would be the quantum of damages and not whether the OPA waived the exclusion of consequential damages set out in the Contract.

Secondly, TCE may be concerned about its ability to collect on any judgment from the OPA and therefore would like to have the Crown included as a party to the arbitration. This concern may be derived from (or exacerbated by) concern that the OPA may cease to exist in the near future (given certain statements made in the media and the uncertainty of the results of next October's election). In any event, we believe that this concern may not be well-founded as we understand that the OPA continues to hold the same credit rating as the Crown.

While in litigation (as opposed to a confidential arbitration) there may be political or public relations considerations that would motivate a desire by TCE to include the Crown, because the proposed arbitration would be confidential, we do not believe that this is a factor in the present circumstances.

We believe it would not be in the OPA's best interests to have the Crown included as a party to an arbitration of the dispute. We do not see a benefit to the OPA in having the Crown as a party and there are potential drawbacks as it would likely increase the cost and complexity of the proceedings. If the Crown were to be a party to the arbitration, there is also the possibility that unfavourable documentation would be produced during document production which might harm the OPA's potential defences.

(b) Arbitration Must Recognize the Terms of the October 7 Letter

It is unclear what precisely is the nature of this condition; however, we believe based on discussions with TCE's counsel that TCE does not want the OPA to be permitted to take the position that the exclusion of consequential damages set out in s. 14.1 of the Contract precludes TCE from recovering any amounts from the OPA on account of loss of profits. This would be, in effect, to treat the October 7 Letter as a waiver by the OPA of the benefit of the exclusion for loss of profits set out in s. 14.1.

If the OPA were to concede that the October 7 Letter constituted a waiver, it would be important to ensure (i) that such waiver did not affect aspects of s. 14.1 not related to loss of profits, e.g., the exclusion of punitive or special damages and (ii) that the OPA did not waive the exclusion of other indirect lost profits, i.e., losses of other profits that TCE might have earned by developing the Oakville Generating Station (for example, selling excess steam to Ford). A narrow waiver of the exclusion for lost profits from the Contract may be acceptable to the OPA, if in exchange for such a waiver, TCE was willing to concede to arbitration without the Crown as a party *and*

cooperate in either negotiating a replacement project or an assignment of the gas turbines, as further discussed below.

(c) **Arbitration Must Not be an Impediment to TCE Participating in Future OPA Procurements**

TCE has stipulated that any agreement to arbitrate must not be an impediment to their participation in future OPA procurements. While this is obviously of great importance to TCE, the OPA's interests in this point may also be aligned. Given how few developers are currently active in the Ontario market for electricity supply from natural gas, despite the dispute between the OPA and TCE, it would likely not be in the OPA's interests to run a procurement where TCE was not permitted to participate as this would simply reduce the competition in the procurement and result in less competitive bids. One point that may be contentious with TCE is that while the OPA may agree not to exclude TCE from future procurements by reason of the arbitration, it would be difficult to commit with certainty that TCE would be permitted to participate in any future procurements as there may be other criteria in a future procurement which TCE would not be able to satisfy (for example, as part of a pre-qualification process).

3. Potential OPA Conditions to Agree to Arbitration

In light of the above analysis, it may be possible for the OPA to propose terms of arbitration to TCE which are acceptable to TCE and provide benefits to the OPA. The OPA's main objective in negotiating terms of arbitration may be to provide for an efficient use of the gas turbines originally acquired for the Oakville Generation Station, since these comprise a substantial proportion of the sunk costs incurred in connection with the Contract. It appears that the highest value use for these gas turbines would be to use them in a peaking generation project in the Kitchener-Waterloo-Cambridge area (the "Peaking Project"). There are principally two ways in which this could be achieved: (i) the OPA could run a competitive procurement for a developer to take an assignment of the equipment supply contract (the "Equipment Supply Contract") between TCE and MPS Canada, Inc. ("MPS") and build the Peaking Project using these turbines, or (ii) the OPA could negotiate a replacement contract with TCE (the "Replacement Contract") for TCE to build the Peaking Project using these turbines.

(a) **Assignment of Turbines**

The terms of the Equipment Supply Contract permit it, subject to MPS's consent, to be assigned by TCE to a third party that would take on all of TCE's rights and obligations under the Equipment Supply Contract. In exchange for taking an assignment of the Equipment Supply Contract, the assignee would normally be expected to pay to TCE an amount equal to all amounts already paid by TCE pursuant to the Equipment Supply Contract to make TCE whole. Such an assignee could then make any remaining payments pursuant to the Equipment Supply Contract and ultimately take delivery of the turbines to utilize them in the construction of the Peaking Project. This would, in effect, fully mitigate TCE's damages relating to the Equipment Supply Contract.

In order to find a third party willing to take an assignment of the Equipment Supply Contract, the OPA would likely run a procurement for a developer to enter into a CES-style contract (perhaps similar to the form of the peaking generation contract from Northern York Region) with the OPA whereby the developer would design, construct, own and operate the Peaking Project using the turbines in exchange for a monthly payment from the OPA. As part of this process, each proponent in the procurement process would agree that if selected as the successful proponent, they would enter into an assignment of the Equipment Supply Contract and pay TCE an amount equal to all amounts previously paid by TCE pursuant to the Equipment Supply Contract.

In order to set up the legal framework for this, MPS, the OPA and TCE would need to enter into an agreement for TCE to assign its interest in the Equipment Supply Contract to the successful proponent (the "Agreement to Assign"), and pursuant to which MPS would consent to such an assignment. The Agreement to Assign would contain, as a schedule, the form of assignment agreement (the "Assignment Agreement") to be entered into by the successful proponent, TCE and MPS, upon conclusion of the procurement process. This form of Assignment Agreement, along with a copy of the Equipment Supply Contract, would be included as documents in the procurement process so that prospective proponents could properly evaluate the arrangement that the successful proponent would be required to enter into. Upon the determination of a successful proponent, the Agreement to Assign would contractually obligate TCE and MPS to enter into the Assignment Agreement with the successful proponent.

Impediments by TCE to the Assignment of the Turbines

The most likely impediment to any assignment of the turbines would be that TCE could refuse to cooperate in the negotiation of an Agreement to Assign, particularly if TCE expects that it will not be permitted to participate in the procurement process for the Peaking Project. This risk could be somewhat mitigated if TCE were permitted to participate in the procurement for the Peaking Project; however, TCE may still resist on the basis that if they block an assignment of the Equipment Supply Contract, they would still be the preferred developer to build the Peaking Project. In order to counter this strategy by TCE, the OPA could advise TCE that if it refuses to cooperate in the negotiation of an Agreement to Assign, the OPA will make a "with prejudice" offer to take an assignment of the Equipment Supply Contract from TCE at full price. A refusal by TCE to accept this offer could be seen as a failure by TCE to reasonably mitigate its damages in connection with the cancellation of the Contract. In particular, as this proposed arrangement would fully mitigate any damages to TCE relating to the Equipment Supply Contract, by failing to accept this offer and properly mitigating its damages, TCE would be taking on the risk of reselling the turbines or repurposing them for another project. Either of these results would not mitigate TCE's damages to the same extent as the proposed assignment arrangement, and therefore potentially exposes TCE to a finding by a court or arbitrator that it failed to properly mitigate its damages and that the OPA is not liable for damages incurred by TCE relating to the Equipment Supply Contract which would have otherwise been mitigated by assigning it to the OPA. As a result, although TCE may not be eager to negotiate an Agreement to Assign, if TCE were to refuse to cooperate, this has the potential to expose it to significant losses which may not be recoverable from the OPA. **[NTD: We are undertaking further research on this point and will advise if there is any new information which affects the analysis.]**

Impediments by MPS to the Assignment of the Turbines

Experience to date with MPS suggests that there is also the possibility that MPS may not cooperate with the OPA in the negotiation of an Agreement to Assign. However, the Equipment Supply Contract contemplates the potential assignment of that agreement and therefore a refusal of MPS to negotiate an Agreement to Assign would be inconsistent with the Equipment Supply Contract. In order to effect an assignment by TCE, MPS's consent is required and such consent cannot be unreasonably withheld. The Equipment Supply Contract sets out three grounds pursuant to which it is not unreasonable for MPS to withhold consent: (i) if it has a reasonable basis for doubting the financial creditworthiness of a prospective assignee, (ii) if such prospective assignee is a direct competitor of MPS, or (iii) if such prospective assignee does not agree to be bound by all terms and conditions of the Equipment Supply Contract.

Each of these three grounds can be addressed in a procurement process for the Peaking Project. With respect to the first ground, the OPA could address this by requiring proponents to have a minimum creditworthiness (or an appropriate related company guarantee) in order to participate in the procurement process. Alternatively, the OPA could consider an approach where in exchange for a security interest in the Peaking Project, the OPA would provide the necessary guarantees itself. Each of the second and third grounds for MPS to refuse consent can be readily addressed by making them prerequisites for participating in the procurement process for the Peaking Project.

Note that although each of the enumerated grounds for MPS to be able to refuse to consent to an assignment can be addressed, these enumerated grounds are not necessarily exhaustive and MPS may raise further grounds for refusing to consent to an assignment, so long as such grounds are "reasonable". One such reason which MPS may raise relates to the necessity of sharing of its confidential information with multiple proponents. This could be addressed, or at least partly addressed, by requiring proponents to enter into a confidentiality agreement with MPS prior to providing them with the Equipment Supply Contract. Note that this still may not satisfy MPS and it may be necessary to consider other approaches to address concerns raised by MPS.

Lastly, it is also relevant that on March 23, 2011, MPS provided a notice of force majeure to TCE relating to the March 11, 2011 earthquake in Japan. The notice itself provided no details regarding the anticipated effect of the force majeure. TCE has not provided the OPA with any further detail regarding the potential effect of this force majeure, and it is uncertain whether MPS has provided any such detail to TCE. Potential proponents in the procurement process for the Peaking Project may not be willing to accept an assignment of the Equipment Supply Contract until the full effect of this force majeure claim is known, or unless they are offered an indemnity for any impacts of such event of force majeure.

[NTD: We should consider how other proponents (e.g. Veresen and Northland) would feel about such a procurement if TCE were also participating. Would they worry about being stalking horses or would they view the OPA's tendering process as being sufficiently robust to address this concern? This may require further consideration.]

(b) Replacement Contract with TCE

The alternative approach to utilizing the turbines in the Peaking Project would be to negotiate an agreement with TCE for TCE to develop this project utilizing the turbines pursuant to a Replacement Contract. There are three main issues between TCE and the OPA in coming to agreement on the terms of a Replacement Contract: (i) the amount to be included in the Replacement Contract on account of the “anticipated financial value of the Contract”, (ii) the methodology to determine the capital cost of building the Peaking Project and how that would be included in the Replacement Contract, and (iii) the proper allocation of permitting and development risk between TCE and the OPA.

The first issue is the issue to be decided by an arbitrator. The Replacement Contract (or term sheet setting out the main provisions of the Replacement Contract) could leave this as an amount to be determined through the arbitration process. The second issue relating to the methodology to determine the capital cost of the Replacement Project is an issue that we believe has the potential to be resolved by the parties through negotiations. With the right level of risk sharing and auditing rights, the parties should be able to reach a compromise on the treatment of the capital cost for the Peaking Project. Despite a failure to reach such an agreement previously, we believe that if TCE were to learn that the OPA was seriously contemplating pursuing the assignment of turbines option, an option which TCE would have difficulty blocking as result of their duty to mitigate damages, they may be more motivated to reach agreement on terms with the OPA that provides the Peaking Project to TCE on a sole-source basis rather than requiring them to compete for it.

The final issue between TCE and the OPA on the allocation of permitting and development risk is the most difficult to resolve. TCE has made it clear to the OPA that TCE cannot accept a Replacement Contract as compensation for the mutual termination of the Contract which contains the same risks that prevented it from successfully developing the Oakville Generating Station in the lead up to the October 7 Letter. The OPA has offered to provide limited permitting relief, but TCE has insisted upon full permitting and extensive development and other force majeure risk and cost relief. It is conceivable that even with OPA pursuing the assignment of turbines option, there may not be enough to convince TCE to accept a level of permitting and development risk that would be acceptable to the OPA. TCE’s representatives have repeatedly stated that they do not want to be in a position where they feel that have “traded one bad contract for another”.

4. Conclusion

We remain of the view that it will be very difficult to reach agreement with TCE on the terms of a Replacement Contract, even if the level of compensation for the termination of the Contract is left to an arbitrator to determine. It would take extensive negotiations to resolve the outstanding issue relating to the appropriate capital cost for the Peaking Project, and it would appear that the greatest level of permitting and development risk that TCE would be willing to accept would still be less than what the OPA would require them to take on. As a result, we believe that it would be worthwhile to focus greater efforts on arranging an assignment of the gas turbines while

developing terms of reference for arbitration on TCE's compensation for the termination of the Contract. If the OPA were able to obtain TCE's cooperation in arranging an assignment of the gas turbines in exchange for settling on favourable terms of arbitration, this would be valuable to the OPA, since it would otherwise be much more difficult to arrange an assignment of the turbines without TCE's cooperation. Although TCE may not be eager to assist the OPA with this, they would at least be motivated to do so in order to properly mitigate their damages.

There are a number of benefits to this approach:

- (i) the Peaking Project would be developed at a cost to the ratepayer that has been competitively bid and therefore, represents better value than a negotiated price;
- (ii) by tendering the Peaking Project, the OPA could decide on the appropriate level of risk sharing between it and the developer without having to resolve TCE's unwillingness to take on an appropriate level of permitting or development risk;
- (iii) the dispute between the OPA and TCE would be narrowed to the issue of quantum of damages rather than having to resolve a number of other issues in connection with negotiating a Replacement Contract; and
- (iv) the further this option is pursued, the more TCE is motivated to negotiate a Replacement Contract, such that if the OPA were to revert to that option it would do so from a position of greater leverage.

The principal drawback to this approach is that it requires making a lump-sum payment to TCE in an amount to be determined by an arbitrator, without any direct return of value from TCE; however, the resolution and eventual payment of compensation to TCE would likely not occur for a minimum of 6-12 months after the commencement of the arbitration.

Aleksandar Kojic

From: JoAnne Butler
Sent: June 17, 2011 8:53 AM
To: 'joannebutler@gmail.com'
Subject: Fw: Memo re Strategic Options for Arbitration with TCE
Attachments: Memo re Strategic Considerations for Arbitration with TCE 20838721_2.DOC

From: Michael Killeavy
Sent: Thursday, June 16, 2011 02:10 PM
To: Deborah Langelaan; JoAnne Butler
Subject: FW: Memo re Strategic Options for Arbitration with TCE

FYI ...

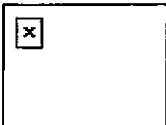
Michael Killeavy, LL.B., MBA, P.Eng.
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Ontario Power Authority
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From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Sebastiano, Rocco
Subject: Memo re Strategic Options for Arbitration with TCE

Michael and Michael,

Further to your meeting earlier this week with Paul and Rocco, please find attached a draft memo we have prepared setting out strategic considerations for a possible arbitration with TCE. If you have any questions, please let us know.

Elliot



Elliot Smith
Associate

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Memorandum

Privileged & Confidential

To: Michael Lyle, *OPA*

Date: June 16, 2011

c: Michael Killeavy, *OPA*

From: Elliot Smith and Paul Ivanoff

Tel: 416.862.6435 and
416.862.4223

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

Matter No: 1126205

1. Background

TCE and the OPA are currently in a dispute over the proper compensation to be paid to TCE in exchange for the mutual termination of the Contract. This memorandum is intended to set out strategic considerations relevant to the resolution of the dispute by an arbitrator.

Both TCE and the OPA have an interest in resolving the dispute by way of arbitration rather than litigation as this could permit the dispute to be resolved on a confidential basis. TCE has set out three conditions that must be satisfied before it will agree to arbitration. These conditions were relayed in a telephone conversation on May 10, 2011 between Michael Barrack, litigation counsel to TCE, and Paul Ivanoff, counsel to the OPA, with Elliot Smith also in attendance. We understand that TCE has not communicated these conditions to the OPA in writing and therefore this memo is based on the recollections of Mr. Smith and Mr. Ivanoff from such call with TCE's litigation counsel. We understand that Mr. Barrack has also conveyed these conditions to counsel for the Ministry of Energy.

The conditions set by TCE are that any arbitration (i) be a three-party arbitration between TCE, the OPA and Her Majesty in right of Ontario (the "Crown"), (ii) recognize the terms of the October 7, 2010 letter from Colin Andersen to Alex Pourbaix (the "October 7 Letter") and (iii) not preclude TCE from participating in future OPA procurements. Each of these conditions is discussed in greater detail below.

2. Conditions for TCE to Agree to Arbitration

(a) Arbitration Must Include the Crown

We remain unclear on TCE's motivation to include the Crown in any arbitration of the dispute, but have two hypotheses. Firstly, TCE may wish to include the Crown as a party to the dispute in order to have the benefit of document production from the Crown. TCE may believe or

suspect that there is correspondence or other documents in the Crown's possession which either contain certain promises to TCE regarding compensation for the mutual termination of the Contract or which provide evidence to support a favourable interpretation of the words in the October 7 Letter. As we do not have the Crown's records for review, it is difficult to comment on how important this factor is to TCE; however, we would note that to the extent the terms of the arbitration concede liability to TCE for loss of profits, there is less value in whatever documents the Crown may have as the only determination for the arbitrator in such case would be the quantum of damages and not whether the OPA waived the exclusion of consequential damages set out in the Contract.

Secondly, TCE may be concerned about its ability to collect on any judgment from the OPA and therefore would like to have the Crown included as a party to the arbitration. This concern may be derived from (or exacerbated by) concern that the OPA may cease to exist in the near future (given certain statements made in the media and the uncertainty of the results of next October's election). In any event, we believe that this concern may not be well-founded as we understand that the OPA continues to hold the same credit rating as the Crown.

While in litigation (as opposed to a confidential arbitration) there may be political or public relations considerations that would motivate a desire by TCE to include the Crown, because the proposed arbitration would be confidential, we do not believe that this is a factor in the present circumstances.

We believe it would not be in the OPA's best interests to have the Crown included as a party to an arbitration of the dispute. We do not see a benefit to the OPA in having the Crown as a party and there are potential drawbacks as it would likely increase the cost and complexity of the proceedings. If the Crown were to be a party to the arbitration, there is also the possibility that unfavourable documentation would be produced during document production which might harm the OPA's potential defences.

(b) Arbitration Must Recognize the Terms of the October 7 Letter

It is unclear what precisely is the nature of this condition; however, we believe based on discussions with TCE's counsel that TCE does not want the OPA to be permitted to take the position that the exclusion of consequential damages set out in s. 14.1 of the Contract precludes TCE from recovering any amounts from the OPA on account of loss of profits. This would be, in effect, to treat the October 7 Letter as a waiver by the OPA of the benefit of the exclusion for loss of profits set out in s. 14.1.

If the OPA were to concede that the October 7 Letter constituted a waiver, it would be important to ensure (i) that such waiver did not affect aspects of s. 14.1 not related to loss of profits, e.g., the exclusion of punitive or special damages and (ii) that the OPA did not waive the exclusion of other indirect lost profits, i.e., losses of other profits that TCE might have earned by developing the Oakville Generating Station (for example, selling excess steam to Ford). A narrow waiver of the exclusion for lost profits from the Contract may be acceptable to the OPA, if in exchange for such a waiver, TCE was willing to concede to arbitration without the Crown as a party *and*

cooperate in either negotiating a replacement project or an assignment of the gas turbines, as further discussed below.

(c) **Arbitration Must Not be an Impediment to TCE Participating in Future OPA Procurements**

TCE has stipulated that any agreement to arbitrate must not be an impediment to their participation in future OPA procurements. While this is obviously of great importance to TCE, the OPA's interests in this point may also be aligned. Given how few developers are currently active in the Ontario market for electricity supply from natural gas, despite the dispute between the OPA and TCE, it would likely not be in the OPA's interests to run a procurement where TCE was not permitted to participate as this would simply reduce the competition in the procurement and result in less competitive bids. One point that may be contentious with TCE is that while the OPA may agree not to exclude TCE from future procurements by reason of the arbitration, it would be difficult to commit with certainty that TCE would be permitted to participate in any future procurements as there may be other criteria in a future procurement which TCE would not be able to satisfy (for example, as part of a pre-qualification process).

3. **Potential OPA Conditions to Agree to Arbitration**

In light of the above analysis, it may be possible for the OPA to propose terms of arbitration to TCE which are acceptable to TCE and provide benefits to the OPA. The OPA's main objective in negotiating terms of arbitration may be to provide for an efficient use of the gas turbines originally acquired for the Oakville Generation Station, since these comprise a substantial proportion of the sunk costs incurred in connection with the Contract. It appears that the highest value use for these gas turbines would be to use them in a peaking generation project in the Kitchener-Waterloo-Cambridge area (the "Peaking Project"). There are principally two ways in which this could be achieved: (i) the OPA could run a competitive procurement for a developer to take an assignment of the equipment supply contract (the "Equipment Supply Contract") between TCE and MPS Canada, Inc. ("MPS") and build the Peaking Project using these turbines, or (ii) the OPA could negotiate a replacement contract with TCE (the "Replacement Contract") for TCE to build the Peaking Project using these turbines.

(a) **Assignment of Turbines**

The terms of the Equipment Supply Contract permit it, subject to MPS's consent, to be assigned by TCE to a third party that would take on all of TCE's rights and obligations under the Equipment Supply Contract. In exchange for taking an assignment of the Equipment Supply Contract, the assignee would normally be expected to pay to TCE an amount equal to all amounts already paid by TCE pursuant to the Equipment Supply Contract to make TCE whole. Such an assignee could then make any remaining payments pursuant to the Equipment Supply Contract and ultimately take delivery of the turbines to utilize them in the construction of the Peaking Project. This would, in effect, fully mitigate TCE's damages relating to the Equipment Supply Contract.

In order to find a third party willing to take an assignment of the Equipment Supply Contract, the OPA would likely run a procurement for a developer to enter into a CES-style contract (perhaps similar to the form of the peaking generation contract from Northern York Region) with the OPA whereby the developer would design, construct, own and operate the Peaking Project using the turbines in exchange for a monthly payment from the OPA. As part of this process, each proponent in the procurement process would agree that if selected as the successful proponent, they would enter into an assignment of the Equipment Supply Contract and pay TCE an amount equal to all amounts previously paid by TCE pursuant to the Equipment Supply Contract.

In order to set up the legal framework for this, MPS, the OPA and TCE would need to enter into an agreement for TCE to assign its interest in the Equipment Supply Contract to the successful proponent (the "Agreement to Assign"), and pursuant to which MPS would consent to such an assignment. The Agreement to Assign would contain, as a schedule, the form of assignment agreement (the "Assignment Agreement") to be entered into by the successful proponent, TCE and MPS, upon conclusion of the procurement process. This form of Assignment Agreement, along with a copy of the Equipment Supply Contract, would be included as documents in the procurement process so that prospective proponents could properly evaluate the arrangement that the successful proponent would be required to enter into. Upon the determination of a successful proponent, the Agreement to Assign would contractually obligate TCE and MPS to enter into the Assignment Agreement with the successful proponent.

