
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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Aleksandar Kojic

From: JoAnne Butler
Sent: December 9, 2011 7:59 PM
To: Michael Killeavy; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

Yes, it looked to me to be a fair bit of alignment.

JCB

From: Michael Killeavy
Sent: Friday, December 09, 2011 06:46 PM
To: JoAnne Butler; Deborah Langelaan
Subject: Re: Southwest GTA Update_Dec6-2011v2.docx

OEFC has spotted the things we noted - discount rate assumption, difference in ANR and INR, etc.

I had noted the fact that IDC wasn't capitalized for tax purposes, too, but I didn't see it being a \$12M hit to NPV. I'd need to see their calculation before I can comment on this. By capitalizing IDC the interest expense will be smaller and as such less EBITDA is shielded from tax. I'd need to check with CRA to see how long it would be capitalized for.

Still, the most important issue are the assumptions underlying the post-term 10 year contract revenues.

It's encouraging to see that they've spotted the same things we spotted when we did our review.

Michael

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

From: JoAnne Butler
Sent: Friday, December 09, 2011 02:53 PM
To: Michael Killeavy; Deborah Langelaan
Subject: FW: Southwest GTA Update_Dec6-2011v2.docx

Privileged and Confidential – Prepared in Contemplation of Litigation

Here are OEFC's contributions to the analysis of the TCE spreadsheet and the questions that need to be asked of TCE. The purpose of the Monday morning meeting is to go through our list, which I had passed on earlier, plus these

comments from Serge and probably a list that IO has prepared. The outcome of the meeting should be a final list to present to TCE prior to a scheduled Wednesday meeting.

JCB

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

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

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

From: Serge Imbrogno [<mailto:Serge.Imbrogno@ofina.on.ca>]
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To: Jonathan Weisstub (Jonathan.Weisstub@infrastructureontario.ca); JoAnne Butler; 'Andrew Lin'; Rick Jennings (MEI)
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 13, 2011 8:59 AM
To: Manuela Moellenkamp
Subject: Fw: Call #2 Pre-Discussions for Meeting with TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4 - al blacklines.doc

Urgent...two copies for nine o'clock...

From: Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]
Sent: Tuesday, December 13, 2011 08:53 AM
To: Jonathan Weisstub <Jonathan.Weisstub@infrastructureontario.ca>; Dermot Muir <Dermot.Muir@infrastructureontario.ca>; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI) <Rick.Jennings@ontario.ca>; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>
Cc: Deborah Langelaan; Michael Lyle
Subject: RE: Call #2 Pre-Discussions for Meeting with TCE

Please find attached the revised draft of the info request to be discussed at our 9am call.

Andrew

-----Original Appointment-----

From: Peggy Delaney
Sent: Thursday, December 08, 2011 4:49 PM
To: Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno
Cc: 'Deborah Langelaan'; 'Michael Lyle'
Subject: Call #2 Pre-Discussions for Meeting with TCE
When: Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Dial in 416 212-8011 Passcode: 9583454# Moderator 4290#

This second meeting will go ahead ! On Monday it was determined that further discussion was necessary.

Note: This time is being held in case further discussions are necessary after Monday and will be determined on Monday's call

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

Scope of Documentary Production

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

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.
- Relevant Time Frame: October 2, 2008 - Present

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

- ~~1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");~~
- ~~2.1. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;~~
- ~~3.2. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;~~
- ~~4.3. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;~~
- ~~5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~

Draft & Privileged

- | 6.4. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
- | 7.5. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
- | 8.6. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
- | 9.7. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
- | 10.8. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
- | 11.9. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
- | 12.10. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
- | 13.11. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.
- | 14. ~~The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;~~
- | 15. ~~All project development schedules and construction schedules for the OGS;~~
- | 16.12. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
- | 17.13. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;
- | 18. ~~Separated revenue and expense line items in the financial projections Operating and Maintenance ("O&M") Agreements for the OGS;~~
- | 19. ~~Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008—present];~~
- | 20.14. Strategy for offering the production of energy into IESO Administered Market versus revenue and expenses for contracted energy; and
- | 21.15. The assumptions made with respect to the forecasted price of carbon.

Draft & Privileged

Draft & Privileged

Aleksandar Kojic

From: Andrew Lin [Andrew.Lin@infrastructureontario.ca]
Sent: December 13, 2011 3:00 PM
To: Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub
Cc: Michael Lyle
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE
Attachments: Scope of Documentary Information re TCE.doc

Here is the clean copy of what I'll send to TCE.