Impediments by TCE to the Assignment of the Turbines

The most likely impediment to any assignment of the turbines would be that TCE could refuse to cooperate in the negotiation of an Agreement to Assign, particularly if TCE expects that it will not be permitted to participate in the procurement process for the Peaking Project. This risk could be somewhat mitigated if TCE were permitted to participate in the procurement for the Peaking Project; however, TCE may still resist on the basis that if they block an assignment of the Equipment Supply Contract, they would still be the preferred developer to build the Peaking Project. In order to counter this strategy by TCE, the OPA could advise TCE that if it refuses to cooperate in the negotiation of an Agreement to Assign, the OPA will make a "with prejudice" offer to take an assignment of the Equipment Supply Contract from TCE at full price. A refusal by TCE to accept this offer could be seen as a failure by TCE to reasonably mitigate its damages in connection with the cancellation of the Contract. In particular, as this proposed arrangement would fully mitigate any damages to TCE relating to the Equipment Supply Contract, by failing to accept this offer and properly mitigating its damages, TCE would be taking on the risk of reselling the turbines or repurposing them for another project. Either of these results would not mitigate TCE's damages to the same extent as the proposed assignment arrangement, and therefore potentially exposes TCE to a finding by a court or arbitrator that it failed to properly mitigate its damages and that the OPA is not liable for damages incurred by TCE relating to the Equipment Supply Contract which would have otherwise been mitigated by assigning it to the OPA. As a result, although TCE may not be eager to negotiate an Agreement to Assign, if TCE were to refuse to cooperate, this has the potential to expose it to significant losses which may not be recoverable from the OPA. **[NTD: We are undertaking further research on this point and will advise if there is any new information which affects the analysis.]**

Impediments by MPS to the Assignment of the Turbines

Experience to date with MPS suggests that there is also the possibility that MPS may not cooperate with the OPA in the negotiation of an Agreement to Assign. However, the Equipment Supply Contract contemplates the potential assignment of that agreement and therefore a refusal of MPS to negotiate an Agreement to Assign would be inconsistent with the Equipment Supply Contract. In order to effect an assignment by TCE, MPS's consent is required and such consent cannot be unreasonably withheld. The Equipment Supply Contract sets out three grounds pursuant to which it is not unreasonable for MPS to withhold consent: (i) if it has a reasonable basis for doubting the financial creditworthiness of a prospective assignee, (ii) if such prospective assignee is a direct competitor of MPS, or (iii) if such prospective assignee does not agree to be bound by all terms and conditions of the Equipment Supply Contract.

Each of these three grounds can be addressed in a procurement process for the Peaking Project. With respect to the first ground, the OPA could address this by requiring proponents to have a minimum creditworthiness (or an appropriate related company guarantee) in order to participate in the procurement process. Alternatively, the OPA could consider an approach where in exchange for a security interest in the Peaking Project, the OPA would provide the necessary guarantees itself. Each of the second and third grounds for MPS to refuse consent can be readily addressed by making them prerequisites for participating in the procurement process for the Peaking Project.

Note that although each of the enumerated grounds for MPS to be able to refuse to consent to an assignment can be addressed, these enumerated grounds are not necessarily exhaustive and MPS may raise further grounds for refusing to consent to an assignment, so long as such grounds are "reasonable". One such reason which MPS may raise relates to the necessity of sharing of its confidential information with multiple proponents. This could be addressed, or at least partly addressed, by requiring proponents to enter into a confidentiality agreement with MPS prior to providing them with the Equipment Supply Contract. Note that this still may not satisfy MPS and it may be necessary to consider other approaches to address concerns raised by MPS.

Lastly, it is also relevant that on March 23, 2011, MPS provided a notice of force majeure to TCE relating to the March 11, 2011 earthquake in Japan. The notice itself provided no details regarding the anticipated effect of the force majeure. TCE has not provided the OPA with any further detail regarding the potential effect of this force majeure, and it is uncertain whether MPS has provided any such detail to TCE. Potential proponents in the procurement process for the Peaking Project may not be willing to accept an assignment of the Equipment Supply Contract until the full effect of this force majeure claim is known, or unless they are offered an indemnity for any impacts of such event of force majeure.

[NTD: We should consider how other proponents (e.g. Veresen and Northland) would feel about such a procurement if TCE were also participating. Would they worry about being stalking horses or would they view the OPA's tendering process as being sufficiently robust to address this concern? This may require further consideration.]

(b) Replacement Contract with TCE

The alternative approach to utilizing the turbines in the Peaking Project would be to negotiate an agreement with TCE for TCE to develop this project utilizing the turbines pursuant to a Replacement Contract. There are three main issues between TCE and the OPA in coming to agreement on the terms of a Replacement Contract: (i) the amount to be included in the Replacement Contract on account of the “anticipated financial value of the Contract”, (ii) the methodology to determine the capital cost of building the Peaking Project and how that would be included in the Replacement Contract, and (iii) the proper allocation of permitting and development risk between TCE and the OPA.

The first issue is the issue to be decided by an arbitrator. The Replacement Contract (or term sheet setting out the main provisions of the Replacement Contract) could leave this as an amount to be determined through the arbitration process. The second issue relating to the methodology to determine the capital cost of the Replacement Project is an issue that we believe has the potential to be resolved by the parties through negotiations. With the right level of risk sharing and auditing rights, the parties should be able to reach a compromise on the treatment of the capital cost for the Peaking Project. Despite a failure to reach such an agreement previously, we believe that if TCE were to learn that the OPA was seriously contemplating pursuing the assignment of turbines option, an option which TCE would have difficulty blocking as result of their duty to mitigate damages, they may be more motivated to reach agreement on terms with the OPA that provides the Peaking Project to TCE on a sole-source basis rather than requiring them to compete for it.

The final issue between TCE and the OPA on the allocation of permitting and development risk is the most difficult to resolve. TCE has made it clear to the OPA that TCE cannot accept a Replacement Contract as compensation for the mutual termination of the Contract which contains the same risks that prevented it from successfully developing the Oakville Generating Station in the lead up to the October 7 Letter. The OPA has offered to provide limited permitting relief, but TCE has insisted upon full permitting and extensive development and other force majeure risk and cost relief. It is conceivable that even with OPA pursuing the assignment of turbines option, there may not be enough to convince TCE to accept a level of permitting and development risk that would be acceptable to the OPA. TCE’s representatives have repeatedly stated that they do not want to be in a position where they feel that have “traded one bad contract for another”.

4. Conclusion

We remain of the view that it will be very difficult to reach agreement with TCE on the terms of a Replacement Contract, even if the level of compensation for the termination of the Contract is left to an arbitrator to determine. It would take extensive negotiations to resolve the outstanding issue relating to the appropriate capital cost for the Peaking Project, and it would appear that the greatest level of permitting and development risk that TCE would be willing to accept would still be less than what the OPA would require them to take on. As a result, we believe that it would be worthwhile to focus greater efforts on arranging an assignment of the gas turbines while

developing terms of reference for arbitration on TCE's compensation for the termination of the Contract. If the OPA were able to obtain TCE's cooperation in arranging an assignment of the gas turbines in exchange for settling on favourable terms of arbitration, this would be valuable to the OPA, since it would otherwise be much more difficult to arrange an assignment of the turbines without TCE's cooperation. Although TCE may not be eager to assist the OPA with this, they would at least be motivated to do so in order to properly mitigate their damages.

There are a number of benefits to this approach:

- (i) the Peaking Project would be developed at a cost to the ratepayer that has been competitively bid and therefore, represents better value than a negotiated price;
- (ii) by tendering the Peaking Project, the OPA could decide on the appropriate level of risk sharing between it and the developer without having to resolve TCE's unwillingness to take on an appropriate level of permitting or development risk;
- (iii) the dispute between the OPA and TCE would be narrowed to the issue of quantum of damages rather than having to resolve a number of other issues in connection with negotiating a Replacement Contract; and
- (iv) the further this option is pursued, the more TCE is motivated to negotiate a Replacement Contract, such that if the OPA were to revert to that option it would do so from a position of greater leverage.

The principal drawback to this approach is that it requires making a lump-sum payment to TCE in an amount to be determined by an arbitrator, without any direct return of value from TCE; however, the resolution and eventual payment of compensation to TCE would likely not occur for a minimum of 6-12 months after the commencement of the arbitration.

Aleksandar Kojic

From: Michael Killeavy
Sent: June 20, 2011 3:07 PM
To: Susan Kennedy
Cc: Colin Andersen; JoAnne Butler; Michael Lyle; Deborah Langelaan
Subject: TCE Matter - Second Offer to Settle

Importance: High

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

The second offer to settle, which was made by the OPA to TCE on 21 April 2011, consisted of the following salient characteristics:

1. NRR of \$14,922/MW-month, where the Gas and Electricity interconnection costs and Gas Distribution and Management services costs were not included in the NRR;
2. CAPEX of \$475M, which was a target cost for construction and any final cost increases/decreases were to be shared 50/50;
3. TCE Cost of Capital of 5.25%, which is TCE's claimed cost of capital for the OGS;
4. Contract term of 25 years;
5. Annual Average Contract Capacity of 481 MW;
6. Foregone OGS Profits of \$200M;
7. Project return of 9.10%;

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Aleksandar Kojic

From: JoAnne Butler
Sent: June 21, 2011 11:06 AM
To: 'James Hinds'; Michael Lyle
Cc: Colin Andersen; Michael Killeavy
Subject: RE: Privileged - KW Peaker
Attachments: TCEBOARDSWGTA Contract Potential Outcome 20 Apr 2011.pdf; TCE Matter - Comparison Matrix 2 May 2011.docx

PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION ON LITIGATION

Jim,

I hope that these are what you are looking for.

Also, the only comparable relevant data points is for the 390 MW Northern York Region peaker. On an apples to apples comparison to the TCE proposed peaker plant, the NYR NRR is approximately \$10,900 per MW-month.

Please note that TCE is standing firm on their original NRR proposal of \$16,900 per MW-month on March 10, 2011. In subsequent offers from us, they have not moved from this spot.

Please let me know if you need anything else.

Jo

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: James Hinds [<mailto:jim.hinds@irish-line.com>]
Sent: Martes, 21 de Junio de 2011 08:51 a.m.
To: JoAnne Butler
Cc: Colin Andersen; Michael Lyle
Subject: Privileged - KW Peaker

Jo,

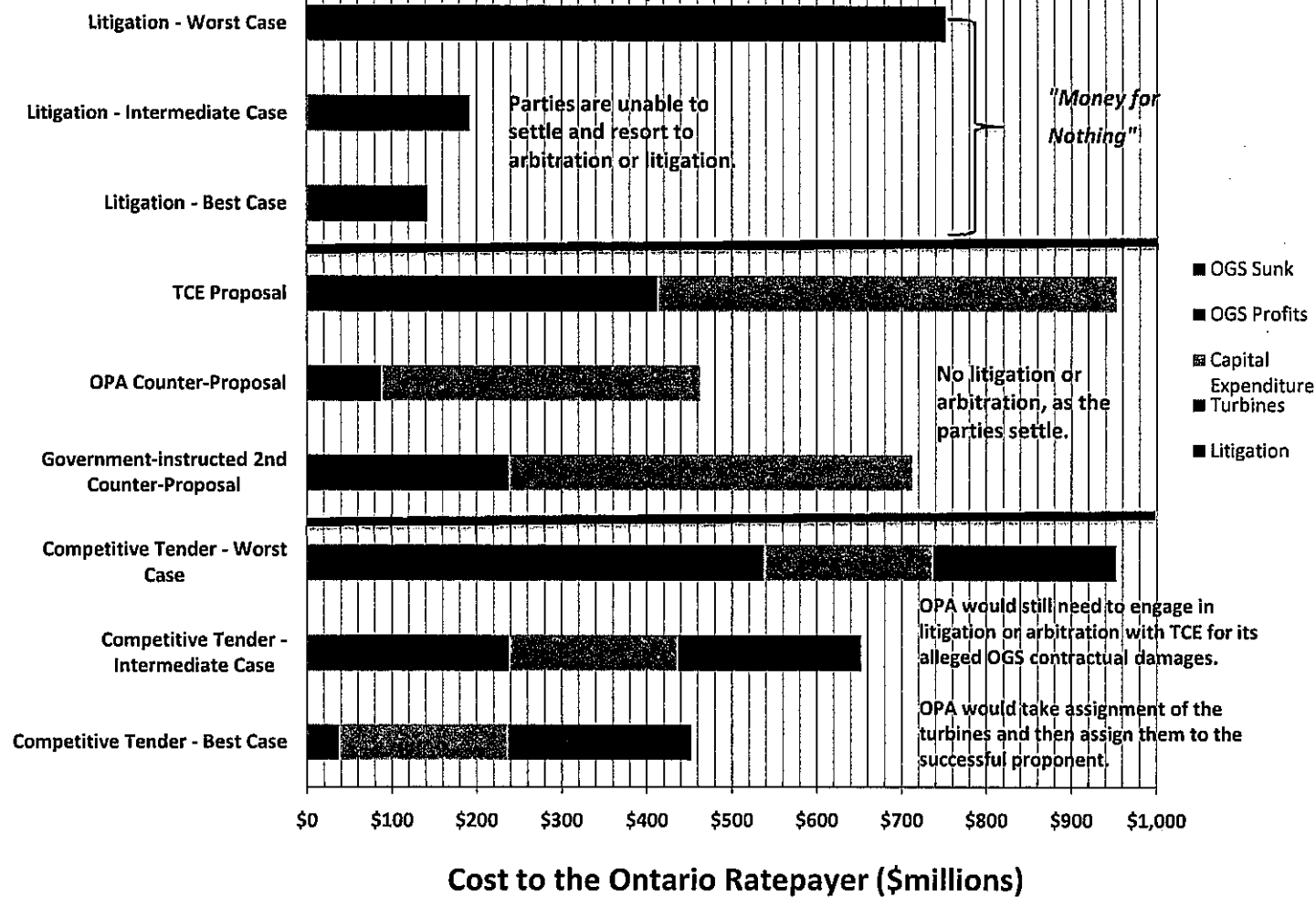
Could you send me a copy of the slide showing the various NRRs for KW? Ideally, I would like them to be directly comparable to the last six cases identified in the dollar value bar chart done about a month ago, ie "TCE Proposal", "OPA Counter-Proposal", "Government-Instructed 2nd Counter Proposal", "Competitive Tender - Worst Case", "Competitive Tender - Intermediate Case" and finally "Competitive Tender - Best Case".

In addition, it would be helpful to have some real data points, like the NRR on North York, the NRR on Halton Hills and whatever other plants you think would be relevant.

Jim Hinds
(416) 524-6949

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

Comparison of Scenarios 20 April 2011



Questions

1. Please clarify the Annual Average Content, dated 24 February 2011, which indicates seasonal capacities of: 510 M
2. Please clarify the 2009 and 2010 CAPEPA? These amounts total to \$42 million. We believe that these amounts are actually
3. Please clarify TCE cost of capital used i
4. Please clarify the NRRIF used in your 2011 financing model assumptions, which were shared with JoAnne Butler of the
5. Can you please specify your concerns a
6. The proposed target costing methodology. I understand your comment in your 29 April 2011 letter where you state that it is "c
7. In your letter of 29 April 2011 you mention, not the model where the modeling assumptions and calculations are disc
- 8.

SETTLEMENT PROPOSAL

PRIVILEGED AND CONFIDENTIAL – PREPARED FOR THE U.S. DEPARTMENT OF ENERGY

	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 April 29, 2011
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed “unleveraged” discount rate of 5.25%	Unknown
Contract Term	20 Years + Option for 10- Year Extension	25 Years	25 Years	20 Years + Option for 10- Year Extension
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown based on the reference to the difference between the two proposals
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown
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 the permitting risk has a right to the Replacement Plant and (b) receive payment for and (ii) financial OGS contracts apply to any not just those the Plant

Aleksandar Kojic

From: Michael Killeavy
Sent: June 21, 2011 12:09 PM
To: Michael Lyle; JoAnne Butler
Cc: Deborah Langelaan; Ronak Mozayyan; Susan Kennedy
Subject: TCE Matter - Competitive Procurement
Attachments: TCE Bilateral Deal vs. K-C Competitive Procurement.xlsm

Importance: High

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

As we discussed last week, we've attempted to determine what the savings to the ratepayer might be if we ran a competitive procurement instead of negotiating a bilateral deal with TCE for the K-W peaking plant. We don't have a lot of comparative data to use, which makes the task difficult, but by using some published information we've been able to come up with a range of savings if we were to run a competitive procurement for the K-W peaking plant.

This analysis presumes that we re-purpose the CTs either by taking assignment of the CT directly and then re-assign them to the successful proponent emerging from the procurement or arrange for a direct assignment from MPS to the successful proponent. Essentially, the successful proponent will construct the balance of plant, commission, and operate the facility. It also assumes that there will be a parallel track litigation or arbitration with TCE, which is independent of the competitive process that could be launched.

In order to realize savings, there needs to be competitive tension among the proponents. This might be difficult to do in practice if the proponents know that we've been discussing K-W peaking facility with TCE, and then TCE shows up as a proponent in the competitive process. Some proponents might regard TCE as having the "inside track" on the procurement or perhaps even consider the procurement to be a sham used by the OPA to cloak an already-made bilateral deal. We'll need to revisit this if we decide to consider seriously a competitive procurement and consider how we can design the process to make it as competitive a process as possible.

Michael

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*** ALL WORKSHEETS ARE PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

Plant Capacity 450 MW
Convert to KW 1000

Input

TCE Bilateral Deal vs. K-C Competitive Procurement

	Lowest Cost Tender		Intermediate Cost Tender		High Cost Tender	
	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement
Capital Expenditures (BOP)	\$330,000,000	\$200,000,000	\$330,000,000	\$270,000,000	\$330,000,000	\$315,000,000
Turbine Equipment Cost	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000
OGS Sunk Costs	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000
OGS Profits	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000
Litigation Costs	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Total	\$957,000,000	\$827,000,000	\$957,000,000	\$897,000,000	\$957,000,000	\$942,000,000
\$/MW	\$2,126,667	\$1,837,778	\$2,126,667	\$1,993,333	\$2,126,667	\$2,093,333
\$/KW	\$2,127	\$1,838	\$2,127	\$1,993	\$2,127	\$2,093
Premium		\$130,000,000		\$60,000,000		\$15,000,000

TCE Bilateral Deal Premium

	Lowest Cost Tender	Intermediate Cost Tender	High Cost Tender
Premium	\$130,000,000	\$60,000,000	\$15,000,000

Note:

VERESEN:

Total Project Cost for YEC (including turbines) \$ 340,000,000

SMS Energy Engineering Estimated:

Low

Total Project Costs (including turbines) \$ 398,317,999

Cost of Turbines (OPA) \$ 210,000,000

Capex [Proj. Total with Equipment - Cost of Turbines (OPA)] \$ 188,317,999

OPA's analysis based on data from CERA

High

Intermediate

Total Project Costs (including turbines) \$ 525,443,218 \$ 480,356,628

CERA costs of Turbines \$ 195,473,218 \$ 195,473,218

Cost of Turbines (OPA) \$ 210,000,000 \$ 210,000,000

Capex [Total CERA Costs (including turbines) - Cost of Turbines (OPA)] \$ 315,443,218 \$ 270,356,628

Other Supplementary Information

Halton Hills Generating Station

CTG Supply \$ 82,037,749

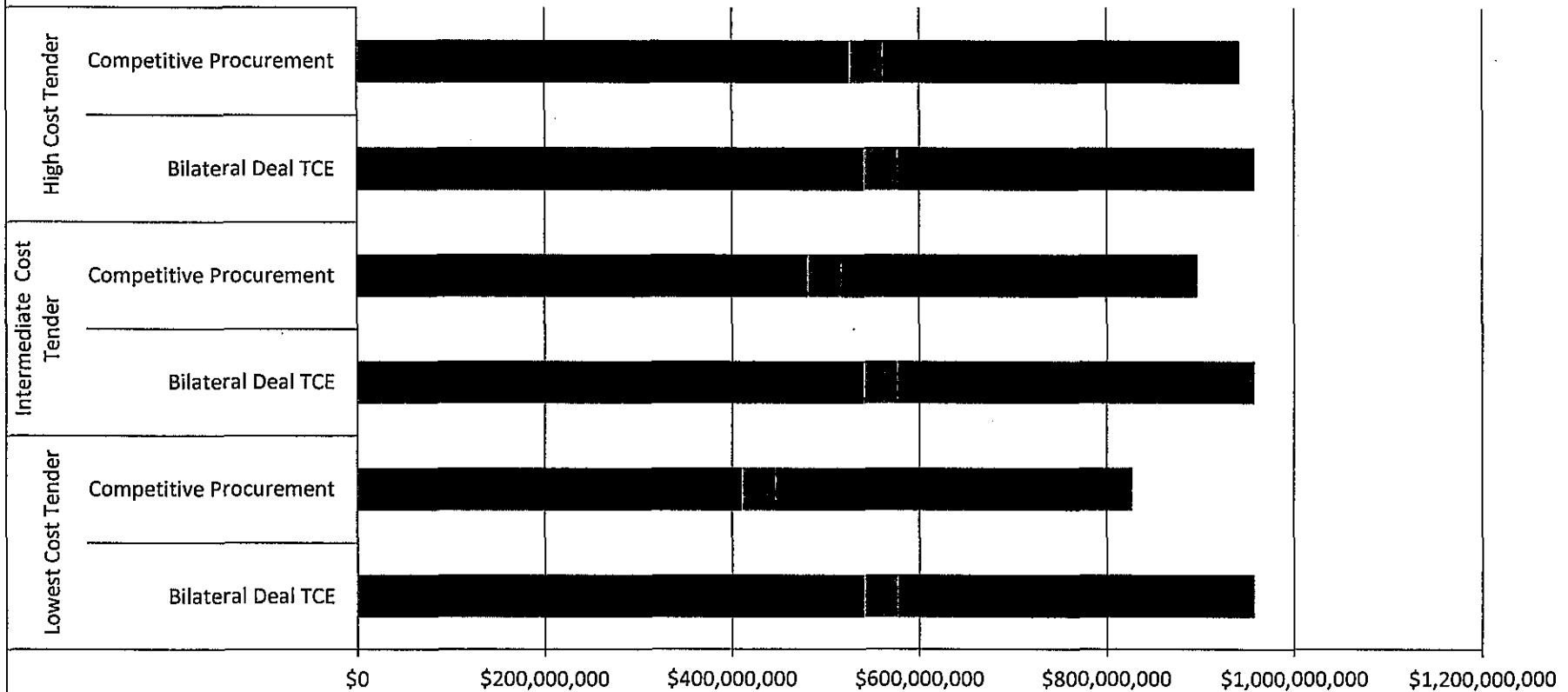
Total Project Cost (including turbines) \$ 670,877,811

The 641.5 MW Halton Hills is a combine cycle plant that implemented two Siemens SGT6 5000F turbines at an estimated cost of about \$82 M. The cost of the two Siemens SGT6-PAC 500F for the York Energy Center was not disclosed in its proposal, however, both Halton Hills and York Energy Center have implemented two Siemens "F" class gas turbines. Although the Cost of the turbines seem low in comparison to the \$210 M proposed by TCE for its two "G" class gas turbines, the contract capacity of 641.5 MW and 393 MW for Halton Hills and York Energy Center are significantly lower than the potential 900 MW Contract Capacity of the SWGTA plant.

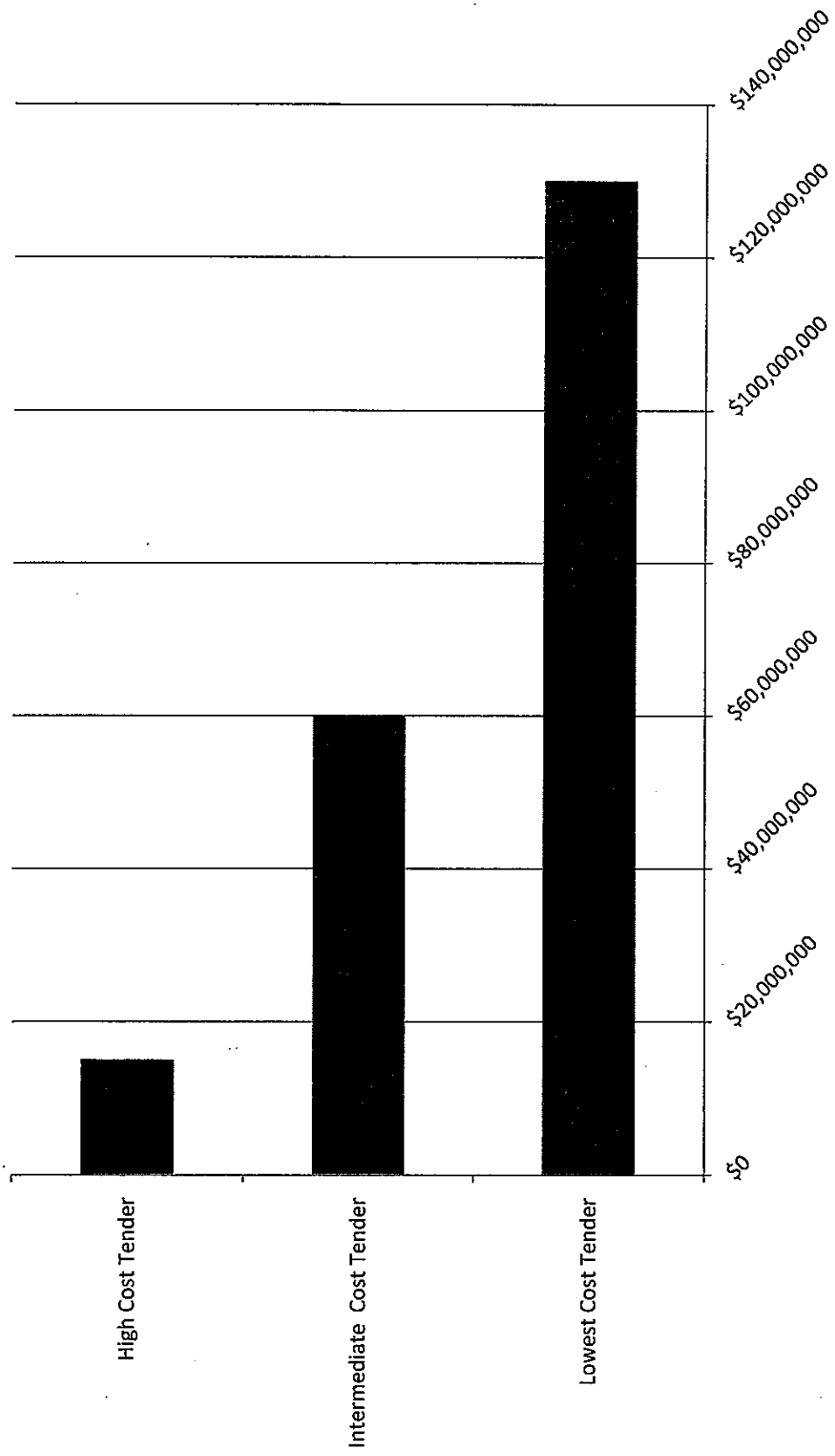
Based on the total project cost above, low, intermediate and high case scenarios were estimated for CAPEX for competitive procurement. The low case scenario CAPEX of \$200M was estimated from VERESEN and SMS's data. The Intermediate and High case scenarios of \$270M and \$315M, respectively, were estimated from CERA.

TCE Bilateral Deal vs. K-C Competitive Procurement

- Capital Expenditures (BOP)
- Turbine Equipment Cost
- OGS Sunk Costs
- OGS Profits
- Litigation Costs



TCE Bilateral Deal Premium



	SWGT	YEC	Portland Energy Center	Halton Hills
OPA Contract Capacity	N/A (450 MW - 500 MW)	393 MW	550 MW	642 MW
Type of Gas Turbine	G-class combustion (reheat turbine)	SGT 5000F	GE 7FA	"F" Class
# Gas Turbine(s)	2	2	2	2
Configuration			2x1 configuration	2x1 configuration
CAPEX (BOP)	TBD			
Cost of Gas Turbines	\$210,000,000			\$82,037,749
Total Project Cost s		\$340,000,000		\$670,877,811

<http://www.industcards.com/cc-usa-or.htm>

Table ES-1

CCAF-P Market Index and 12-month Outlook											
<u>Primary Markets</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Q1 2009</u>	<u>Q2 2009</u>
Steel	100	107	117	127	130	159	189	201	311	222	222
Ancillary equipment	100	103	108	116	124	141	188	231	235	228	220
Engineering and project management	100	101	129	156	163	160	168	195	216	213	213
Construction labor	100	107	109	111	117	122	134	140	149	146	146
Electrical bulks	100	99	96	106	141	173	320	331	270	188	209
Construction and civils	100	102	107	115	122	137	156	165	176	167	167
Major equipment	100	101	106	110	125	140	217	339	296	292	288
<u>Major Equipment Submarkets</u>											
Gas turbines	100	100	107	101	103	117	135	163	175	175	172
Steam turbines	100	102	109	119	122	129	142	150	167	167	164
Nuclear reactors	100	98	97	90	134	153	365	753	559	548	542
Boilers	100	105	121	140	141	152	177	191	199	199	194
Wind turbines and towers	100	106	113	126	133	151	178	199	230	217	217
<u>PCCI</u>											
Overall PCCI	100	103	108	114	124	136	181	233	224	213	214
Overall PCCI, without nuclear	100	106	111	116	124	135	164	177	189	174	175
Gas CT	100	106	111	112	122	137	164	186	195	182	180
Gas CC	100	103	109	111	119	132	166	183	195	176	181
Coal	100	107	111	118	125	135	163	174	185	172	172
Nuclear	100	101	106	111	125	137	196	282	256	248	250
Wind	100	106	114	126	133	150	180	197	225	198	202

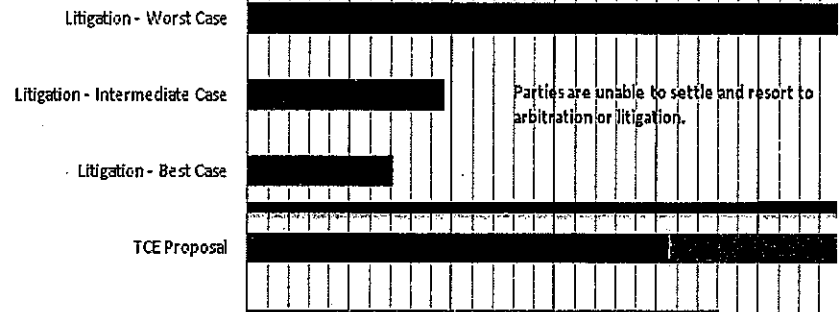
Source: IHS CERA.

February 2011 IHS CERA Special Report *Capital Costs Analysis Forum—North American Power: Third Quarter 2010 Market Review—Extended Glide*.

<u>Q3 2009</u>	<u>Q4 2009</u>	<u>Q1 2010</u>	<u>Q2 2010</u>	<u>Q3 2010</u>	<u>Q3 2011</u>
214	207	218	233	224	213
220	220	220	220	223	225
198	198	198	198	198	202
147	147	148	148	150	153
213	234	246	239	243	251
167	165	167	171	168	170
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168	165	161	158	157	153
162	160	160	159	157	156
537	537	537	542	537	532
189	185	180	173	167	159
212	206	204	204	202	198
213	213	215	215	215	217
174	174	176	176	176	176
182	182	182	182	181	181
176	176	176	176	174	174
172	172	174	174	174	176
248	248	251	251	251	253
198	194	192	192	190	187

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Comparison of Scenarios
20 April 2011



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Aleksandar Kojic

From: JoAnne Butler
Sent: June 22, 2011 9:14 AM
To: Manuela Moellenkamp
Subject: FW: TCE Matter - Competitive Procurement
Attachments: TCE Bilateral Deal vs. K-C Competitive Procurement.xlsm

Importance: High

Please print two copies of attachment on the right size paper...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: Martes, 21 de Junio de 2011 12:09 p.m.
To: Michael Lyle; JoAnne Butler
Cc: Deborah Langelan; Ronak Mozayyan; Susan Kennedy
Subject: TCE Matter - Competitive Procurement
Importance: High

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

As we discussed last week, we've attempted to determine what the savings to the ratepayer might be if we ran a competitive procurement instead of negotiating a bilateral deal with TCE for the K-W peaking plant. We don't have a lot of comparative data to use, which makes the task difficult, but by using some published information we've been able to come up with a range of savings if we were to run a competitive procurement for the K-W peaking plant.

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In order to realize savings, there needs to be competitive tension among the proponents. This might be difficult to do in practice if the proponents know that we've been discussing K-W peaking facility with TCE, and then TCE shows up as a proponent in the competitive process. Some proponents might regard TCE as having the "inside track" on the procurement or perhaps even consider the procurement to be a sham used by the OPA to cloak an already-made bilateral deal. We'll need to revisit this if we decide to consider seriously a competitive procurement and consider how we can design the process to make it as competitive a process as possible.

Michael

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

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416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

*** ALL WORKSHEETS ARE PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

Plant Capacity 450 MW
Convert to KW 1000

Input

TCE Bilateral Deal vs. K-C Competitive Procurement

	Lowest Cost Tender		Intermediate Cost Tender		High Cost Tender	
	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement
Capital Expenditures (BOP)	\$330,000,000	\$200,000,000	\$330,000,000	\$270,000,000	\$330,000,000	\$315,000,000
Turbine Equipment Cost	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000
OGS Sunk Costs	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000
OGS Profits	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000
Litigation Costs	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Total	\$957,000,000	\$827,000,000	\$957,000,000	\$897,000,000	\$957,000,000	\$942,000,000
\$/MW	\$2,126,667	\$1,837,778	\$2,126,667	\$1,993,333	\$2,126,667	\$2,093,333
\$/KW	\$2,127	\$1,838	\$2,127	\$1,993	\$2,127	\$2,093
Premium		\$130,000,000		\$60,000,000		\$15,000,000

TCE Bilateral Deal Premium

	Lowest Cost Tender	Intermediate Cost Tender	High Cost Tender
Premium	\$130,000,000	\$60,000,000	\$15,000,000

Note:

VERESEN:

Total Project Cost for YEC (including turbines) \$ 340,000,000

SMS Energy Engineering Estimated:

Low

Total Project Costs (including turbines) \$ 398,317,999

Cost of Turbines (OPA) \$ 210,000,000

Capex [Proj. Total with Equipment - Cost of Turbines (OPA)] \$ 188,317,999

OPA's analysis based on data from CERA

High

Intermediate

Total Project Costs (including turbines) \$ 525,443,218 \$ 480,356,628

CERA costs of Turbines \$ 195,473,218 \$ 195,473,218

Cost of Turbines (OPA) \$ 210,000,000 \$ 210,000,000

Capex [Total CERA Costs (including turbines) - Cost of Turbines (OPA)] \$ 315,443,218 \$ 270,356,628

Other Supplementary Information

Halton Hills Generating Station

CTG Supply \$ 82,037,749

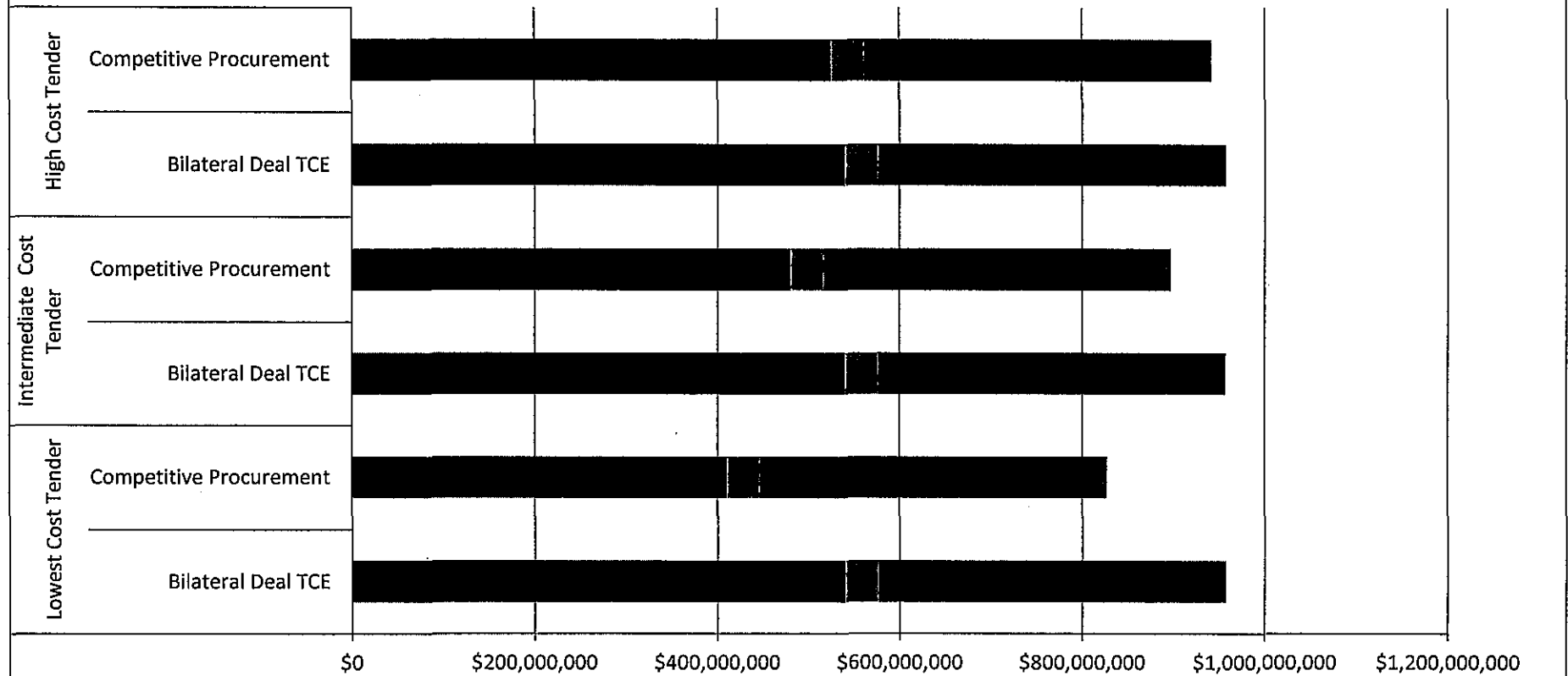
Total Project Cost (including turbines) \$ 670,877,811

The 641.5 MW Halton Hills is a combine cycle plant that implemented two Siemens SGT6 5000F turbines at an estimated cost of about \$82 M. The cost of the two Siemens SGT6-PAC 500F for the York Energy Center was not disclosed in its proposal, however, both Halton Hills and York Energy Center have implemented two Siemens "F" class gas turbines. Although the Cost of the turbines seem low in comparison to the \$210 M proposed by TCE for its two "G" class gas turbines, the contract capacity of 641.5 MW and 393 MW for Halton Hills and York Energy Center are significantly lower than the potential 900 MW Contract Capacity of the SWGTA plant.

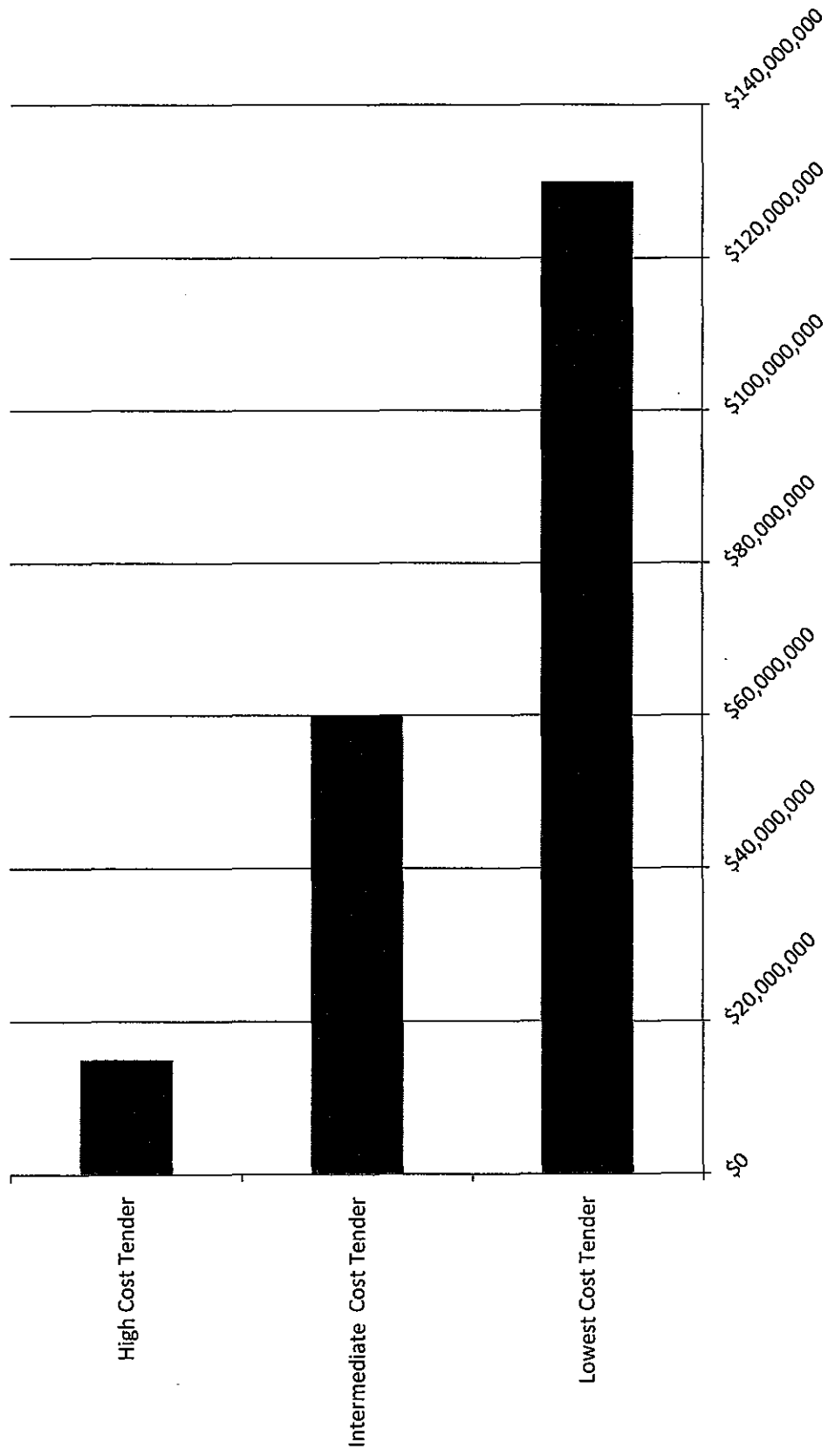
Based on the total project cost above, low, intermediate and high case scenarios were estimated for CAPEX for competitive procurement. The low case scenario CAPEX of \$200M was estimated from VERESEN and SMS's data. The Intermediate and High case scenarios of \$270M and \$315M, respectively, were estimated from CERA.

TCE Bilateral Deal vs. K-C Competitive Procurement

- Capital Expenditures (BOP)
- Turbine Equipment Cost
- OGS Sunk Costs
- OGS Profits
- Litigation Costs



TCE Bilateral Deal Premium



	SWGT	YEC	Portland Energy Center	Halton Hills
OPA Contract Capacity	N/A (450 MW - 500 MW)	393 MW	550 MW	642 MW
Type of Gas Turbine	G-class combustion (reheat turbine)	SGT 5000F	GE 7FA	"F" Class
# Gas Turbine(s)	2	2	2	2
Configuration			2x1 configuration	2x1 configuration
CAPEX (BOP)	TBD			
Cost of Gas Turbines	\$210,000,000			\$82,037,749
Total Project Cost s		\$340,000,000		\$670,877,811

<http://www.industcards.com/cc-usa-or.htm>

CCAF-P Marke

<u>Primary Markets</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Steel	100	107	117	127	130	159
Ancillary equipment	100	103	108	116	124	141
Engineering and project management	100	101	129	156	163	160
Construction labor	100	107	109	111	117	122
Electrical bulks	100	99	96	106	141	173
Construction and civils	100	102	107	115	122	137
Major equipment	100	101	106	110	125	140
<u>Major Equipment Submarkets</u>						
Gas turbines	100	100	107	101	103	117
Steam turbines	100	102	109	119	122	129
Nuclear reactors	100	98	97	90	134	153
Boilers	100	105	121	140	141	152
Wind turbines and towers	100	106	113	126	133	151
<u>PCCI</u>						
Overall PCCI	100	103	108	114	124	136
Overall PCCI, without nuclear	100	106	111	116	124	135
Gas CT	100	106	111	112	122	137
Gas CC	100	103	109	111	119	132
Coal	100	107	111	118	125	135
Nuclear	100	101	106	111	125	137
Wind	100	106	114	126	133	150

Source: IHS CERA.

February 2011 IHS CERA Special Report *Capital Costs Analysis Forum—North American Power: Third Quarter 2010 Market Review—Exter*

Table ES-1

Market Index and 12-month Outlook

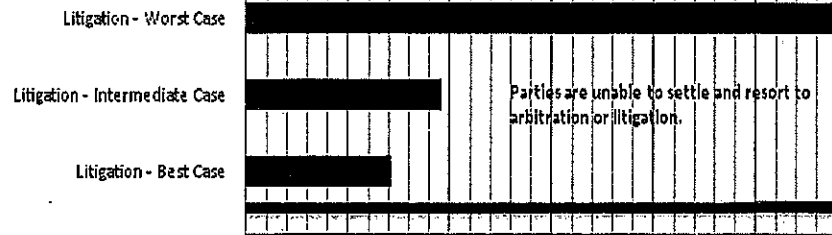
Market Index

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Q1 2009</u>	<u>Q2 2009</u>	<u>Q3 2009</u>	<u>Q4 2009</u>	<u>Q1 2010</u>	<u>Q2 2010</u>	<u>Q3 2010</u>	<u>Q3 2011</u>
189	201	311	222	222	214	207	218	233	224	213
188	231	235	228	220	220	220	220	220	223	225
168	195	216	213	213	198	198	198	198	198	202
134	140	149	146	146	147	147	148	148	150	153
320	331	270	188	209	213	234	246	239	243	251
156	165	176	167	167	167	165	167	171	168	170
217	339	296	292	288	280	278	278	278	275	272
135	163	175	175	172	168	165	161	158	157	153
142	150	167	167	164	162	160	160	159	157	156
365	753	559	548	542	537	537	537	542	537	532
177	191	199	199	194	189	185	180	173	167	159
178	199	230	217	217	212	206	204	204	202	198
181	233	224	213	214	213	213	215	215	215	217
164	177	189	174	175	174	174	176	176	176	176
164	186	195	182	180	182	182	182	182	181	181
166	183	195	176	181	176	176	176	176	174	174
163	174	185	172	172	172	172	174	174	174	176
196	282	256	248	250	248	248	251	251	251	253
180	197	225	198	202	198	194	192	192	190	187

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*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CO

Comparison of Scenarios
20 April 2011



Aleksandar Kojic

From: JoAnne Butler
Sent: June 22, 2011 1:52 PM
To: Colin Andersen
Cc: Irene Mauricette
Subject: FW: TCE Matter - Competitive Procurement
Attachments: TCE Bilateral Deal vs. K-C Competitive Procurement.xlsm

Importance: High

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

As indicated earlier.....goes with the Osler's memo....

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

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

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

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Plant Capacity 450 MW
Convert to KW 1000

Input

TCE Bilateral Deal vs. K-C Competitive Procurement

	Lowest Cost Tender		Intermediate Cost Tender		High Cost Tender	
	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement
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TCE Bilateral Deal Premium

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Note:

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Halton Hills Generating Station

CTG Supply \$ 82,037,749

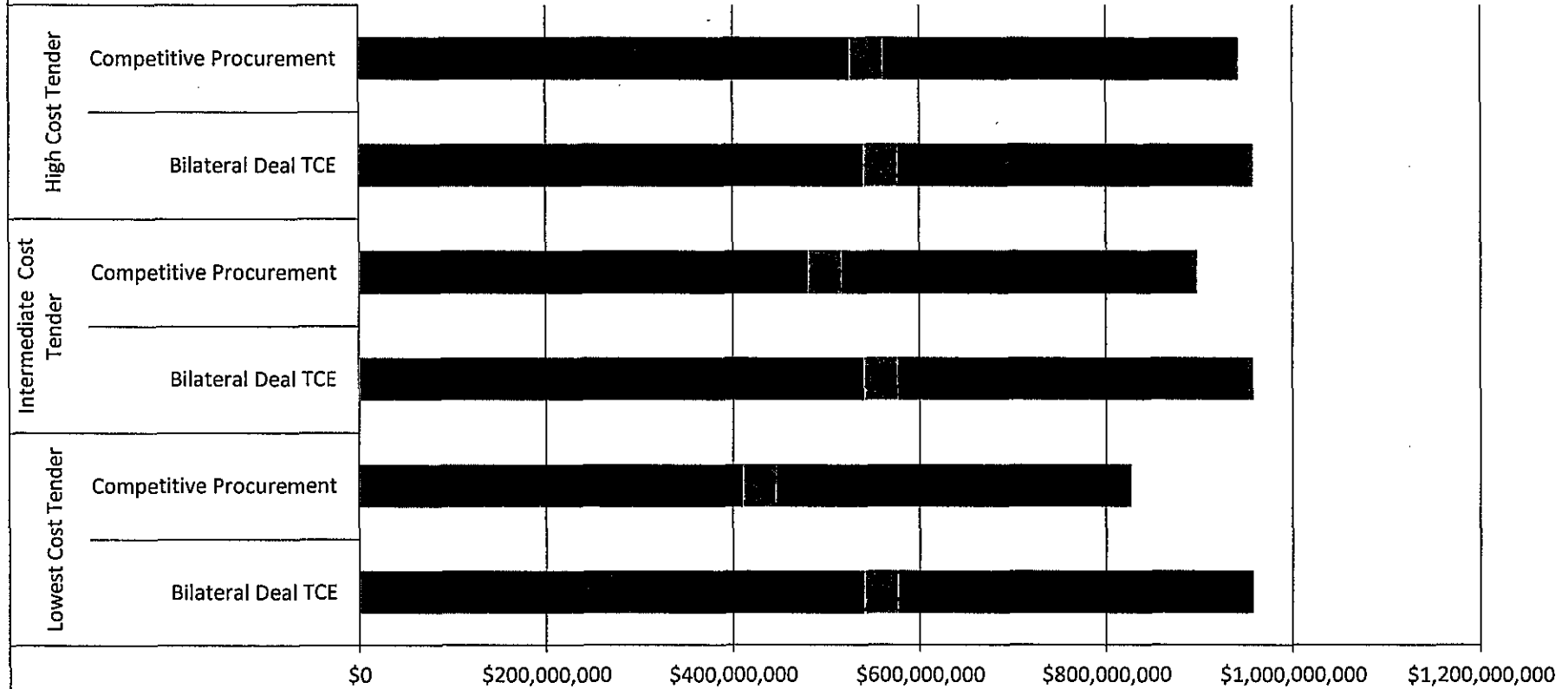
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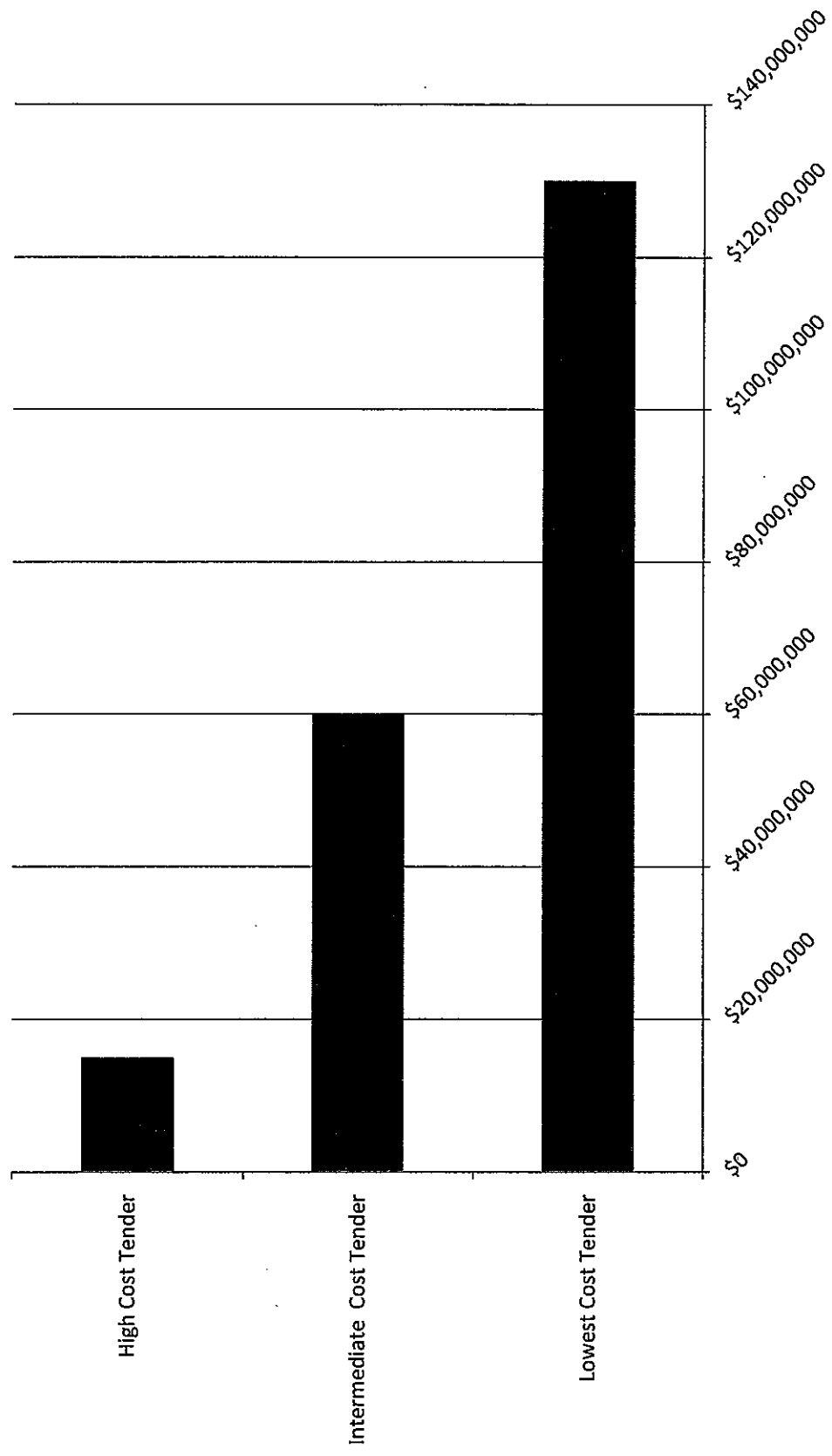
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TCE Bilateral Deal Premium



	SWGT	YEC	Portland Energy Center	Halton Hills
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Type of Gas Turbine	G-class combustion (reheat turbine)	SGT 5000F	GE 7FA	"F" Class
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Configuration			2x1 configuration	2x1 configuration
CAPEX (BOP)	TBD			
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<http://www.industcards.com/cc-usa-or.htm>

Table ES-1

CCAF-P Market Index and 12-month Outlook

<u>Primary Markets</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Q1 2009</u>	<u>Q2 2009</u>
Steel	100	107	117	127	130	159	189	201	311	222	222
Ancillary equipment	100	103	108	116	124	141	188	231	235	228	220
Engineering and project management	100	101	129	156	163	160	168	195	216	213	213
Construction labor	100	107	109	111	117	122	134	140	149	146	146
Electrical bulks	100	99	96	106	141	173	320	331	270	188	209
Construction and civils	100	102	107	115	122	137	156	165	176	167	167
Major equipment	100	101	106	110	125	140	217	339	296	292	288
<u>Major Equipment Submarkets</u>											
Gas turbines	100	100	107	101	103	117	135	163	175	175	172
Steam turbines	100	102	109	119	122	129	142	150	167	167	164
Nuclear reactors	100	98	97	90	134	153	365	753	559	548	542
Boilers	100	105	121	140	141	152	177	191	199	199	194
Wind turbines and towers	100	106	113	126	133	151	178	199	230	217	217
<u>PCCI</u>											
Overall PCCI	100	103	108	114	124	136	181	233	224	213	214
Overall PCCI, without nuclear	100	106	111	116	124	135	164	177	189	174	175
Gas CT	100	106	111	112	122	137	164	186	195	182	180
Gas CC	100	103	109	111	119	132	166	183	195	176	181
Coal	100	107	111	118	125	135	163	174	185	172	172
Nuclear	100	101	106	111	125	137	196	282	256	248	250
Wind	100	106	114	126	133	150	180	197	225	198	202

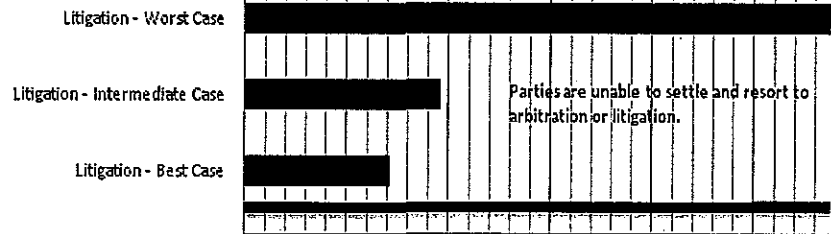
Source: IHS CERA.

February 2011 IHS CERA Special Report *Capital Costs Analysis Forum—North American Power: Third Quarter 2010 Market Review—Extended Slide*.

<u>Q3 2009</u>	<u>Q4 2009</u>	<u>Q1 2010</u>	<u>Q2 2010</u>	<u>Q3 2010</u>	<u>Q3 2011</u>
214	207	218	233	224	213
220	220	220	220	223	225
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167	165	167	171	168	170
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168	165	161	158	157	153
162	160	160	159	157	156
537	537	537	542	537	532
189	185	180	173	167	159
212	206	204	204	202	198
213	213	215	215	215	217
174	174	176	176	176	176
182	182	182	182	181	181
176	176	176	176	174	174
172	172	174	174	174	176
248	248	251	251	251	253
198	194	192	192	190	187

*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CO

Comparison of Scenarios
20 April 2011





MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Thursday, June 16, 2011 at 9:00 a.m., Toronto time, at the Ontario Power Authority's offices at 120 Adelaide Street West, Toronto, Ontario

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs
JoAnne Butler, Vice President, Electricity Resources
Kimberly Marshall, Vice President, Finance and Administration
Andrew Pride, Vice President, Conservation (by telephone)
Kristin Jenkins, Acting Vice President, Communications
Shawn Cronkwright, Director, Renewables Procurement, Electricity Resources
Susan Kennedy, Associate General Counsel and Director, Corporate/Commercial Law Group, Legal, Aboriginal and Regulatory Affairs
Michael Killeavy, Director, Contract Management, Electricity Resources
Derek Leung, Manager, Contract Management, Electricity Resources
Ruth Covich, Director, Corporate Marketing, Communications
Guy Raffaele, Director, Operations, Conservation
Nathalie McLauchlin, Manager, Engineering, Operations, Conservation
Cliff Poyton, Manager, Contracts, Operations, Conservation
Brett Baker, Senior Advisor, Policy and Strategy
John Zych, Corporate Secretary

1. Constitution of the Meeting

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

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

2. Review of Agenda

The agenda for the meeting was reviewed and approved.

3. Chair's Report

Mr. Hinds advised that he had no report to make.

4. Approval of Minutes of Previous Meeting

The Board reviewed the minutes of the Board meeting of May 18 - 19, 2011 and, on motion duly made, seconded and unanimously carried, it was RESOLVED THAT they be approved.

5. Chief Executive Officer's Report

The Chief Executive Officer's report had been provided to each director for his or her review. Queries and concerns raised over items in the report were discussed with Mr. Andersen and senior management present at the meeting. Board members discussed certain items addressed in the report.

Mr. Andersen and Mr. Hinds reported on their attendance, earlier in the week at the introductory meeting of a new permanent forum of Ontario government agency chairs and chief executive officers. The purpose of the forum is to provide a

present on the substance of a permanent chairs and chief executive officers forum. Mr. Andersen and Mr. Hinds noted that this form was an outgrowth of the Report of whose report was issued on December 2010.

Mr. Andersen directed the Board members' attention to three awards on display in the Boardroom that the OPA had recently received, namely, the "ENERGY STAR Advocate of the Year Award", which was awarded by Natural Resources Canada, the 2011 Canada's Greenest Employers Award, which was presented to the Ontario Power Authority in honour of its selection as one of Canada's Greenest Employers by the editors of the Canada's Top 100 Employers project, and an acknowledgement by WWF-Canada of the OPA's sponsorship of WWF's 2011 Earth Hour project.

31 *Page(s)*

Redacted

NOT RELEVANT

31

(2)

Not Relevant

TransCanada - Settlement Negotiations for Oakville Generating Station (OGS)

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

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

18 *Page(s)*

Redacted

NOT RELEVANT

(2)

81

Not RELEVANT

Litigation/Potential Litigation List

Party	Relationship to OPA	Description of Matter	Status
TransCanada Energy	Contract counterparty on contract for Oakville Generating Station	TCE and OPA have been in discussions since October 2010 to negotiate a mutually agreed termination of the contract with respect to the Oakville Generating Station in light of the Government's announcement that the plant would not proceed. These discussions involve the possibility of TCE being compensated for financial loss and sunk costs on the project through a contract for a new gas plant in the Cambridge area.	TCE has served notice on the Crown of its intention to commence litigation against the Crown. The 60 day waiting period after the notice was served before litigation could commence has now passed. TCE has yet to commence litigation. Discussions are ongoing.
Japa		S t p C	
Project in the area			Notice

63 *Page(s)*

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NOT RELEVANT

(2)

23

NOT RELEVANT

31 Page(s)

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NOT RELEVANT

(2)

12

NOT RETURNED

63 *Page(s)*

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NOT RELEVANT

(2)

23

NOT RELEVANT

TransCanada - Settlement Negotiations for Oakville Generating Station (OGS)

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

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



MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Thursday, June 16, 2011 at 9:00 a.m., Toronto time, at the Ontario Power Authority's offices at 120 Adelaide Street West, Toronto, Ontario

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs
JoAnne Butler, Vice President, Electricity Resources
Kimberly Marshall, Vice President, Finance and Administration
Andrew Pride, Vice President, Conservation (by telephone)
Kristin Jenkins, Acting Vice President, Communications
Shawn Cronkwright, Director, Renewables Procurement, Electricity Resources
Susan Kennedy, Associate General Counsel and Director, Corporate/Commercial Law Group, Legal, Aboriginal and Regulatory Affairs
Michael Killeavy, Director, Contract Management, Electricity Resources
Derek Leung, Manager, Contract Management, Electricity Resources
Ruth Covich, Director, Corporate Marketing, Communications
Guy Raffaele, Director, Operations, Conservation
Nathalie McLauchlin, Manager, Engineering, Operations, Conservation
Cliff Poyton, Manager, Contracts, Operations, Conservation
Brett Baker, Senior Advisor, Policy and Strategy
John Zych, Corporate Secretary

1. Constitution of the Meeting

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

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

2. Review of Agenda

The agenda for the meeting was reviewed and approved.

3. Chair's Report

Mr. Hinds advised that he had no report to make.

4. Approval of Minutes of Previous Meeting

The Board reviewed the minutes of the Board meeting of May 18 - 19, 2011 and, on motion duly made, seconded and unanimously carried, it was RESOLVED THAT they be approved.

5. Chief Executive Officer's Report

The Chief Executive Officer's report had been provided to each director for his or her review. Queries and concerns raised over items in the report were discussed with Mr. Andersen and senior management present at the meeting. Board members discussed certain items addressed in the report.

Mr. Andersen and Mr. Hinds reported on their attendance, earlier in the week at the introductory meeting of a new permanent forum of Ontario government agency chairs and chief executive officers.

The purpose of the first meeting was to discuss the need for a permanent forum of chairs and chief executive officers of Ontario government agencies, to graduate and to present on the substance of a permanent chairs and chief executive officers forum. Mr. Andersen and Mr. Hinds noted that this form was an outgrowth of the Report of the Special Advisor on Agencies, Ms. Rita Burak, whose report was issued on December 2010.

Mr. Andersen directed the Board members' attention to three awards on display in the Boardroom that the OPA had recently received, namely, the "ENERGY STAR Advocate of the Year Award", which was awarded by Natural Resources Canada, the 2011 Canada's Greenest Employers Award, which was presented to the Ontario Power Authority in honour of its selection as one of Canada's Greenest Employers by the editors of the Canada's Top 100 Employers project, and an acknowledgement by WWF-Canada of the OPA's sponsorship of WWF's 2011 Earth Hour project.

18 Page(s)

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NOT RELEVANT

(2)

81

Not a student

Litigation/Potential Litigation List

Party	Relationship to OPA	Description of Matter	Status
TransCanada Energy	Contract counterparty on contract for Oakville Generating Station	TCE and OPA have been in discussions since October 2010 to negotiate a mutually agreed termination of the contract with respect to the Oakville Generating Station in light of the Government's announcement that the plant would not proceed. These discussions involve the possibility of TCE being compensated for financial loss and sunk costs on the project through a contract for a new gas plant in the Cambridge area.	TCE has served notice on the Crown of its intention to commence litigation against the Crown. The 60 day waiting period after the notice was served before litigation could commence has now passed. TCE has yet to commence litigation. Discussions are ongoing.

Ja

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NOT RELEVANT

1

WILLIAM T. WILSON

Aleksandar Kojic

From: Michael Killeavy
Sent: July 15, 2011 4:26 PM
To: 'David.Livingston@infrastructureontario.ca'
Cc: Michael Lyle; Colin Andersen; JoAnne Butler
Subject: Suggested Document Revision
Attachments: TCEsettlement.docx

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

David,

Attached are our suggested changes to the document we discussed Wednesday evening.

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)

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between OPA's and TCE to reach a mutual agreement on the termination -of the South West GTA Clean Energy Supply Contract ("CES Contract") for the Oakville Generating Station ("OGS").

Arbitration

In the event that all of the definitive agreements contemplated between Ontario Power Generation ("OPG") and TCE in Schedules A, B and C are not fully executed and delivered on or before September 1, 2011, then the matter of the reasonable damages which TCE is to be awarded as a result of the cancellation of the OGS project shall be determined by binding arbitration.

[Delete "the matter of the reasonable damages which TCE is to be awarded as a result of" and replace with "an assessment of any damages to TCE resulting from"]

[Note: We added the following paragraph to be revised]

Terms of Arbitration

Per the terms of the letter of October 7, 2010 from OPA to TCE, the arbitration shall provide an assessment of any damages to TCE resulting from the cancellation of the OGS project.

Aleksandar Kojic

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

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

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 **Act**

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

ARTICLE 2

Section 2.1 **Consideration**

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

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

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4

JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3

Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6 CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

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

Section 6.4 Expert Reports

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

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

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

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

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

Section 7.4 Release

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

ARTICLE 8 CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6 Counterparts

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

Section 9.7 Electronic Execution

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

Section 9.8 Counsel

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

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

Thornton Grout Finnigan LLP
3200 - 100 Wellington Street West
CP Tower, TD Centre
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Her Majesty The Queen in Right of
Ontario**

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

TRANSCANADA ENERGY LTD.

By: _____

Title

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

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

Title

ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment [A9]: Why are legal advisors included?

In witness whereof, the undersigned have executed this Agreement at

, this day of , 2011.

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

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

Aleksandar Kojic

From: John Zych
Sent: August 2, 2011 3:53 PM
To: Colin Andersen; 'jmichaelcostello@gmail.com'; 'Richard Fitzgerald'; 'James Hinds'; 'Adele Hurley'; 'Ron Jamieson'; 'Bruce Lourie'; 'Lyn McLeod'; 'pjmon'
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pptx; 2 - Original TS.pdf; 3 - Preferred TS.pdf; 4 - Draft Arbitration Agreement_FINAL12_IO.docx

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

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

We attach the following materials:

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

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

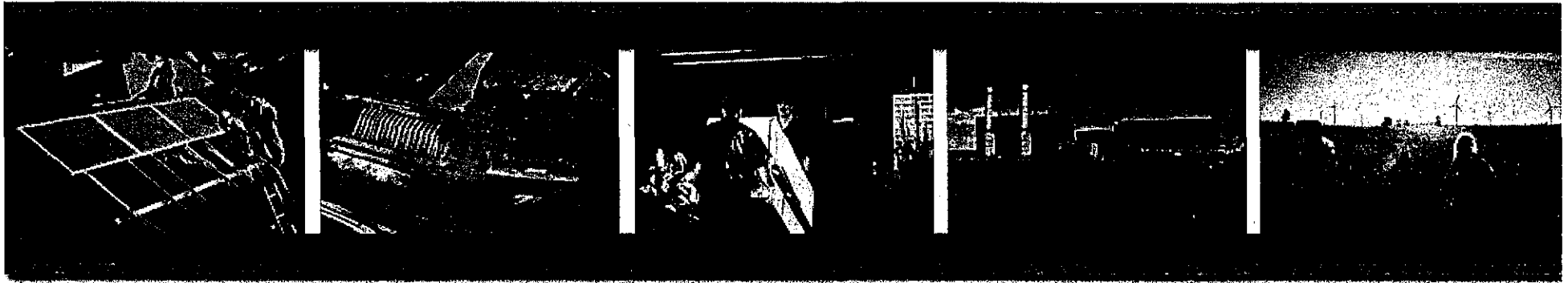
It is hard to estimate the time required for this meeting but we estimate that 90 minutes will be needed.

The call-in details are as follows:

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

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

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

August 2, 2010

Background:

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

Background:

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

Proposed Deal – Key Elements

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

Arbitration Agreement – Key Elements

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

Arbitration Agreement – OPA Key Concerns

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

Arbitration Agreement – OPA Key Concerns

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

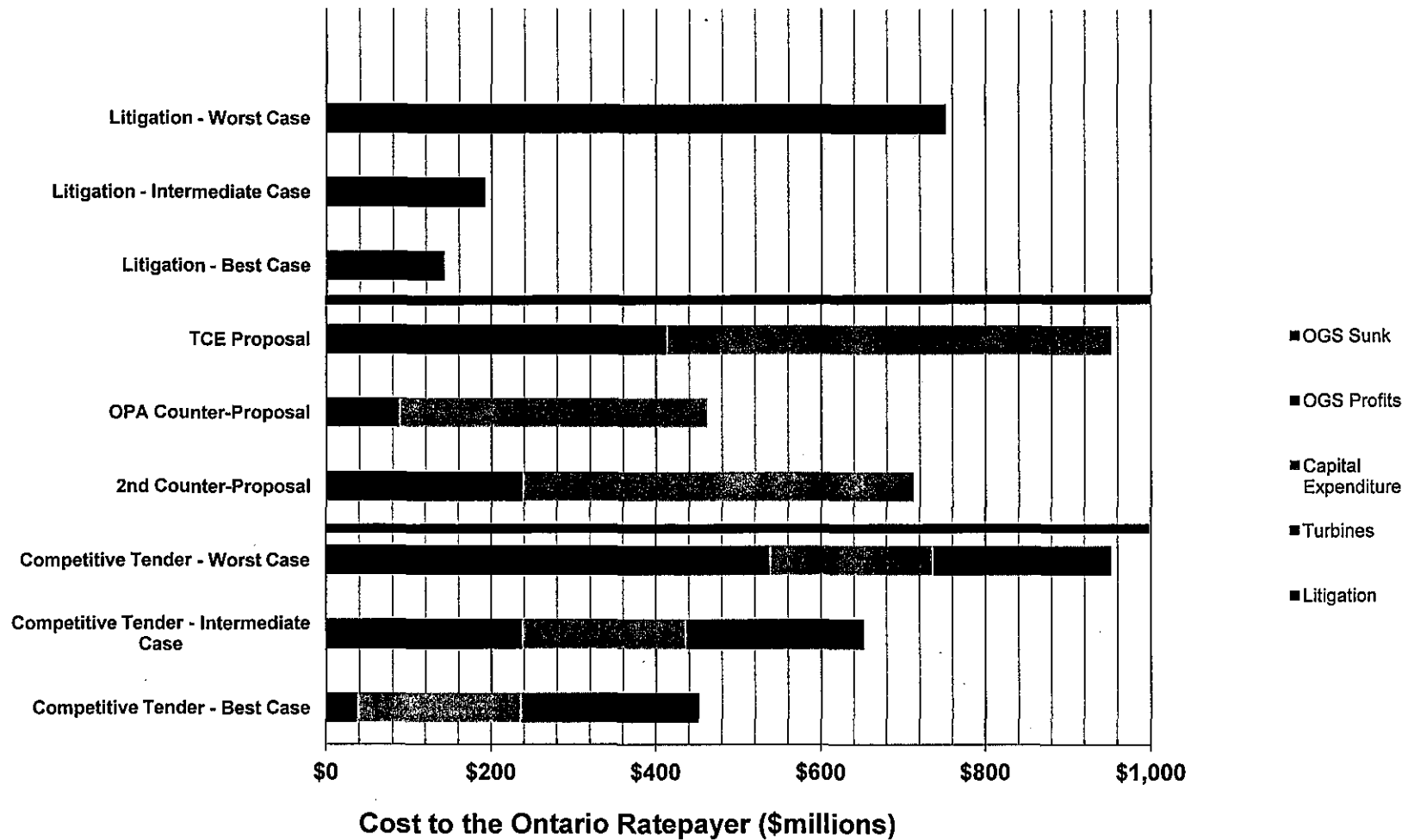
Comparison of Settlement Proposals

	TCE Proposal March 19, 2011	OGS Counter-Proposal March 28, 2011	Portlands Energy Centre March 28, 2011	TCE Response to OGS Counter-Proposal April 6, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity. Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Potential Outcomes

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

Financial Value of Potential Outcomes



Appendix – System Planning and Status of Lennox GS

OPG/TCE Potential Deal - System Planning Considerations

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

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

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

Current Status of Lennox Contract and Negotiations

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

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

Southwest Greater Toronto Area (SW GTA) Supply

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

Southwest Greater Toronto Area (SW GTA) Supply

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

OPA Procurement Process – Ministry Directive

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

OPA Procurement Process – RFQ & RFP

1. Request for Qualifications

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

2. Request for Proposals

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

Procurement Process - Contract

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

Opposition to Gas-Fired Generation

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

Opposition to Gas-Fired Generation

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

Government Cancellation

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

Termination Negotiations

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

TCE Initial Concerns

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

Confidentiality Agreement

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

MOU

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

Replacement Project

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

Replacement Project Negotiations

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

OPA Analysis

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

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

TCE Current Position on OGS Financial Value

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

Original
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement
Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

TransCanada Energy Ltd. ("TCE"), Province of Ontario (the "Province") and Ontario Power Authority ("OPA")

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between OPA and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract") for the OGS.

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement described below, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Binding MOU

A binding MOU incorporating these terms, to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before July 31, 2011.

Arbitration

In the event that all of the definitive agreements contemplated between Ontario Power Generation and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated, and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPA and Ontario Power Generation Inc., to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Objective: TransCanada Energy Ltd. ("TCE") and Ontario Power Generation Inc. ("OPG"), (together, the "Partners") will work together exclusively using best efforts on thermal generation developments as further described in this Schedule A.

Development A

Joint Venture: The Partners will form a joint venture, partnership or other tax-favourable structure which will have the exclusive right to work together using best efforts on a gas-fired generation facility (the "Project") at one of OPG's existing thermal sites, or other such sites as the Partners agree, secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will use the turbines and ancillary contracts (the "Turbines") already acquired for the OGS .

Ownership: The Partners will own the Project on a 50/50 equity basis.

Term: The Partnership will have 2 years to identify a mutually agreeable project and secure a long-term CES Contract with the OPA or other credit-worthy power purchaser.

Funding: The Project shall be funded as follows:

TCE will transfer Oakville gas turbines and associated contracts to the OPG/TCE joint venture upon execution of a CES Contract for the Project.

For the first \$[450] million of Project capital cost (including Turbines), TCE shall contribute all funding in the form of the Turbines (with a notional value of \$[225] million) and up to \$[225] million in cash necessary to complete the Project.

Project capital costs over \$[450] million shall be funded 50/50 by OPG and TCE. In return for TCE's commitment to fund the Project as set out above, TCE shall acquire all of OPG's equity interest in Portlands Energy Centre Inc. and partnership interest

in Portlands Energy Centre LP. TCE shall also pay OPG \$[100] million - \$[50] million on closing and \$[50] million on first anniversary of closing.

- Closing:** To occur as soon as all third party and government approvals are received.
- Termination:** In the event that the Partners are unable to develop the Project and secure the CES Contract using the Turbines by the end of the 2 year period or if the Parties obtain a CES Contract but are unable to construct the Project, then TCE will transfer its interest in the Turbines to OPG for no additional consideration and the joint venture shall terminate.
- Return:** The Project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
- Definitive Document:** Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.
- Approvals:** TCE and OPG to obtain all required internal approvals to enter into the definitive agreement and to close the transaction, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011

Development B

- Joint Venture:** The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using best efforts on gas-fired generation facilities at a combination of the Coal Power Facilities listed below that will generate 1,000 MW of power. A project developed pursuant to the "Development A" section above and located at a Coal Power Facility shall not be counted as a project under this section. The Partners will work together on other Coal Power Facility power generation initiatives on a non-exclusive, best efforts basis. Each project will be secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will jointly assume the preliminary feasibility and design work already

performed on the conversion of the Coal Power Facilities to natural gas fuel.

Coal Power Facilities: The following three coal generation facilities and sites are owned by OPG:

Lambton (950 MW)

Nanticoke (4,096 MW)

Thunder Bay (303 MW)

Ownership: 50/50

Term: [10] years, subject to extension by mutual agreement of the Partners, plus the term of any CES Contracts (the "Term").

Funding: The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.

Return: Each project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.

ROFR: In the event that the OPG intends to sell, lease or otherwise transfer any direct or indirect interest in any of the Coal Power Facilities, it shall grant TCE the right of first refusal on any third party offer.

Definitive Document: Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.

Approvals: TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

OP6
Preferred
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement
Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

TransCanada Energy Ltd. ("TCE"), Province of Ontario (the "Province") and Ontario Power Generation ("OPG")

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between Ontario Power Authority ("OPA") and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract").

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement which will include TCE releasing the Province and the OPA from legal action, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Arbitration

In the event that all of the definitive agreements contemplated between OPG and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPG to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Development A

Joint Venture	Using the PEC existing Limited Partnership, TCE and OPG will develop further business opportunities relating to OPG's existing Lennox plant and Gas Turbines procured by TCE for the Oakville project.
Ownership	Parties will form a new Limited Partnership (Lennox JV) with 100% Class A Limited Partnership Units owned by PEC and 100% Class B Limited Partnership Units owned by TCE.
Contributions	OPG will lease the Lennox facility to the Lennox JV for a nominal value. TCE will contribute the gas turbines and related contracts to the Lennox JV.
PPA	OEFC will enter into a 20 year PPA with the new JV reflecting a full recovery of operating costs plus a capacity charge with a lifetime value of \$X (NTD: to be inserted by IO).
Operations	OPG and the new JV will enter into a new operating agreement for operation of the Lennox facility.
Distribution Policy	All cash flows relating to the PPA capacity charge will flow as a partner distribution to the Class B Partnership Unit holders.
New Development	The JV will use commercially reasonable efforts to develop and secure a satisfactory PPA to permit the construction of a new CCGT on the Lennox site or other site as the parties may agree.
Definitive Documentation	Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.

Development B

Joint Venture:	The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using commercially reasonable efforts on the gas-conversion of the existing Nanticoke coal fired generating facility
Funding:	The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.
Ownership:	50/50
Return:	Project will give a return to the JV that is equal to than returns earned on similar, privately-owned generating projects.
Term:	Exclusive right expires Dec. 31, 2014.
Definitive Document:	Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1

Recitals

The recitals herein are true and correct.

Section 1.2

Act

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

ARTICLE 2

Section 2.1

Consideration

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

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

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4

JURISDICTION OF ARBITRATOR

Section 4.1

Final Decision and Award

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

Section 4.2

The Disputes

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

Section 4.3

Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6 CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7

AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications of the transaction, equal to the Final Award [or interim final award] (the "Equivalent Value").

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

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

Section 7.4 Release

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

ARTICLE 8 CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6**Counterparts**

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

Section 9.7**Electronic Execution**

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

Section 9.8**Counsel**

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

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

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

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

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

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

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

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

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

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

John Kelly
Tel: (416) 601-7887
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Eunice Machado
Tel: (416)601-7562
Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

TRANSCANADA ENERGY LTD.

By _____

Title

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

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

Title

ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

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

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In witness whereof, the undersigned have executed this Agreement at

, this day of , 2011.

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

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

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

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

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

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

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

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

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

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

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

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

Aleksandar Kojic

From: JoAnne Butler
Sent: August 2, 2011 4:11 PM
To: Manuela Moellenkamp
Subject: FW: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pptx; 2 - Original TS.pdf; 3 - Preferred TS.pdf; 4 - Draft Arbitration Agreement_FINAL12_IO.docx

Please put in binder for tomorrow...thanks....

JCB

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

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

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

From: John Zych
Sent: Martes, 02 de Agosto de 2011 03:53 p.m.
To: Colin Andersen; 'jmichaelcostello@gmail.com'; 'Richard Fitzgerald'; 'James Hinds'; 'Adele Hurley'; 'Ron Jamieson'; 'Bruce Lourie'; 'Lyn McLeod'; 'pjmon'
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

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

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

We attach the following materials:

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

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

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

The call-in details are as follows:

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

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

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

August 2, 2010

Background:

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

Background:

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

Proposed Deal – Key Elements

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

Arbitration Agreement – Key Elements

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

Arbitration Agreement – OPA Key Concerns

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

Arbitration Agreement – OPA Key Concerns

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

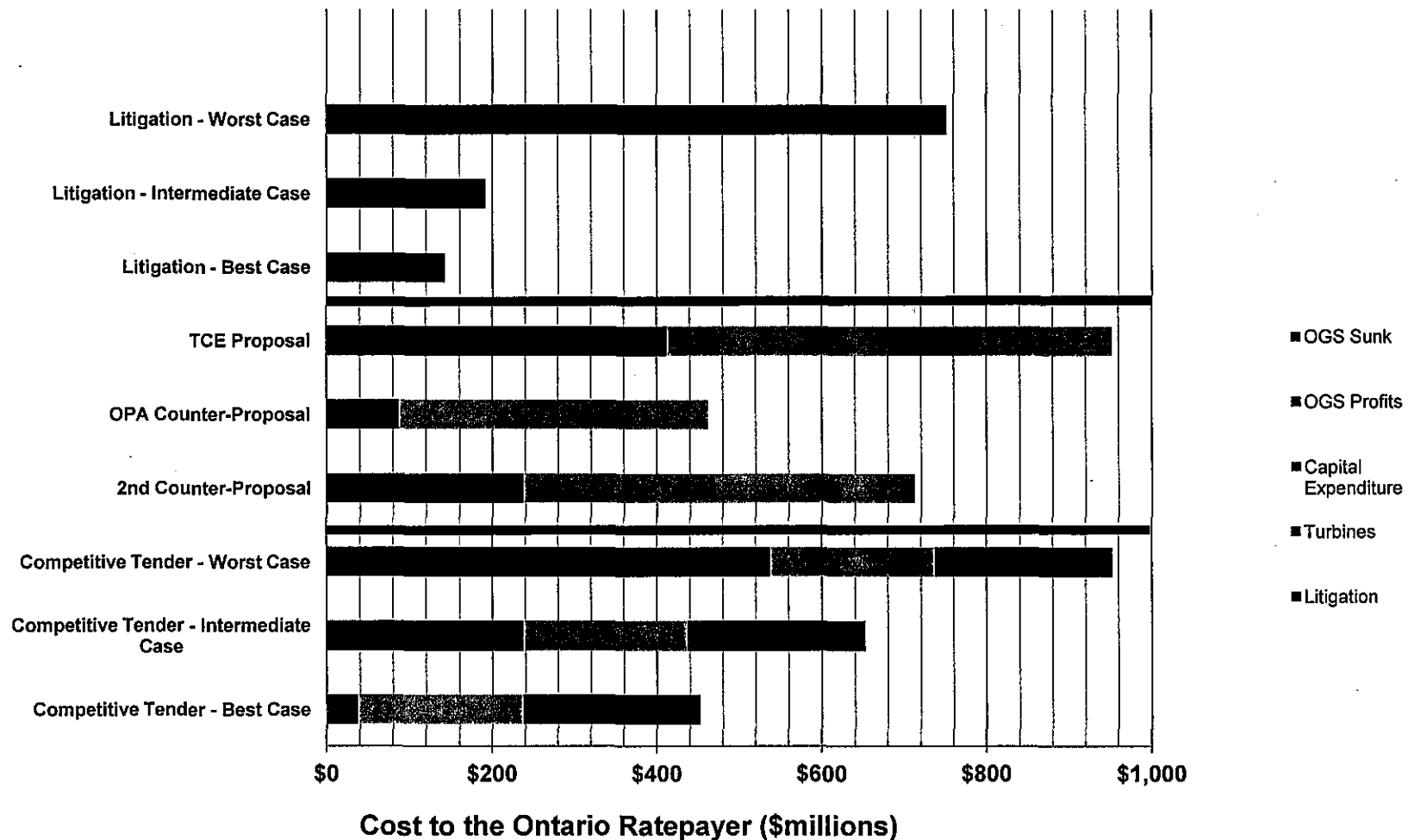
Comparison of Settlement Proposals

	TCE Proposal March 16, 2016	OPG Counter Proposal March 23, 2016	OPG Counter Proposal March 23, 2016	TCE Fourth Counter Proposal April 28, 2016	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, Average of 500 MW provides additional system flexibility and reduces NRR on per MW basis
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37MM to be audited by Ministry of Finance for substantiation and reasonableness
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Potential Outcomes

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

Financial Value of Potential Outcomes



Appendix – System Planning and Status of Lennox GS

OPG/TCE Potential Deal - System Planning Considerations

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

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

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

Current Status of Lennox Contract and Negotiations

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

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

Southwest Greater Toronto Area (SW GTA) Supply

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

Southwest Greater Toronto Area (SW GTA) Supply

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

OPA Procurement Process – Ministry Directive

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

OPA Procurement Process – RFQ & RFP

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

Procurement Process - Contract

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

Opposition to Gas-Fired Generation

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

Opposition to Gas-Fired Generation

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

Government Cancellation

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

Termination Negotiations

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

TCE Initial Concerns

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

Confidentiality Agreement

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

MOU

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

Replacement Project

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

Replacement Project Negotiations

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

OPA Analysis

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

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

TCE Current Position on OGS Financial Value

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

Original
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement
Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

TransCanada Energy Ltd. ("TCE"), Province of Ontario (the "Province") and Ontario Power Authority ("OPA")

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between OPA and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract") for the OGS.

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement described below, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Binding MOU

A binding MOU incorporating these terms, to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before July 31, 2011.

Arbitration

In the event that all of the definitive agreements contemplated between Ontario Power Generation and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated, and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPA and Ontario Power Generation Inc., to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Objective: TransCanada Energy Ltd. ("TCE") and Ontario Power Generation Inc. ("OPG"), (together, the "Partners") will work together exclusively using best efforts on thermal generation developments as further described in this Schedule A.

Development A

Joint Venture: The Partners will form a joint venture, partnership or other tax-favourable structure which will have the exclusive right to work together using best efforts on a gas-fired generation facility (the "Project") at one of OPG's existing thermal sites, or other such sites as the Partners agree, secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will use the turbines and ancillary contracts (the "Turbines") already acquired for the OGS.

Ownership: The Partners will own the Project on a 50/50 equity basis.

Term: The Partnership will have 2 years to identify a mutually agreeable project and secure a long-term CES Contract with the OPA or other credit-worthy power purchaser.

Funding: The Project shall be funded as follows:

TCE will transfer Oakville gas turbines and associated contracts to the OPG/TCE joint venture upon execution of a CES Contract for the Project.

For the first \$[450] million of Project capital cost (including Turbines), TCE shall contribute all funding in the form of the Turbines (with a notional value of \$[225] million) and up to \$[225] million in cash necessary to complete the Project.

Project capital costs over \$[450] million shall be funded 50/50 by OPG and TCE. In return for TCE's commitment to fund the Project as set out above, TCE shall acquire all of OPG's equity interest in Portlands Energy Centre Inc. and partnership interest

in Portlands Energy Centre LP. TCE shall also pay OPG \$[100] million - \$[50] million on closing and \$[50] million on first anniversary of closing.

- Closing:** To occur as soon as all third party and government approvals are received.
- Termination:** In the event that the Partners are unable to develop the Project and secure the CES Contract using the Turbines by the end of the 2 year period or if the Parties obtain a CES Contract but are unable to construct the Project, then TCE will transfer its interest in the Turbines to OPG for no additional consideration and the joint venture shall terminate.
- Return:** The Project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
- Definitive Document:** Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.
- Approvals:** TCE and OPG to obtain all required internal approvals to enter into the definitive agreement and to close the transaction, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011

Development B

- Joint Venture:** The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using best efforts on gas-fired generation facilities at a combination of the Coal Power Facilities listed below that will generate 1,000 MW of power. A project developed pursuant to the "Development A" section above and located at a Coal Power Facility shall not be counted as a project under this section. The Partners will work together on other Coal Power Facility power generation initiatives on a non-exclusive, best efforts basis. Each project will be secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will jointly assume the preliminary feasibility and design work already

performed on the conversion of the Coal Power Facilities to natural gas fuel.

Coal Power Facilities: The following three coal generation facilities and sites are owned by OPG:

Lambton (950 MW)

Nanticoke (4,096 MW)

Thunder Bay (303 MW)

Ownership: 50/50

Term: [10] years, subject to extension by mutual agreement of the Partners, plus the term of any CES Contracts (the "Term").

Funding: The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.

Return: Each project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.

ROFR: In the event that the OPG intends to sell, lease or otherwise transfer any direct or indirect interest in any of the Coal Power Facilities, it shall grant TCE the right of first refusal on any third party offer.

Definitive Document: Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.

Approvals: TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

OPG
Preferred
Term Sheet

Proposal

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Between the Province of Ontario and TransCanada Energy

July 2011

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Privileged and Without Prejudice

Context

Parties:

TransCanada Energy Ltd. ("TCE"), Province of Ontario (the "Province") and Ontario Power Generation ("OPG")

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between Ontario Power Authority ("OPA") and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract").

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement which will include TCE releasing the Province and the OPA from legal action, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Arbitration

In the event that all of the definitive agreements contemplated between OPG and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPG to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Development A

Joint Venture	Using the PEC existing Limited Partnership, TCE and OPG will develop further business opportunities relating to OPG's existing Lennox plant and Gas Turbines procured by TCE for the Oakville project.
Ownership	Parties will form a new Limited Partnership (Lennox JV) with 100% Class A Limited Partnership Units owned by PEC and 100% Class B Limited Partnership Units owned by TCE.
Contributions	OPG will lease the Lennox facility to the Lennox JV for a nominal value. TCE will contribute the gas turbines and related contracts to the Lennox JV.
PPA	OEFC will enter into a 20 year PPA with the new JV reflecting a full recovery of operating costs plus a capacity charge with a lifetime value of \$X (NTD: to be inserted by IO).
Operations	OPG and the new JV will enter into a new operating agreement for operation of the Lennox facility.
Distribution Policy	All cash flows relating to the PPA capacity charge will flow as a partner distribution to the Class B Partnership Unit holders.
New Development	The JV will use commercially reasonable efforts to develop and secure a satisfactory PPA to permit the construction of a new CCGT on the Lennox site or other site as the parties may agree.
Definitive Documentation	Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.

Development B

Joint Venture:	The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using commercially reasonable efforts on the gas-conversion of the existing Nanticoke coal fired generating facility
Funding:	The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.
Ownership:	50/50
Return:	Project will give a return to the JV that is equal to than returns earned on similar, privately-owned generating projects.
Term:	Exclusive right expires Dec. 31, 2014.
Definitive Document:	Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1

Recitals

The recitals herein are true and correct.

Section 1.2

Act

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

ARTICLE 2

Section 2.1

Consideration

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

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

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4

JURISDICTION OF ARBITRATOR

Section 4.1

Final Decision and Award

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

Section 4.2

The Disputes

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

Section 4.3

Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6 CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

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

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

Section 7.4

Release

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

ARTICLE 8 CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6**Counterparts**

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

Section 9.7**Electronic Execution**

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

Section 9.8**Counsel**

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

TRANSCANADA ENERGY LTD.

By: _____

Title

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

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

Title

ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

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

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

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

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

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

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

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

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

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

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

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

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

Aleksandar Kojic

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

Can we discuss response at ETM?

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

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

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

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

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

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

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

Do you want to address this?

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

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

Folks,

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

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

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

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

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

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

Let's focus on Lennox. Since 2006, Lennox has been running on a yearly contract which presently costs the ratepayer \$110MM per year. And for what? What is its capacity utilization? The only time I've seen it running recently was once during the heat spell this past July. It is my understanding that OPG has written the plant off to zero and has filed notice to close it; the only reason it is still running is the must-run contract. Absent the TCE discussion, we were wanting to extend the contract on Lennox for three to ten years. What is the NPV of that contract extension - \$300MM to \$900MM by a quick calculation. What value does running Lennox this way create for the ratepayer?

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

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

Jim Hinds
(416) 524-6949

Aleksandar Kojic

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

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

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

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

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

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

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

Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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

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

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

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

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

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

Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: Michael Killeavy
Sent: August 3, 2011 1:54 PM
To: Michael Lyle; JoAnne Butler
Subject: FW: Confidential - TCE and Lennox

Kevin's provided some background on Lennox GS for us.

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: Kevin Dick
Sent: August 3, 2011 9:36 AM
To: Michael Killeavy
Subject: RE: Confidential - TCE and Lennox

A few notes/clarifications on Lennox and the arbitration agreement:

1. The Lennox contract is roughly 50 to 60 MM dollars per year. 60 MM dollars represents the fixed costs, variable costs and 5% cost of capital for Lennox less the market revenues Lennox makes. I think the 110 MM dollar number referenced in the email below is a gross number but I would not consider it appropriate as an assessment of the cost of Lennox. OPG has likely written off the asset but the OPA is not paying any depreciation costs for the facility. The NPV of the contract extension based on a 60 MM annual costs is roughly 500 MM.
2. While there are questions regarding Lennox's usefulness a practical question arises regarding the conversion of Nanticoke and Lambton. Lennox is a dual fuel facility providing 2100 MW of capacity at the relatively low cost of 60 MM/year (2,500 \$/MW-month). Why would we be contemplating a conversion of Nanticoke costing over 500 MM dollars (350 MM dollars for a pipeline and 50 MM dollars per unit converted) with an operating cost of 27 MM dollars per year per unit when Lennox already has the infrastructure in place and has comparable, if not lower, operating costs (the heat rates are comparable). If Nanticoke, or Lambton for that matter, are required as capacity resources but Lennox is deemed to not be in the ratepayers interest I think that raises serious questions on our planning decisions. Reconfiguring the Lennox facility will likely not be a positive net value for ratepayers, however I recognise this is about minimising negative value rather than maximising positive value.
3. Personally, I think building a combined cycle at Nanticoke makes the most sense but the plans to convert Nanticoke should be abandoned. I think that getting a deal done for KWCG would have been a better option but it now appears as though that opportunity has passed. I do agree with Jim's assessment of the situation. Better to get some value for ratepayers than have a settlement paid to TCE with no generation being installed but I am unsure if cancelling the current Lennox contract is the right route. I think a look at Nanticoke as the appropriate site is likely the better route.

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

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

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

Please see below. It deals with Lennox.

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

-----Original Message-----
From: Michael Lyle
Sent: August 3, 2011 7:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

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

Folks,

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

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

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

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

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Jim Hinds
(416) 524-6949

Aleksandar Kojic

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

Importance: High

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

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

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

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

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

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Proposed New Clauses for the Draft Arbitration Agreement

Section 4.3(d)

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

Section 4.7 Gas Turbines

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

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

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

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

Section 7.5 Split of Final Award between Respondents

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

Ministry of Energy

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Téléc.: 416-327-6755



August 5, 2011

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

Re: TransCanada Energy Ltd.

Dear Colin:

This letter will confirm the basis upon which Her Majesty the Queen in Right of Ontario (the "Crown") and the Ontario Power Authority (the "OPA") have agreed to divide between themselves responsibility for the payment of any award made under an arbitration agreement (the "Arbitration Agreement") entered into between TransCanada Energy Ltd. ("TCE"), the Crown and the OPA with respect to matters related to a contract between TCE and the OPA dated as of October 9, 2009 (the "CES Contract") for the development and operation of a 900 megawatt gas fired generating station in Oakville, Ontario (the "OGS").

By letter dated October 7, 2010, the OPA noted the Minister of Energy's announcement of the same day that the OGS would not proceed. The letter stated that the OPA would not proceed with the contract and acknowledged that TCE is entitled to reasonable damages from the OPA, including the anticipated financial value of the CES Contract. The letter further stated that the OPA would like to begin negotiations with TCE to reach mutual agreement to terminate the CES Contract.

Negotiations have led to agreement that the issues in dispute between TCE, the Crown and the OPA related to the decision not to proceed with the OGS should be resolved by way of binding arbitration in accordance with the terms of the Arbitration Agreement. Section 4.3(c)(ii) of the Arbitration Agreement sets out the three components of which the reasonable damages of TCE are understood to be comprised. The Crown and the OPA agree that it is appropriate to reach agreement on which components of damages should be allocated to the Crown and which should be allocated to the OPA.

Ministry of Energy

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Téléc.: 416-327-6755



Page 2 of 2

The Crown and the OPA agree that, notwithstanding any finding of liability as between the Crown and the OPA which may be determined by the Arbitrator under the Arbitration Agreement, except where the award of the Arbitrator is satisfied by the transfer of an asset of Equivalent Value in accordance with section 7.3 of the Arbitration Agreement, the OPA shall only be liable for payment of the component of the Arbitrator's award that is described in clause 4.3(c)(ii)(B) of the Arbitration Agreement (costs incurred by TCE in connection with either the performance or termination of the CES Contract other than costs which have been recovered under the component of damages which is net profit to be earned by TCE during the 20 year term of the CES Contract as described in clause 4.3(c)(ii)(A)) and the Crown shall be liable for payment of all other amounts of the Arbitrator's award.

The Crown and the OPA acknowledge that this agreement is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

The Crown and the OPA agree that this letter agreement and its contents are to be held in confidence and shall not be disclosed unless disclosure is required under the *Freedom of Information and Protection of Privacy Act* (Ontario) or other applicable law.

Please execute and return to us the duplicate copy of this letter enclosed to confirm the foregoing.

Regards,

David Lindsay
Deputy Minister
Ministry of Energy

Acknowledged Friday, August 5, 2011:

Colin Andersen
Chief Executive Officer
Ontario Power Authority

AVG-06-2011 11:51

P.003

Ministry of Energy

Ministère de l'Énergie

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Page 2 of 2

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Regards,


David Lindsay
Deputy Minister
Ministry of Energy

Acknowledged Friday, August 5, 2011:

Colin Andersen
Chief Executive Officer
Ontario Power Authority

AUG-05-2011 10:40

(416) 325-4644

P.015

David Lindsay to David Lindsay

Section 9.9

Notices

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

DATED this _____ **day of** _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

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

By: David Lindsay
Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____
Title

Resolution - Agreement to Submit Dispute to Arbitration

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO POWER AUTHORITY

BE IT RESOLVED THAT:

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

Aleksandar Kojic

From: JoAnne Butler
Sent: September 14, 2011 4:44 PM
To: Amir Shalaby; Michael Lyle
Subject: Fw: analysis that OPA conducted

Fyi.

From: MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]
Sent: Tuesday, September 13, 2011 05:18 PM
To: JoAnne Butler; Amir Shalaby; serge.imbrogno@ofina.on.ca <serge.imbrogno@ofina.on.ca>; rick.jennings@ontario.ca <rick.jennings@ontario.ca>
Cc: jonathan.weisstub@infrastructureontario.ca <jonathan.weisstub@infrastructureontario.ca>
Subject: RE: analysis that OPA conducted

Agree but the challenge I have been given by the various government parties is to try to reach a commercial deal which satisfies TCE to the point they don't go to arbitration.

From: JoAnne Butler [<mailto:joanne.butler@powerauthority.on.ca>]
Sent: Tuesday, September 13, 2011 5:01 PM
To: MCNEIL Patrick -CORPBUSDEV; Amir Shalaby; serge.imbrogno@ofina.on.ca; rick.jennings@ontario.ca
Cc: jonathan.weisstub@infrastructureontario.ca
Subject: RE: analysis that OPA conducted

The whole idea of the arbitration was to determine exactly that – the quantum. What TransCanada feels entitled to and what we are prepared to recommend differ widely.

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: MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]
Sent: Martes, 13 de Septiembre de 2011 03:50 p.m.
To: Amir Shalaby; 'serge.imbrogno@ofina.on.ca'; 'rick.jennings@ontario.ca'
Cc: JoAnne Butler; 'jonathan.weisstub@infrastructureontario.ca'
Subject: Re: analysis that OPA conducted

I don't want to go through the analysis and shouldn't.

I just want to know what you would be prepared to recommend so I know how the ideal OPA envelope I am working.

D. Patrick McNeil
Senior Vice-President, Corporate Business Development and Chief Risk Officer
Ontario Power Generation

From: Amir Shalaby [<mailto:Amir.Shalaby@powerauthority.on.ca>]
Sent: Tuesday, September 13, 2011 03:38 PM
To: MCNEIL Patrick -CORPBUSDEV; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Rick Jennings <rick.jennings@ontario.ca>
Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Jacquie.carter@infrastructureontario.ca <Jacquie.carter@infrastructureontario.ca>
Subject: analysis that OPA conducted

Following up on your request at yesterday's meeting. Asking Jacquie to forward to Jonathan until I get his email address.

The Analysis was shared with David L earlier. For your benefit, JoAnne is prepared to take you through it at your request.

Her number is 416 969 6005

Cheers

Amir Shalaby

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THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

Ministry of Energy

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August 5, 2011

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

Re: TransCanada Energy Ltd.

Dear Colin:

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Ministry of Energy

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Page 2 of 2

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Please execute and return to us the duplicate copy of this letter enclosed to confirm the foregoing.

Regards,

David Lindsay
Deputy Minister
Ministry of Energy

Acknowledged Friday, August 5, 2011:

Colin Andersen
Chief Executive Officer
Ontario Power Authority

AUG-05-2011 11:51

P.003

Ministry of Energy

Ministère de l'Énergie

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Page 2 of 2

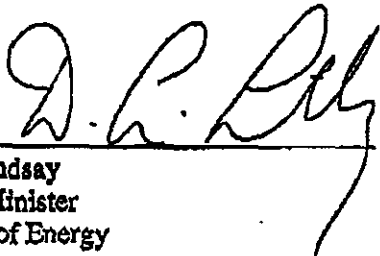
The Crown and the OPA agree that, notwithstanding any finding of liability as between the Crown and the OPA which may be determined by the Arbitrator under the Arbitration Agreement, except where the award of the Arbitrator is satisfied by the transfer of an asset of Equivalent Value in accordance with section 7.3 of the Arbitration Agreement, the OPA shall only be liable for payment of the component of the Arbitrator's award that is described in clause 4.3(c)(ii)(B) of the Arbitration Agreement (costs incurred by TCE in connection with either the performance or termination of the CES Contract other than costs which have been recovered under the component of damages which is net profit to be earned by TCE during the 20 year term of the CES Contract as described in clause 4.3(c)(ii)(A)) and the Crown shall be liable for payment of all other amounts of the Arbitrator's award.

The Crown and the OPA acknowledge that this agreement is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

The Crown and the OPA agree that this letter agreement and its contents are to be held in confidence and shall not be disclosed unless disclosure is required under the *Freedom of Information and Protection of Privacy Act* (Ontario) or other applicable law.

Please execute and return to us the duplicate copy of this letter enclosed to confirm the foregoing.

Regards,


David Lindsay
Deputy Minister
Ministry of Energy

Acknowledged Friday, August 5, 2011:

Colin Andersen
Chief Executive Officer
Ontario Power Authority

TOTAL P.003

AUG-05-2011 10:40 (416) 325-4644

P.015

David Lindsay to David Lindsay

Section 9.9 Notices

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

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

By: David Lindsay
Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____
Title

Resolution - Agreement to Submit Dispute to Arbitration

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO POWER AUTHORITY

BE IT RESOLVED THAT:

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

Aleksandar Kojic

From: JoAnne Butler
Sent: September 13, 2011 5:19 PM
To: Michael Killeavy
Subject: RE: analysis that OPA conducted

No, that is what Pat is saying...he doesn't want to be involved in the analysis...he just wants the number that we would recommend...what I was trying to say was that the number that we would recommend would not be supported by TCE, hence, the arbitration.

The briefing would be for Serge, Rick and the guy from IO, Jonathan Weisstub....I don't know where Livingston is....he has already seen it...this must be a lower level guy...back to where we were six months ago....

JCB

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

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

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

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

From: Michael Killeavy
Sent: Martes, 13 de Septiembre de 2011 05:14 p.m.
To: JoAnne Butler
Subject: Re: analysis that OPA conducted

With who exactly? Not Pat McNeil?

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

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

From: JoAnne Butler
Sent: Tuesday, September 13, 2011 05:09 PM
To: 'Serge Imbrogno' <Serge.Imbrogno@ofina.on.ca>; MCNEIL Patrick -CORPBUSDEV <patrick.mcneil@opg.com>; Amir Shalaby; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Michael Killeavy
Cc: jonathan.weisstub@infrastructureontario.ca <jonathan.weisstub@infrastructureontario.ca>

Subject: RE: analysis that OPA conducted

No problem....we would be happy to run through all the analysis with you. I will ask Michael K to set something up....

JCB

JoAnne C. Butler
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416-969-6005 Tel.
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joanne.butler@powerauthority.on.ca

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

From: Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]
Sent: Martes, 13 de Septiembre de 2011 05:03 p.m.
To: JoAnne Butler; MCNEIL Patrick -CORPBUSDEV; Amir Shalaby; Rick Jennings (MEI)
Cc: jonathan.weisstub@infrastructureontario.ca
Subject: RE: analysis that OPA conducted

Hi JoAnne,

The intent of the briefing was to walk Rick, Jonathan and I through the model. OPG is not a party to the arbitration agreement.

Serge

From: JoAnne Butler [joanne.butler@powerauthority.on.ca]
Sent: Tuesday, September 13, 2011 5:00 PM
To: MCNEIL Patrick -CORPBUSDEV; Amir Shalaby; Serge Imbrogno; Rick Jennings (MEI)
Cc: jonathan.weisstub@infrastructureontario.ca
Subject: RE: analysis that OPA conducted

The whole idea of the arbitration was to determine exactly that - the quantum. What TransCanada feels entitled to and what we are prepared to recommend differ widely.

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joanne.butler@powerauthority.on.ca<mailto:joanne.butler@powerauthority.on.ca>

From: MCNEIL Patrick -CORPBUSDEV [mailto:patrick.mcneil@opg.com]

Sent: Martes, 13 de Septiembre de 2011 03:50 p.m.
To: Amir Shalaby; 'serge.imbrogno@ofina.on.ca'; 'rick.jennings@ontario.ca'
Cc: JoAnne Butler; 'jonathan.weisstub@infrastructureontario.ca'
Subject: Re: analysis that OPA conducted

I don't want to go through the analysis and shouldn't.

I just want to know what you would be prepared to recommend so I know how the ideal OPA envelope I am working.

D. Patrick McNeil
Senior Vice-President, Corporate Business Development and Chief Risk Officer Ontario Power Generation

From: Amir Shalaby [mailto:Amir.Shalaby@powerauthority.on.ca]
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Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>;
Jacquie.carter@infrastructureontario.ca <Jacquie.carter@infrastructureontario.ca>
Subject: analysis that OPA conducted

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The Analysis was shared with David L earlier. For your benefit, JoAnne is prepared to take you through it at your request.
Her number is 416 969 6005
Cheers
Amir Shalaby

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Aleksandar Kojic

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Sent: September 13, 2011 5:18 PM
To: JoAnne Butler; Amir Shalaby; serge.imbrogno@ofina.on.ca; rick.jennings@ontario.ca
Cc: jonathan.weisstub@infrastructureontario.ca
Subject: RE: analysis that OPA conducted

Agree but the challenge I have been given by the various government parties is to try to reach a commercial deal which satisfies TCE to the point they don't go to arbitration.

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Tuesday, September 13, 2011 5:01 PM
To: MCNEIL Patrick -CORPBUSDEV; Amir Shalaby; serge.imbrogno@ofina.on.ca; rick.jennings@ontario.ca
Cc: jonathan.weisstub@infrastructureontario.ca
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From: JoAnne Butler
Sent: September 13, 2011 5:20 PM
To: Michael Killeavy
Subject: RE: analysis that OPA conducted

I would like to be involved, too....thanks...

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

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

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

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

From: Michael Killeavy
Sent: Martes, 13 de Septiembre de 2011 05:20 p.m.
To: JoAnne Butler
Subject: Re: analysis that OPA conducted

Ok. I'll ask Yvonne to arrange it.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
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Subject: analysis that OPA conducted

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Her number is 416 969 6005

Cheers

Amir Shalaby

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Aleksandar Kojic

From: JoAnne Butler
Sent: September 22, 2011 9:02 AM
To: Michael Killeavy; Michael Lyle; Kristin Jenkins
Cc: Colin Andersen; Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

I agree as well. As for notification, maybe Colin could, out of courtesy, mention to Alex on his call that the press are getting nosy on this one and we providing holding messages??

JCB

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

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, 22 de Septiembre de 2011 08:31 a.m.
To: Michael Lyle; Kristin Jenkins; JoAnne Butler
Cc: Colin Andersen; Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

I agree.

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

From: Michael Lyle
Sent: September 22, 2011 8:31 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

Thinking about this some more it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with "Discussions are ongoing.....".

From: Michael Lyle
Sent: Thursday, September 22, 2011 07:49 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
Subject: Re: Toronto Star Request - Cancellation of Oakville Contract

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

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

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

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

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

Kristin

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

Aleksandar Kojic

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

Here are Osler's comments on the proposed answer.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
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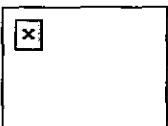
From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Thursday, September 22, 2011 09:49 AM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Cc: Susan Kennedy
Subject: RE: Toronto Star Request - Cancellation of Oakville Contract

Michael,
We propose responding with the following:

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

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

Elliot



Elliot Smith, P.Eng.
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



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

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

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Kristin

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Aleksandar Kojic

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

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Michael.killeavy@powerauthority.on.ca

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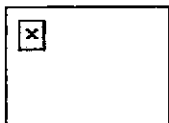
From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
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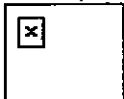
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Box 50, 1 First Canadian Place
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From: Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]
Sent: Wednesday, March 23, 2011 10:21 AM
To: Smith, Elliot; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: OGS L/C

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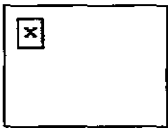
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Aleksandar Kojic

From: JoAnne Butler
Sent: September 28, 2011 4:08 PM
To: Michael Killeavy
Subject: Re: OGS L/C

Have a nice few days off!

JCB

From: Michael Killeavy
Sent: Wednesday, September 28, 2011 04:00 PM
To: JoAnne Butler
Subject: Re: OGS L/C

Thx

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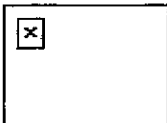
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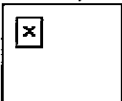
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From: JoAnne Butler
Sent: September 28, 2011 4:56 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan
Subject: Re: OGS L/C

Ok...please proceed as discussed..

JCB

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

Yes

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General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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120 Adelaide Street West, Suite 1600
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Fax: 416.969.6383
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From: Michael Killeavy
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From: Michael Lyle
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To: Michael Killeavy; JoAnne Butler; Deborah Langelaan
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From: Michael Killeavy
Sent: September 28, 2011 4:32 PM
To: Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Re: OGS L/C

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

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From: Michael Lyle
Sent: Wednesday, September 28, 2011 04:25 PM
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Subject: RE: OGS L/C

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

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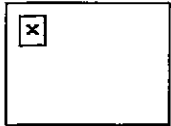
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From: Michael Lyle
Sent: September 29, 2011 5:05 PM
To: Deborah Langelaan; JoAnne Butler; Michael Killeavy
Subject: RE: OGS L/C
Attachments: Arbitration Agreement August 5 2011 (3).pdf

Of course.

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

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

Deb

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From: JoAnne Butler
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Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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

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

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

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

Subject: RE: OGS L/C

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

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
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From: JoAnne Butler
Sent: September 28, 2011 3:56 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Michael Lyle
Subject: Re: OGS L/C

No comments. I agree with your position.

JCB

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

Deb,

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

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

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

Michael

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

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

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

Michael;

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

Deb

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

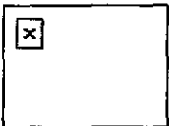
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 24, 2011 11:40 AM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; Sebastiano, Rocco
Subject: RE: OGS L/C

Deb,

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

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

Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



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

Privileged & Confidential

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

Deb

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 Consideration

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

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

ARTICLE 3 ARBITRATOR

Section 3.1 Arbitrator

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

ARTICLE 4 JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

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

Section 4.2 The Disputes

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

Section 4.3 Waiver of Defences

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

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

Section 4.4

Arbitrator Jurisdiction

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

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

Section 4.5

Costs

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

Section 4.6 Timetable

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

**ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS**

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

**ARTICLE 6
CONDUCT OF THE ARBITRATION**

Section 6.1 Documentary Discovery

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

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

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

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

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

Section 7.4

Release

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

ARTICLE 8 CONFIDENTIALITY

Section 8.1

Confidentiality

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

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

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

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6 Counterparts

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

Section 9.7**Electronic Execution**

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

Section 9.8**Counsel**

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

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

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

Michael E. Barrack
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Email: mbarrack@tgf.ca

John L. Finnigan
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**Counsel for the Respondent,
The Ontario Power Authority**

Oslers, Hoskin & Harcourt LLP
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Tel: (416) 862-4223
Fax: (416) 862-6666
Email: pivanoff@osler.com

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

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

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

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

Section 9.9

Notices

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

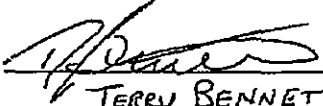
DATED this 5th day of August, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

By


TERRY BENNETT
Title Vice-President, Power, Eastern Growth

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

By: _____
David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____

Title

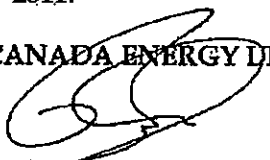
Section 9.9

Notices

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

DATED this 5th day of August, 2011.

TRANSCANADA ENERGY LTD.



By: WILLIAM C. TAYLOR

Title SENIOR VICE-PRESIDENT, EASTERN POWER

By _____

Title

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

By: David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____

Title

AUG-05-2011 10:40 (416) 325-4646

P.015

David Lindsay To David Lindsay

Section 9.9 Notices

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

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

By: David Lindsay
Title: Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: Colin Andersen
Title: Chief Executive Officer

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

AGREED TO as of the ► day of ►

Witness

(Name)

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

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

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

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

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

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

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

Aleksandar Kojic

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

Importance: High

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

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

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

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

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

Recommended Response:

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

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

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

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

Aleksandar Kojic

From: Amir Shalaby
Sent: November 6, 2011 9:04 AM
To: Brett Baker; Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler
Subject: TCE will get arbitration underway

According to a conversation with OPG recently .
Not unexpected

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

From: MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]
Sent: Sunday, November 06, 2011 07:23 AM
To: 'rick.jennings@ontario.ca' <rick.jennings@ontario.ca>;
'jonathan.weisstub@infrastructureontario.ca' <jonathan.weisstub@infrastructureontario.ca>;
'serge.imbrogno@ofina.on.ca' <serge.imbrogno@ofina.on.ca>; Amir Shalaby
Subject: Project Apple

OPG CONFIDENTIAL AND COMMERCIALY SENSITIVE

Sorry for delay in the update but swamped like the rest of you.

Last Wednesday, OPG and TCE met to discuss the draft Long-Term Partnership Agreement OPG provided TCE in September.

TCE advised they had decided to initiate the arbitration with Ontario and TCE and were going to meet with Infrastructure Ontario on Thursday to advise them of their decision.

TCE believes it is in its best interest to use arbitration to set the damage value for the Oakville cancellation.

TCE wishes to continue to explore the options identified by TCE apart from the arbitration agreement and perhaps in satisfaction of the damage value.

I will be arranging a conference call for the four of us as soon as possible this week.

Jonathan has suggested it would be worthwhile for OPG to start discussions with the OPA on the options to determine what value can be assigned to them.

I am in Ottawa Monday and Tuesday but will try to cut out of some meetings.

Have a great remainder of the weekend.

D. Patrick McNeil

Senior Vice-President, Corporate Business Development and Chief Risk Officer Ontario Power Generation

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Aleksandar Kojic

From: JoAnne Butler
Sent: November 6, 2011 12:45 PM
To: Amir Shalaby
Subject: Re: TCE will get arbitration underway

Yes, not unexpected and probably the fairest way to proceed.

JCB

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

From: Amir Shalaby
Sent: Sunday, November 06, 2011 09:03 AM
To: Brett Baker; Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler
Subject: TCE will get arbitration underway

According to a conversation with OPG recently .
Not unexpected

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

From: MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]
Sent: Sunday, November 06, 2011 07:23 AM
To: 'rick.jennings@ontario.ca' <rick.jennings@ontario.ca>;
'jonathan.weisstub@infrastructureontario.ca' <jonathan.weisstub@infrastructureontario.ca>;
'serge.imbrogno@ofina.on.ca' <serge.imbrogno@ofina.on.ca>; Amir Shalaby
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received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.

Aleksandar Kojic

From: Amir Shalaby
Sent: November 7, 2011 7:28 PM
To: George Pessione
Cc: Michael Killeavy; JoAnne Butler
Subject: Re: Evaluating four options

Yes,
Lennox (which OPG does not like anymore Cambridge (fully evaluated by killeavy and crew)
Gas conversions (TB, Nanticoke, Lambton) Deploying CTs outside Ontario (TCE does not like
that option)

Portlands is off the table as far as OPG is concerned

Copying JoAnne and Michael Killeavy. (What is her name and the other guy) I think the
Cambridge option is fully understood and model led.

TCE already walked away from it.
I think OPG wants to force the decision on Conversions under the TCE settles cover. I told
them today they are not a sure call at this time.
I suggest you work with Michael to develop a financial evaluation model for Gas conversions
that is consistent with the work on Cambridge. Do not spend much time on other options Cheers

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

From: George Pessione
Sent: Monday, November 07, 2011 07:09 PM
To: Amir Shalaby
Subject: Re: Evaluating four options

Ok
Any idea of the type of options?

George Pessione
Director Resource Integration
Power System Planning
Ontario Power Authority

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

From: Amir Shalaby
Sent: Monday, November 07, 2011 07:07 PM
To: George Pessione; patrick.mcneil@opg.com <patrick.mcneil@opg.com>; chris.young@opg.com
<chris.young@opg.com>
Subject: Evaluating four options

George:
I was on a call earlier today with Chris and Pat as well as government folks.
They want to evaluate four options for joint partnership with TCE.
I indicated that you are our contact to get this work done Thanks

Aleksandar Kojic

From: Amir Shalaby
Sent: November 9, 2011 12:14 PM
To: Michael Lyle; Michael Killeavy
Cc: JoAnne Butler
Subject: Re: Discussion with IO on TCE

I understand. Again: should I meet ? As a member of working group . I need an explicit direction please

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

From: Michael Lyle
Sent: Wednesday, November 09, 2011 11:44 AM
To: Amir Shalaby; Michael Killeavy
Cc: JoAnne Butler
Subject: RE: Discussion with IO on TCE

I think we need to make it very clear that the arbitration is going to be between TCE, OPA and the Crown. Not sure that there is any role for IO to play. They need to be aware of outcome and any settlement negotiations as this will impact on potential deal related to assets to pay for settlement/award. Perhaps it is time that we had a three way discussion between Crown, OPA and IO involving counsel to talk about respective roles going forward.

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

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

From: Amir Shalaby
Sent: November 9, 2011 11:39 AM
To: Michael Lyle; Michael Killeavy
Cc: JoAnne Butler
Subject: Re: Discussion with IO on TCE

He is "head of new partnerships", assigned to this file. I do not know the exact role for IO going forward(above pay grade) Let me know if it is ok to meet

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

From: Michael Lyle
Sent: Wednesday, November 09, 2011 10:55 AM

To: Amir Shalaby; Michael Killeavy
Cc: JoAnne Butler
Subject: Re: Discussion with IO on TCE

What is Jonathon's position? I remain confused about what role IO think they are playing in the arbitration.

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

From: Amir Shalaby
Sent: Wednesday, November 09, 2011 10:53 AM
To: Michael Lyle; Michael Killeavy
Cc: JoAnne Butler
Subject: Re: Discussion with IO on TCE

Should I work with Jonathan for now?

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

From: Michael Lyle
Sent: Wednesday, November 09, 2011 10:52 AM
To: Amir Shalaby; Michael Killeavy
Cc: JoAnne Butler
Subject: Re: Discussion with IO on TCE

Once we are in arbitration, all communications about disclosure of information will go through legal counsel.

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

From: Amir Shalaby
Sent: Wednesday, November 09, 2011 10:36 AM
To: Michael Killeavy
Cc: JoAnne Butler; Michael Lyle
Subject: Discussion with IO on TCE

Jonathan is hopeful that a session with TCE can be arranged post launch of arbitration. The objective would be to speed up discovery process. He asked me to provide a list of information (he is thinking mostly financial assumptions) that we would like to get from TCE.

I indicated that Michael K has made good guesses at most,

So here is as chance to lift the curtain , look under the hood, open the kimono .

What are. The assumptions , parameters you would like to know?

I am meeting with Jonathan tomorrow at 9 . To discuss process as well as our views on merits of options.

Does any of you wish to join ?

A start at the list would be helpful

(I can guess at residual value, IRR, discount rates, costs, market /gas price assumptions)

Tx

Aleksandar Kojic

From: Michael Killeavy
Sent: November 17, 2011 1:43 PM
To: JoAnne Butler
Subject: FW: OGS Damages Calculation - Information Required ...
Attachments: Need to Know 16 Nov 2011.docx

Importance: High

For tomorrow. I did this a while ago and updated it yesterday.

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

From: Michael Killeavy
Sent: November 16, 2011 1:06 PM
To: Sebastiano, Rocco
Cc: Ivanoff, Paul; Smith, Elliot; Michael Lyle
Subject: OGS Damages Calculation - Information Required ...
Importance: High

Rocco,

Here's the list of information that I think we'd need to know to understand how TCE arrived at its claimed damages calculation.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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416-520-9788 (CELL)
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PRIVILEGED & CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

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

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model¹, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

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

Aleksandar Kojic

From: JoAnne Butler
Sent: November 17, 2011 1:57 PM
To: Michael Killeavy
Subject: RE: OGS Damages Calculation - Information Required ...

Good...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: Jueves, 17 de Noviembre de 2011 01:43 p.m.
To: JoAnne Butler
Subject: FW: OGS Damages Calculation - Information Required ...
Importance: High

For tomorrow. I did this a while ago and updated it yesterday.

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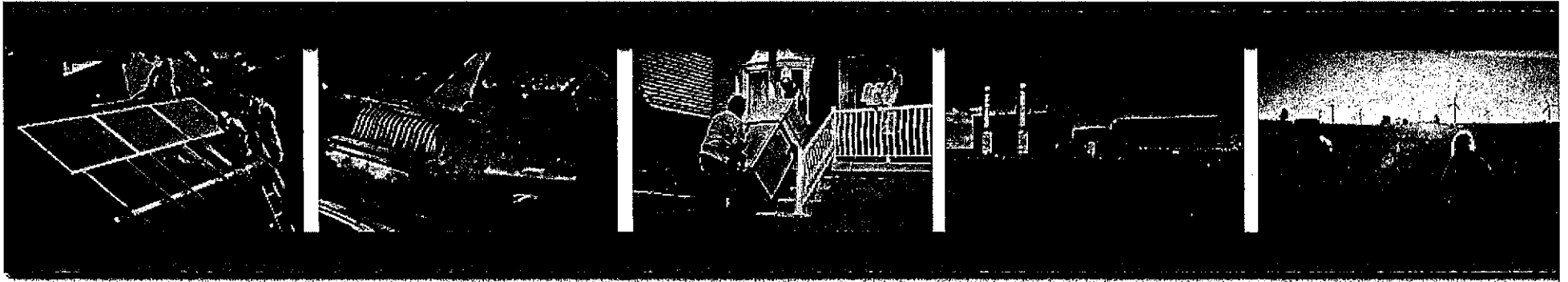
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Aleksandar Kojic

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

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Analysis of TCE Cost of Capital

November 24, 2011
Privileged and Confidential – Prepared in Contemplation of Litigation

Assumptions

Getting the
Effective Tax Rate

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

To estimate
TransCanada Energy's
 β (Beta)

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

Cost of Capital Using CAPM

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

Cost of Capital Using TCPL's 2010 Financial Statements

Cost of Equity: Based on Financial Statements	
Return on Equity (Net Income / S. Equity)	9.80%
Dividend Yield	4.80%
Total Shareholder Return	14.40%
Cost of Debt (Actual Values from Financial Statements)	
Interest on Long-Term Debt (in 2009)	\$1,285
Long Term Debt (Market Value)	\$19,377
Effective Cost of Debt	6.63%
Effective Tax Rate (Average of 6 years)	25.09%
Cost of Debt (after Taxes)	4.97%
Debt / Capital Ratio	80%
Equity / Capital Ratio	20%
Cost of Capital (Weighted)	6.85%

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

Residual Value of the OGS

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

Residual Value of the OGS

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

TCE Current Position on OGS Financial Value

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

Reanalysis of OGS Financial Value

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

Reanalysis of OGS Financial Value

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

Delays and Construction Cost Overruns

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

TransCanada's Unlevered Cost of Equity

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

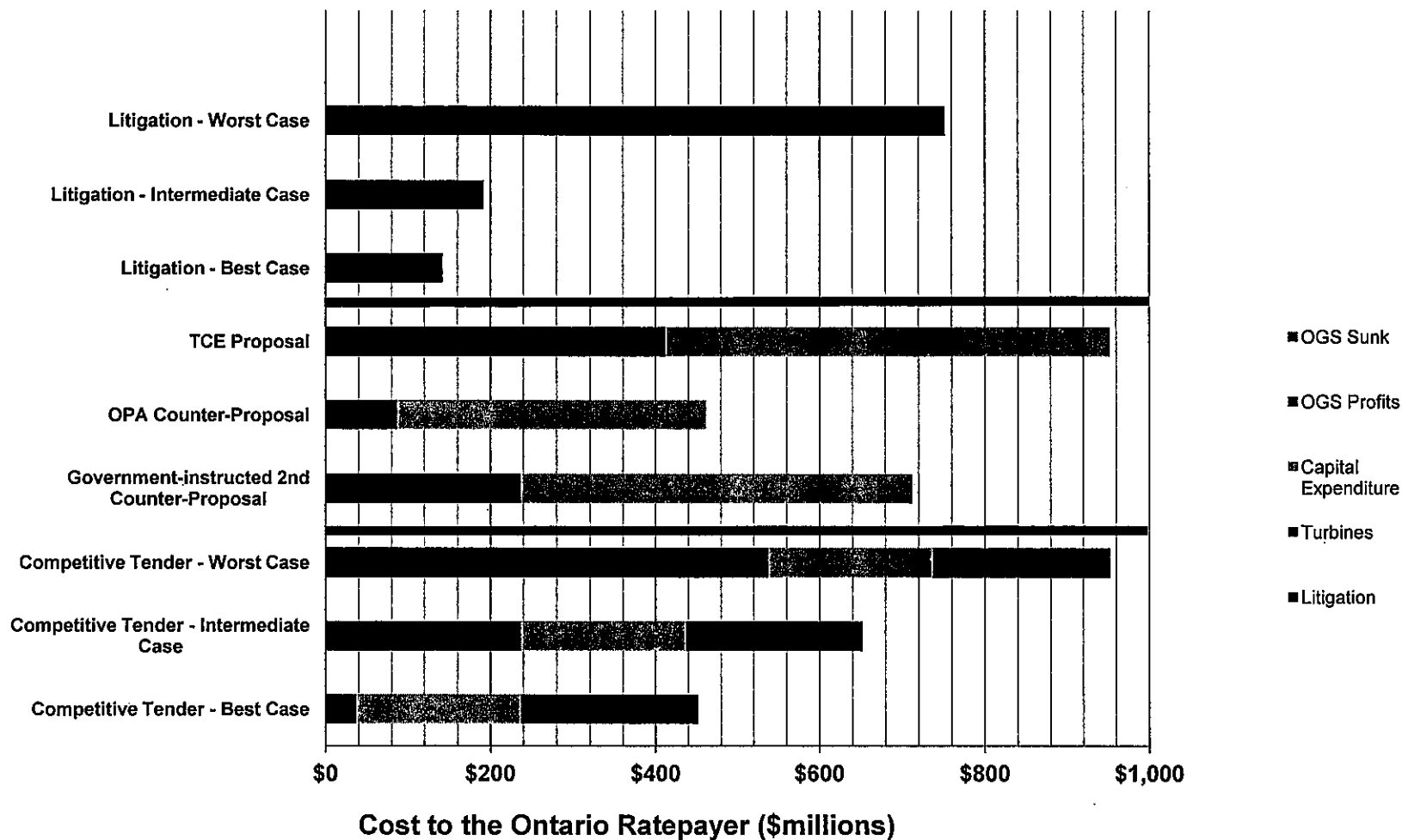
TransCanada's Unlevered Cost of Equity

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

Comparison of Settlement Proposals

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

Financial Value of Potential Outcomes



Aleksandar Kojic

From: Amir Shalaby
Sent: November 25, 2011 4:20 PM
To: Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler
Subject: Progress discussion on TCE arbitartaion

just finished a Conference call with Government/lo folks:

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

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

Cheers

amir

Aleksandar Kojic

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

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

JCB

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

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Toronto, Ontario M5H 1T1

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

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

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Cheers
amir

Aleksandar Kojic

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

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

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

Michael:

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

Happy to discuss.

Regards

Dermot

Dermot P. Muir
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Infrastructure Ontario
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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

ARTICLE 1 APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 Consideration

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

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

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

ARTICLE 3 ARBITRATOR

Section 3.1 Arbitrator

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

ARTICLE 4 JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

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

Section 4.2 The Disputes

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

Section 4.3 Waiver of Defences

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

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

Section 4.4

Arbitrator Jurisdiction

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

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

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

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

Section 4.5 Costs

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

Section 4.6 Timetable

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

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 ~~Statement of Claim~~

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

~~Section 5.2~~ ————— ~~Defence~~

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

~~Section 5.3~~ ————— ~~Reply~~

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

ARTICLE 5
INITIATION OF THE ARBITRATION PROCESS

Section 5.1

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

Section 5.2

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

Section 5.3

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

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

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

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

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

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

Section 6.2 ————— Evidence by Witness Affidavits

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

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

Section 6.3 ————— Cross Examinations on Affidavits

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

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

Section 6.4 ————— Expert Reports

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

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

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

Section 6.1

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

Section 6.2

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

Section 6.3

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

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

Section 6.4

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

Section 6.5

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

Section 6.6

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

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

Section 6.7

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

Section 6.8

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

Section 6.9

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

Section 6.10

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

Section 6.11

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

Section 6.12 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.13 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.14 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.15 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.16

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.17

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 8 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement substantially in the form attached hereto as Schedule "A".

ARTICLE 7 AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within ~~six (6) months~~ sixty (60) days from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications to TCE of the transaction, being equal to the Final Award [or interim final award] (the "**Equivalent Value**").

- (a) Upon the request of the Respondent, the Province of Ontario, to satisfy the Final Award [or interim final award] as against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by

the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amongst the Parties. Assets which will provide partial Equivalent Value may be considered.

- (b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.
- (d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:
 - (i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;
 - (ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;
 - (iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and
 - (iv) TCE does not become liable for any pre-closing liabilities relating to the asset.
- (e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

- (f) If more than ninety (90) days have passed after the date of the issuance of the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8 CONFIDENTIALITY

Section 8.1 Confidentiality

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except to their legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, employees, agents, servants, administrators, successors, members, subsidiaries, affiliates, insurers, and assigns of the terms and conditions of this Article. Notwithstanding the foregoing, the OPA and the Province of Ontario are entitled to share confidential information for the purpose of defending the Claim.

ARTICLE 9 MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 Counsel

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

**Counsel for the Claimant,
TransCanada Energy Ltd.**

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

**Counsel for the Respondent,
The Ontario Power Authority**

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223
Fax: (416) 862-6666
Email: pivanoff@osler.com

**Counsel for the Respondent,
Her Majesty The Queen in Right of
Ontario**

**Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9**

John Kelly
Tel: (416) 601-7887
Email: john.kelly@ontario.ca

Eunice Machado
Tel: (416) 601-7562
Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this 5th day of August, 2011.

TRANSCANADA ENERGY LTD.

By: _____
William C. Taylor

Title Senior Vice-President, Eastern Power

By _____
Terry Bennett

Title Vice-President, Eastern Growth

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

By David Lindsay

Title Deputy Minister of Energy

ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT sets forth the terms pursuant to which ► will provide or receive certain confidential information during the course of participating at the Arbitration Hearing between the Claimant, TransCanada Energy Ltd., and the Respondents, Her Majesty the Queen in Right of Ontario and the Ontario Power Authority.

The information that will be disclosed is considered to be proprietary and confidential information ("Confidential Information"). For the purpose of this Agreement the party disclosing Confidential Information is referred to as the "Disclosing Party", the party receiving such Confidential Information is referred to as the "Receiving Party".

The Receiving Party agrees that he/she has been made aware of the confidentiality terms in Article 8 of the Arbitration Agreement dated August ,2011 and agrees to maintain in strict confidence all Confidential Information disclosed by the Disclosing Party. The Receiving Party shall not disclose and shall prevent disclosure of Confidential Information to any third party without the express written permission of the Disclosing Party and shall not use Confidential Information for any commercial use, except for the purpose consistent with giving evidence at the Arbitration Hearing. In the event the Receiving Party is required by judicial or administrative process to disclose Confidential Information, the Receiving Party will promptly notify the Disclosing Party and permit adequate time to oppose such process.

The obligation of confidentiality and restricted use imposed herein shall not apply to Confidential Information that:

1. is known to the public or the Receiving Party prior to disclosure;
2. becomes known to the public through no breach of this Agreement by the Receiving Party;
3. is disclosed to the Receiving Party by a third party having a legal right to make such disclosure; or
4. is developed independently of the Confidential Information by the Receiving Party.

The Receiving Party agrees that the Confidential Information disclosed by the Disclosing Party will be used solely for the purposes consistent with the Arbitration Agreement and participation at the Arbitration Hearing or providing evidence during the course of the Arbitration Hearing. The Receiving Party will restrict transmission of such Confidential Information to those advisors and representatives who need to know the Confidential Information, for the purposes of the Agreement it is being agreed by the Receiving Party that such advisors and representatives are or will be placed under similar written obligations of confidentiality and restricted use as are contained in this Agreement and in the Arbitration Agreement.

It is understood that unauthorized disclosure or use by the Receiving Party hereto of Confidential Information may cause irreparable harm to the Disclosing Party and result in significant commercial damages, which may not adequately compensate for the breach. In addition to any remedies that may be available at law, in equity or otherwise, the Receiving Party agrees that the Disclosing Party shall be entitled to obtain injunctive relief enjoining the Receiving Party from engaging in any of the activities or practices which may constitute a breach or threatened breach of this Agreement, without the necessity of proving actual damages.

Upon written request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all materials furnished by the Disclosing Party pursuant to this Agreement. The Receiving Party will not retain samples, copies, extracts, electronic data storage, or other reproduction in whole or in part of such materials. All documents, memoranda, notes and other writing based on such Confidential Information shall be destroyed.

Notwithstanding anything to the contrary in this Agreement, the Receiving Party acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with the Arbitration Agreement or Arbitration Hearing, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

AGREED TO as of the ► day of ►

Witness

(Name)

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 7 of the *Proceedings Against the Crown Act* (the "Claim");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising out of and in relation to the CES Contract, the October 7 Letter and the Claim [as set out in the [Insert title of document setting out settlement terms/arbitration award] (the 'Arbitration') and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of \$5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising

which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. Notwithstanding the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made by the Arbitrator in favour of the Releasor pursuant to the Arbitration.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract, the October 7 Letter or the Claim or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter, or the Claim and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract, the October 7 Letter or the Claim which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract, the October 7 Letter or the Claim.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as they case may be, of all the Parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

By _____
Title

Aleksandar Kojic

From: JoAnne Butler
Sent: November 30, 2011 1:33 PM
To: Michael Lyle; Michael Killeavy
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Mike, this is frightful....as we have discussed in the past, I have a huge issue around overall governance. We hold the contract and the Gov. is making deals around us. Surely, our Board must be starting to get uncomfortable with this. Is it not time to assign the contract to the Gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickle anyway.

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Michael Lyle
Sent: Miércoles, 30 de Noviembre de 2011 01:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: 'Ivanoff, Paul'
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs

Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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From: Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]
Sent: November 30, 2011 10:29 AM
To: Michael Lyle
Subject: Sched B_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

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Aleksandar Kojic

From: Michael Lyle
Sent: November 30, 2011 2:46 PM
To: Michael Killeavy; JoAnne Butler
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Ok. I think we have a consensus. Will provide feedback from IO.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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From: Michael Killeavy
Sent: November 30, 2011 1:44 PM
To: JoAnne Butler; Michael Lyle
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Ditto.

A limited scope of discovery impairs our ability to scrutinize the assumptions used in the their modelling used to quantify the alleged damages. I cannot agree with these changes.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

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To: Michael Lyle; Michael Killeavy
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JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Michael Lyle
Sent: Miércoles, 30 de Noviembre de 2011 01:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: 'Ivanoff, Paul'
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

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Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Direct: 416-969-6035
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Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
1 Dundas Street West, 20th Floor
Toronto, Ontario M5G 2L5
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

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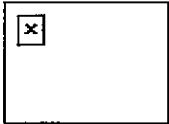
Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: November 30, 2011 2:58 PM
To: Michael Lyle
Cc: JoAnne Butler; Michael Killeavy; Sebastiano, Rocco
Subject: RE: Sched B_ Blacklined version of Arbitration Agreement

Mike,

I completely agree with your concerns. I understood that there was agreement on procedure/conduct for the arbitration and I don't understand why they are resiling.

Let me know if you want to discuss.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Wednesday, November 30, 2011 1:23 PM
To: JoAnne Butler; Michael Killeavy
Cc: Ivanoff, Paul
Subject: FW: Sched B_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
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From: Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]
Sent: November 30, 2011 10:29 AM
To: Michael Lyle
Subject: Sched B_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
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Aleksandar Kojic

From: Michael Killeavy
Sent: December 5, 2011 10:54 AM
To: Ivanoff, Paul
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...
Attachments: Need to Know 16 Nov 2011.docx

Importance: High

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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PRIVILEGED & CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

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1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial modelⁱ, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

ⁱ Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

Aleksandar Kojic

From: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 5, 2011 5:21 PM
To: 'Andrew Lin'; Serge Imbrogno; Rick Jennings (MEI)
Cc: Michael Killeavy
Subject: RE: TCE modelling - next steps
Attachments: TCENeed to Know 16 Nov 2011.docx

Privileged and Confidential

FYI. We have to been asked what we would need from TCE. You may already have this list but thought that I would send you an updated one. Thanks...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]
Sent: Viernes, 02 de Diciembre de 2011 01:06 p.m.
To: Serge Imbrogno; Rick Jennings (MEI); JoAnne Butler
Subject: TCE modelling - next steps

Hi,

I got a message back from Terry Bennett of TCE yesterday. He had been travelling for a few days and couldn't respond earlier. He's working with his lawyers now on the CA to disclose the model, and will hopefully get a draft to us shortly.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

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ⁱ Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 7, 2011 2:55 PM
To: JoAnne Butler; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements
Attachments: TCENeed to Know 16 Nov 2011.docx; Copy of Base Oakville Generating Station Unlevered Economics_OPA_IO.XLS

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot -- let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

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¹ Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

2009	2009	2009	2010	2010	2010	2010	2011	2011	2011	2011	2012	2012	2012	2012	2013	2013	2013	2013	2013	2014	2015	2016	2017	2018	2019	2020	2021
7/1/2009	9/30/2009	12/31/2009	4/1/2010	7/1/2010	9/30/2010	12/31/2010	4/1/2011	7/1/2011	9/30/2011	12/31/2011	4/1/2012	7/1/2012	9/30/2012	12/31/2012	4/1/2013	7/1/2013	9/30/2013	11/15/2013	7/1/2014	7/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021	

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TransCanada Oakville GS - Unlevered Economics (July 8, 2009)



Note: All Values in \$M CAD
Pricing & Index Assumptions

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044
	7/1/2022	7/1/2023	7/1/2024	7/1/2025	7/1/2026	7/1/2027	7/1/2028	7/1/2029	7/1/2030	7/1/2031	7/1/2032	7/1/2033	7/1/2034	7/1/2035	7/1/2036	7/1/2037	7/1/2038	7/1/2039	7/1/2040	7/1/2041	7/1/2042	7/1/2043	7/1/2044
Capital Spending, IDC & LTSA Costs																							
Initial Capital Including Land	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Land sale (after tax amount)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (102.2)	\$ -
Capital Expenditure	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (102.2)	\$ -
IDC Calculation																							
Opening Balance	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0
Current Period Spending	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ending Balance	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0	\$ 149.0
LTSA Costs	\$ 22.7	\$ 19.7	\$ 23.2	\$ 20.6	\$ 21.3	\$ 22.1	\$ 24.1	\$ 24.9	\$ 25.4	\$ 25.9	\$ 26.4	\$ 26.9	\$ 27.5	\$ 28.0	\$ 28.6	\$ 29.1	\$ 29.7	\$ 30.3	\$ 30.9	\$ 31.5	\$ -	\$ -	\$ -
Calculation of Cash Margin																							
Calculated NRR	\$ 192.7	\$ 193.6	\$ 194.4	\$ 195.4	\$ 196.3	\$ 197.2	\$ 198.2	\$ 199.2	\$ 200.2	\$ 201.2	\$ 202.3	\$ 152.6											\$ -
Imputed Net Revenue	\$ 49.7	\$ 35.4	\$ 44.5	\$ 29.9	\$ 37.8	\$ 47.3	\$ 55.6	\$ 66.8	\$ 59.4	\$ 60.8	\$ 57.7	\$ 63.2											
Contingency Support Payment	\$ 143.0	\$ 158.1	\$ 149.9	\$ 165.5	\$ 158.5	\$ 149.9	\$ 142.6	\$ 132.4	\$ 140.8	\$ 140.5	\$ 144.6	\$ 89.4											
Revenues																							
Actual Gross Market Revenues	\$ 302.5	\$ 253.7	\$ 312.1	\$ 250.8	\$ 268.7	\$ 305.2	\$ 355.6	\$ 379.3	\$ 358.2	\$ 365.7	\$ 373.4	\$ 381.2	\$ 388.8	\$ 396.6	\$ 404.5	\$ 412.6	\$ 420.9	\$ 429.3	\$ 437.9	\$ 446.6	\$ 455.6	\$ 349.4	
Contingency Support Payments (CSP)	\$ 143.0	\$ 158.1	\$ 149.9	\$ 165.5	\$ 158.5	\$ 149.9	\$ 142.6	\$ 132.4	\$ 140.8	\$ 140.5	\$ 144.6	\$ 107.2	\$ 112.0	\$ 111.8	\$ 111.7	\$ 111.5	\$ 111.4	\$ 111.2	\$ 111.1	\$ 110.9	\$ 110.7	\$ 83.0	
Revenue Sharing Payment (RSP)																							
Total Revenues	\$ 445.5	\$ 411.8	\$ 462.0	\$ 416.3	\$ 427.2	\$ 455.1	\$ 498.3	\$ 511.7	\$ 499.0	\$ 506.2	\$ 518.0	\$ 488.4	\$ 500.8	\$ 508.4	\$ 516.2	\$ 524.1	\$ 532.2	\$ 540.5	\$ 548.9	\$ 557.5	\$ 566.3	\$ 432.4	\$ -
Expenses																							
Fuel Costs	\$ 240.1	\$ 207.0	\$ 251.1	\$ 207.2	\$ 218.8	\$ 245.6	\$ 283.3	\$ 295.9	\$ 281.1	\$ 287.0	\$ 293.0	\$ 299.1	\$ 305.1	\$ 311.2	\$ 317.5	\$ 323.8	\$ 330.3	\$ 336.9	\$ 343.6	\$ 350.5	\$ 357.5	\$ 273.5	
Variable Energy Costs	\$ 6.0	\$ 5.1	\$ 6.3	\$ 5.2	\$ 5.4	\$ 6.1	\$ 7.1	\$ 7.4	\$ 7.0	\$ 7.1	\$ 7.3	\$ 7.4	\$ 7.6	\$ 7.7	\$ 7.9	\$ 8.0	\$ 8.2	\$ 8.3	\$ 8.5	\$ 8.7	\$ 8.8	\$ 6.8	
Fixed Costs	\$ 28.7	\$ 28.7	\$ 29.6	\$ 29.5	\$ 44.0	\$ 30.8	\$ 31.7	\$ 32.3	\$ 32.5	\$ 33.1	\$ 33.6	\$ 32.7	\$ 33.3	\$ 33.9	\$ 34.6	\$ 35.3	\$ 36.0	\$ 36.7	\$ 37.5	\$ 38.2	\$ 39.0	\$ 34.1	
Total Expenses	\$ 274.7	\$ 240.8	\$ 287.0	\$ 241.9	\$ 268.2	\$ 282.5	\$ 322.1	\$ 335.6	\$ 320.6	\$ 327.2	\$ 333.8	\$ 339.3	\$ 346.0	\$ 352.9	\$ 359.9	\$ 367.1	\$ 374.5	\$ 382.0	\$ 389.6	\$ 397.4	\$ 405.3	\$ 314.4	\$ -
EBITDA / Cash Margin	\$ 170.7	\$ 171.0	\$ 175.0	\$ 174.4	\$ 159.1	\$ 172.6	\$ 176.2	\$ 176.1	\$ 178.4	\$ 179.0	\$ 184.1	\$ 149.1	\$ 154.8	\$ 155.5	\$ 156.3	\$ 157.0	\$ 157.8	\$ 158.5	\$ 159.3	\$ 160.1	\$ 161.0	\$ 118.1	\$ -
Income Tax Calculations																							
Capital Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxable Income																							
Cash Margin (EBITDA)	\$ 170.72	\$ 171.01	\$ 175.01	\$ 174.41	\$ 159.05	\$ 172.60	\$ 176.21	\$ 176.07	\$ 178.43	\$ 179.00	\$ 184.13	\$ 149.14	\$ 154.82	\$ 155.53	\$ 156.26	\$ 157.01	\$ 157.77	\$ 158.54	\$ 159.33	\$ 160.13	\$ 160.96	\$ 118.05	\$ -
Ont Capital Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capitalized Interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CCA Allowance	\$ 62.38	\$ 54.82	\$ 54.30	\$ 48.15	\$ 45.77	\$ 43.88	\$ 43.43	\$ 42.22	\$ 40.79	\$ 39.67	\$ 38.75	\$ 38.01	\$ 37.42	\$ 36.97	\$ 36.64	\$ 36.41	\$ 36.29	\$ 36.25	\$ 36.29	\$ 36.40	\$ 4.41	\$ 46.07	
Taxable Income	\$ 108.34	\$ 116.19	\$ 120.71	\$ 126.27	\$ 113.28	\$ 128.72	\$ 132.78	\$ 133.85	\$ 137.64	\$ 139.33	\$ 145.38	\$ 111.13	\$ 117.40	\$ 116.57	\$ 119.63	\$ 120.59	\$ 121.48	\$ 122.29	\$ 123.04	\$ 123.73	\$ 156.55	\$ 71.98	\$ -
Tax Pooling																							
Opening Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Additions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loss Realized	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Closing Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxable Income after Pooling	108.34	116.19	120.71	126.27	113.28	128.72	132.78	133.85	137.64	139.33	145.38	111.13	117.40	116.57	119.63	120.59	121.48	122.29	123.04	123.73	156.55	71.98	0.00
Tax Rate	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Cash Taxes	27.09	29.05	30.18	31.57	28.32	32.18	33.20	33.46	34.41	34.83	36.34	27.78	29.35	29.64	29.91	30.15	30.37	30.57	30.76	30.93	39.14	18.00	0.00
Unlevered Free Cash Flow																							
Cash Margin	\$ 170.7	\$ 171.0	\$ 175.0	\$ 174.4	\$ 159.1	\$ 172.6	\$ 176.2	\$ 176.1	\$ 178.4	\$ 179.0	\$ 184.1	\$ 149.1	\$ 154.8	\$ 155.5	\$ 156.3	\$ 157.0	\$ 157.8	\$ 158.5	\$ 159.3	\$ 160.1	\$ 161.0	\$ 118.1	\$ -
- Capital Expenditure	\$ 22.7	\$ 19.7	\$ 23.2	\$ 20.6	\$ 21.3	\$ 22.1	\$ 24.1	\$ 24.9	\$ 25.4	\$ 25.9	\$ 26.4	\$ 26.9	\$ 27.5	\$ 28.0	\$ 28.6	\$ 29.1	\$ 29.7	\$ 30.3	\$ 30.9	\$ 31.5	\$ -	\$ (102.2)	\$ -
- Cash Taxes + Capital Taxes	\$ 27.1	\$ 29.0	\$ 30.2	\$ 31.6	\$ 28.3	\$ 32.2	\$ 33.2	\$ 33.5	\$ 34.4	\$ 34.8	\$ 36.3	\$ 27.8	\$ 29.3	\$ 29.6	\$ 29.9	\$ 30.1	\$ 30.4	\$ 30.6	\$ 30.8	\$ 30.9	\$ 39.1	\$ 18.0	\$ -
Net Cash Flow After Tax	\$ 120.9	\$ 122.2	\$ 121.6	\$ 122.2	\$ 109.4	\$ 118.3	\$ 118.9	\$ 117.7	\$ 118.7	\$ 118.3	\$ 121.4	\$ 94.4	\$ 98.0	\$ 97.9	\$ 97.8	\$ 97.7	\$ 97.7	\$ 97.7	\$ 97.6	\$ 97.7	\$ 121.8	\$ 202.3	\$ -

Aleksandar Kojic

From: JoAnne Butler
Sent: December 7, 2011 5:05 PM
To: 'Andrew Lin'; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: RE: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

Andrew,

It is disappointing that we are not going to be allowed to see their model but they are certainly consistent as to why we can't see it. The Xcel spreadsheet we have had for over a year. Nonetheless, if they can give us the information that we have requested then we will just build up our own model.

We can make ourselves available for the meetings.

Thanks...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

416-969-6005 Tel.
416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]
Sent: Miércoles, 07 de Diciembre de 2011 02:55 p.m.
To: JoAnne Butler; Jonathan Weisstub; Serge Imbrogno; Rick Jennings (MEI); Dermot Muir
Cc: Michael Killeavy; Peggy Delaney
Subject: Vapour Pre-meeting and Meeting with TCE re: assumptions requirements

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8
Tel: (416) 325-3299

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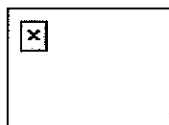
Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 7, 2011 6:01 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list.

We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request. Please let me know your thoughts on this front.

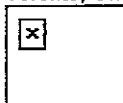
Regards,
Paul



Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)

From: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
and the ONTARIO POWER AUTHORITY

Respondents

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.
- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");
2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;
3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;
4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;
5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith;
11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.
14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;
15. All project development schedules and construction schedules for the OGS;
16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
17. The Long Term Service Agreement;
18. Operating and Maintenance ("O&M") Agreements for the OGS; and
19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].

Aleksandar Kojic

From: JoAnne Butler
Sent: December 8, 2011 9:15 AM
To: 'Ivanoff, Paul'; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

Paul,

It has been made clear to us (again) that TCE will NOT share their model. From an earlier email from IO, quote:

"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

So, I am not sure if asking them for the model again will add any value or move anything forward. Perhaps we can word our request (thinking future audit) something like the following:

"After repeated requests to be able to view the TCE model, they refuse to do so because of purported commercial sensitivity and the multiple, large and complex formulas and models that feed into it. Therefore, OPA has no choice but to recreate a shadow model. In order to that, we need the following information:" . This is more or less what MK has indicated in his one pager of asks but maybe we need to expand it.

Thoughts??

JCB

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From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

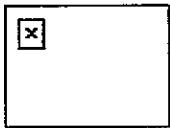
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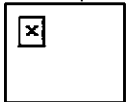
Paul



Paul Ivanoff
Partner

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Toronto, Ontario, Canada M5X 1B8



From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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To: Ivanoff, Paul <PIvanoff@osler.com>
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Aleksandar Kojic

From: Michael Killeavy
Sent: December 8, 2011 9:34 AM
To: JoAnne Butler; 'Ivanoff, Paul'
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: OPA_v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

We have reviewed the document and made a few suggested changes. The changes are in blackline in the attached version of the document.

Michael Killeavy, LL.B., MBA, P.Eng.
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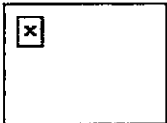
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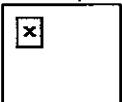
Regards,
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Draft & Privileged

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
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16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
17. The Long Term Service Agreement with MPS Canada Ltd.;
18. Operating and Maintenance ("O&M") Agreements for the OGS; and
19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].
20. Strategy for offering energy into IESO Administered Market
- 19-21. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: December 8, 2011 9:40 AM
To: JoAnne Butler; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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Sent: Thursday, December 08, 2011 9:15 AM
To: Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

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416-969-6005 Tel.
416-969-6071 Fax.
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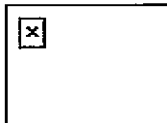
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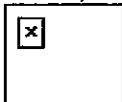
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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 8, 2011 9:50 AM
To: 'Sebastiano, Rocco'; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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joanne.butler@powerauthority.on.ca

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Jueves, 08 de Diciembre de 2011 09:40 a.m.
To: JoAnne Butler; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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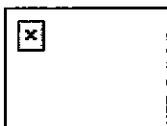
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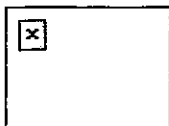
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Aleksandar Kojic

From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: December 8, 2011 11:57 AM
To: JoAnne Butler; Sebastiano, Rocco; Michael Killeavy
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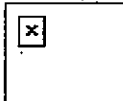
I'll send the document (as revised by Michael) over to John Kelly.
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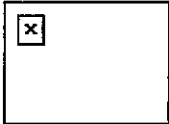
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Aleksandar Kojic

From: Serge Imbrogno [Serge.Imbrogno@ofina.on.ca]
Sent: December 9, 2011 2:26 PM
To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
Subject: Southwest GTA Update_Dec6-2011v2.docx
Attachments: Southwest GTA Update_Dec6-2011v2.docx

Hi,

Attached are our initial comments on the TCE model.

Serge

This message, including any attachments, is meant only for the use of the individual(s) to whom it is intended and may contain information that is privileged/confidential. Any unauthorized use, copying or disclosure is strictly prohibited. If you are not the intended recipient or have received this message in error, please notify us immediately by reply e-mail and permanently delete this message, including any attachments, without reading them, and destroy all copies. Thank you.

SOUTHWEST GTA GAS-FIRED PROCUREMENT

On December 2, 2011, TransCanada Energy (TCE) provided a spreadsheet which was claimed to be as presented to the TCE board to outline the base economics for the Oakville Generating Station (OGS).

CONTEXT

- TCE has been seeking recovery of its out-of-pocket expenses (\$37 million), the cost of turbines for the project (\$210 million) if they cannot be redeployed and its estimated financial value of OGS.
- TCE estimated the financial value of OGS at 503 million using a discount rate of 5.25 percent and issued a subsequent estimate of \$385 million using an 8 percent discount rate.

TCE SPREADSHEET OVERVIEW

- The spreadsheet provided summarizes the key revenues and expenses of the Oakville project, but does not provide key underlying calculations or assumptions.
- The spreadsheet assumes \$1,195.1 million CAPEX during the initial construction period to build the project and a \$680.5 M long-term service agreement during its operation to cover maintenance and refurbishment costs.
- \$102.2 million is the assumed inflow from a land sale at the end of project life.
- Interest during construction is \$149 million and is listed as capitalized interest.
 - However, the interest does not appear to be capitalized for tax purposes (see issues / questions section below).
- The net revenue requirement begins from a base of \$185.5 million (approximately \$17,000 / MW / month assuming 900 MW) and appears to grow based on a calculation of 20 percent of base rate escalated at CPI of 2 percent over the 20 year OPA contract.
- On average, imputed net revenues as assumed to be calculated under the OPA contract are \$8 million lower than actual margin over variable costs on an annual basis.
 - The source(s) of these revenues over and above those on the OPA contract are not provided and could be due to a variety of reasons (e.g., excess capacity not under contract, participation in IESO ancillary services or cost guarantee programs, etc.)
- Post-OPA contract EBITDA is about \$15 M less on average per year than under the 20 year OPA contract.
 - The facility is assumed to operate for 10 years following the initial OPA contract under a similar contract.
- Negative taxable income (i.e. negative taxes owed) that occur during construction are assumed to be realized in the year they are incurred, meaning that cash outflows during the construction phase of the project are reduced.

- The spreadsheet also provides the option to pool negative taxable income amounts and apply against positive taxable income upon contract start. Given declining corporate tax rates and time value of money considerations, this option reduces the NPV of the project by about \$12 million.
- Bottom line cash flows provided are unlevered after tax free cash flows. This represents all cash flows to the firm before any financing considerations (i.e. capital structure, debt) are taken into account.

CONSISTENCY WITH PREVIOUS ESTIMATES

- While very preliminary analysis, the \$503 million and \$385 million valuations provided by TCE can be reasonably approximated using the net after tax cash flow values in the spreadsheet.
 - The NPV as at July 1, 2009 is \$504 million using a discount rate of 5.25 percent ROE.
 - The NPV as at July 1, 2009 is \$376 million using a discount rate of 5.25 percent ROE up to 2033 and a discount rate of 8 percent ROE for the remaining 10 years.
- Further due diligence can be completed to refine the estimates.

PRIMARY ISSUES / QUESTIONS ON TCE CALCULATIONS

- **Capitalized Interest:** While interest during the construction period is listed as capitalized interest, it is in fact treated as an expense in the year incurred when calculating cash taxes. Discussion is needed surrounding whether the interest incurred is or is not capitalized and what must be assumed for tax purposes.
- **Long-Term Service Agreement:** It is unclear what parameters surround the assumed long-term service agreement and whether the maintenance performed under such an agreement would enable plant operation for the 10 years following the initial 20 year contract term.
- **Imputed Net Revenues:** Given the apparent \$8 million annual margin over and above OPA contract imputed revenues, the province must consider its position with respect to covering any amounts over and above those earned under the OPA contract.
- **Net After Tax Cash Flows:** The cash flows in the model are unlevered free cash flows, which represent the free cash flows before borrowing costs are taken into account. The province must continue to discuss what discount rate would be appropriate for this analysis given the uncertainties surrounding TCE project financing, decisions on appropriate risk premiums to be included, differences between the discount rate during and post OPA contract, etc.
- **Net After Tax Cash Flow Calculation:** Clarification is required on why a factor of 0.4 is multiplied against the tax shield when calculating net after tax cash flows and how this factor is established.
 - Without this factor the NPV valuation is reduced by about \$20 million.

Electricity Finance Branch
Corporate and Electricity Finance Division
December 6, 2011

Aleksandar Kojic

From: JoAnne Butler
Sent: December 9, 2011 2:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx
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Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

JoAnne C. Butler
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From: Serge Imbrogno [<mailto:Serge.Imbrogno@ofina.on.ca>]
Sent: Viernes, 09 de Diciembre de 2011 02:26 p.m.
To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
Subject: Southwest GTA Update_Dec6-2011v2.docx

Hi,

Attached are our initial comments on the TCE model.

Serge

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SOUTHWEST GTA GAS-FIRED PROCUREMENT

On December 2, 2011, TransCanada Energy (TCE) provided a spreadsheet which was claimed to be as presented to the TCE board to outline the base economics for the Oakville Generating Station (OGS).

CONTEXT

- TCE has been seeking recovery of its out-of-pocket expenses (\$37 million), the cost of turbines for the project (\$210 million) if they cannot be redeployed and its estimated financial value of OGS.
- TCE estimated the financial value of OGS at 503 million using a discount rate of 5.25 percent and issued a subsequent estimate of \$385 million using an 8 percent discount rate.

TCE SPREADSHEET OVERVIEW

- The spreadsheet provided summarizes the key revenues and expenses of the Oakville project, but does not provide key underlying calculations or assumptions.
- The spreadsheet assumes \$1,195.1 million CAPEX during the initial construction period to build the project and a \$680.5 M long-term service agreement during its operation to cover maintenance and refurbishment costs.
- \$102.2 million is the assumed inflow from a land sale at the end of project life.
- Interest during construction is \$149 million and is listed as capitalized interest.
 - However, the interest does not appear to be capitalized for tax purposes (see issues / questions section below).
- The net revenue requirement begins from a base of \$185.5 million (approximately \$17,000 / MW / month assuming 900 MW) and appears to grow based on a calculation of 20 percent of base rate escalated at CPI of 2 percent over the 20 year OPA contract.
- On average, imputed net revenues as assumed to be calculated under the OPA contract are \$8 million lower than actual margin over variable costs on an annual basis.
 - The source(s) of these revenues over and above those on the OPA contract are not provided and could be due to a variety of reasons (e.g., excess capacity not under contract, participation in IESO ancillary services or cost guarantee programs, etc.)
- Post-OPA contract EBITDA is about \$15 M less on average per year than under the 20 year OPA contract.
 - The facility is assumed to operate for 10 years following the initial OPA contract under a similar contract.
- Negative taxable income (i.e. negative taxes owed) that occur during construction are assumed to be realized in the year they are incurred, meaning that cash outflows during the construction phase of the project are reduced.

- The spreadsheet also provides the option to pool negative taxable income amounts and apply against positive taxable income upon contract start. Given declining corporate tax rates and time value of money considerations, this option reduces the NPV of the project by about \$12 million.
- Bottom line cash flows provided are unlevered after tax free cash flows. This represents all cash flows to the firm before any financing considerations (i.e. capital structure, debt) are taken into account.

CONSISTENCY WITH PREVIOUS ESTIMATES

- While very preliminary analysis, the \$503 million and \$385 million valuations provided by TCE can be reasonably approximated using the net after tax cash flow values in the spreadsheet.
 - The NPV as at July 1, 2009 is \$504 million using a discount rate of 5.25 percent ROE.
 - The NPV as at July 1, 2009 is \$376 million using a discount rate of 5.25 percent ROE up to 2033 and a discount rate of 8 percent ROE for the remaining 10 years.
- Further due diligence can be completed to refine the estimates.

PRIMARY ISSUES / QUESTIONS ON TCE CALCULATIONS

- **Capitalized Interest:** While interest during the construction period is listed as capitalized interest, it is in fact treated as an expense in the year incurred when calculating cash taxes. Discussion is needed surrounding whether the interest incurred is or is not capitalized and what must be assumed for tax purposes.
- **Long-Term Service Agreement:** It is unclear what parameters surround the assumed long-term service agreement and whether the maintenance performed under such an agreement would enable plant operation for the 10 years following the initial 20 year contract term.
- **Imputed Net Revenues:** Given the apparent \$8 million annual margin over and above OPA contract imputed revenues, the province must consider its position with respect to covering any amounts over and above those earned under the OPA contract.
- **Net After Tax Cash Flows:** The cash flows in the model are unlevered free cash flows, which represent the free cash flows before borrowing costs are taken into account. The province must continue to discuss what discount rate would be appropriate for this analysis given the uncertainties surrounding TCE project financing, decisions on appropriate risk premiums to be included, differences between the discount rate during and post OPA contract, etc.
- **Net After Tax Cash Flow Calculation:** Clarification is required on why a factor of 0.4 is multiplied against the tax shield when calculating net after tax cash flows and how this factor is established.
 - Without this factor the NPV valuation is reduced by about \$20 million.

Electricity Finance Branch
Corporate and Electricity Finance Division
December 6, 2011

Aleksandar Kojic

From: JoAnne Butler
Sent: December 9, 2011 3:42 PM
To: Michael Killeavy
Subject: RE: Vapour Pre-Meeting

I send that paragraph to you yesterday when I responded to Rocco...told you...Ground Hog Day....

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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From: Michael Killeavy
Sent: Viernes, 09 de Diciembre de 2011 03:13 p.m.
To: JoAnne Butler
Subject: Fw: Vapour Pre-Meeting

WTF?

"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

Michael Killeavy, LL.B., MBA, P.Eng.
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From: Jonathan Weisstub [<mailto:Jonathan.Weisstub@infrastructureontario.ca>]
Sent: Friday, December 09, 2011 03:07 PM
To: Vas Georgiou <Vas.Georgiou@infrastructureontario.ca>; Mona Pio <Mona.Pio@infrastructureontario.ca>; Peggy Delaney <Peggy.Delaney@infrastructureontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>; Nadine Brammer <Nadine.Brammer@infrastructureontario.ca>; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Andrew Lin <Andrew.Lin@infrastructureontario.ca>; Yvonne Cuellar; Manuela Moellenkamp; Michael Killeavy; JoAnne Butler

Subject: Vapour Pre-Meeting

When: Monday, December 12, 2011 8:30 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).

Where: Boardroom 1807, 120 Adelaide St W * Check in with reception on 16th floor

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*~*

*** Please note time/location change: This is the same meeting as was sent out by Andrew Lin. It now begins at 8:30 am and will be held in person at the OPA offices at 120 Adelaide Street West, though the dial option will still be available. / Conference Call: 416 212-8011 Passcode: 9583454#

Original Invite

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14th at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

Andrew Lin
VP, Treasury & Risk Management, and Head of Special Initiatives
Infrastructure Ontario
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Aleksandar Kojic

From: Michael Killeavy
Sent: December 9, 2011 6:46 PM
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

OEFC has spotted the things we noted - discount rate assumption, difference in ANR and INR, etc.

I had noted the fact that IDC wasn't capitalized for tax purposes, too, but I didn't see it being a \$12M hit to NPV. I'd need to see their calculation before I can comment on this. By capitalizing IDC the interest expense will be smaller and as such less EBITDA is shielded from tax. I'd need to check with CRA to see how long it would be capitalized for.

Still, the most important issue are the assumptions underlying the post-term 10 year contract revenues.

It's encouraging to see that they've spotted the same things we spotted when we did our review.

Michael

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From: JoAnne Butler
Sent: Friday, December 09, 2011 02:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx

Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

JoAnne C. Butler
Vice President, Electricity Resources
Ontario Power Authority

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