From: Andrew Lin
Sent: Tuesday, December 13, 2011 2:35 PM
To: Dermot Muir; Serge Imbrogno; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Jonathan Weisstub
Cc: 'Michael.Lyle@powerauthority.on.ca'
Subject: RE: v5 Scope of Documentary Discovery OPA re TCE

If there are no further comments, I will make a clean copy of Dermot's last blackline and send to TCE this afternoon.

Andrew

From: Dermot Muir
Sent: Tuesday, December 13, 2011 9:48 AM
To: Serge Imbrogno; Andrew Lin; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI)
Cc: 'Michael.Lyle@powerauthority.on.ca'
Subject: v5 Scope of Documentary Discovery OPA re TCE

I have inserted a new clause in the preamble. Let me now what you think.

Regards

Dermot

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

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List of Proposed Settlement Information

Without prejudice to the rights of any of TCE, the Province of Ontario or the Ontario Power Authority (the “Parties”) to require full documentary disclosure in the context of any arbitration or other legal process undertaken between or amongst the Parties.

1. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported “unlevered cost of equity”;
2. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
3. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
4. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
5. All supporting documentation relating to fixed and variable operating and maintenance costs (“O&M costs”) for the OGS facility, including any Operating and Maintenance (“O&M”) Agreements.
6. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine including invoices and proof of payments;
7. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;
8. The “replacement contract” that TCE anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged “residual cash flow”);
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
10. The assumptions made with respect to the forecasted price of carbon.

Aleksandar Kojic

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: December 14, 2011 7:36 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco; Michael Lyle; JoAnne Butler; Smith, Elliot
Subject: Re: OGS Financial Model

Michael,

As there is an arbitration agreement in place with TCE that contemplates production of documents, we could proceed to get the arbitrator appointed and then make the request to the arbitrator that the information that we have asked for be produced by TCE. We could then get a ruling compelling them to produce.

Regards,
Paul

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

From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Wednesday, December 14, 2011 05:55 PM
To: Ivanoff, Paul
Cc: Sebastiano, Rocco; Michael Lyle <Michael.Lyle@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Subject: Fw: OGS Financial Model

Paul,

There was a settlement meeting at TCE today and it didn't go well. I didn't attend, but our requests for information were rebuffed again and again.

We've been tasked with developing a financial model for OGS (see below). Could we use NERA to shadow model for testing purposes?

Thank you,
Michael

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 Killeavy
Sent: Wednesday, December 14, 2011 05:51 PM
To: Ronak Mozayyan; Deborah Langelaan
Cc: JoAnne Butler; Catherine Forster; Michael Lyle
Subject: OGS Financial Model

Deb and Ronak,

We need to regroup on this tomorrow. Evidently, development of the model needs to be accelerated. We have a week basically to build a model for the OGS.

I know this isn't what I told you earlier, but sadly we've been overcome by events.

I think it's quite possible if we work together and chunk out the work. We can use a lot of the generic model you have done already and then link it to the deemed dispatch models we already have for SWGTA.

What we don't know, we will assume. We may need to ask Corinna to use Thermoflow to get us a physical heat rate for OGS, but this can be done in parallel with development of the financial model.

Michael

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 14, 2011 9:39 PM
To: Michael Killeavy
Subject: Fw: OGS Financial Model

I don't think that we are ready to go the arbitration route yet, however, your idea of using NERA as a check on the model is a good one. Let's chat tomorrow...

JCB

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

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Wednesday, December 14, 2011 07:36 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Michael Lyle; JoAnne Butler; Smith, Elliot <ESmith@osler.com>
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 15, 2011 1:06 PM
To: Jonathan Weisstub; 'Andrew Lin'; 'McKeever, Garry (MEI)'; Serge Imbrogno; Dermot Muir
Cc: Michael Killeavy; Deborah Langelaan
Subject: TCE Status Update....

Gentlemen,

I spoke with my team last night and again this morning. We had just started to model the OGS plant and we will put a priority on it. We will back calculate from the spreadsheet to the extent that we can and the rest will be assumptions. However, we had both a highly regarded technical consultant and contract expert working with us on this file and validating our model when we did the peaking model in the spring, and we will use these same parties as necessary, as validation of the work that we do.

We will endeavour to turn something around mid next week, and if TCE comes back with any cost data (which I think that they agreed that they might give us, ie. routine O&M and Major Maintenance) then we can populate with actual data.

FYI, as probably the case with many of you, I will be out of the office starting Thursday next week until after the first week in January; however, we can continue to fine tune the model.

Thanks....

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 15, 2011 1:10 PM
To: JoAnne Butler; 'Jonathan Weisstub'; 'Andrew Lin'; 'McKeever, Garry (MEI)'; 'Serge Imbrogno'; 'Dermot Muir'
Cc: Deborah Langelan
Subject: RE: TCE Status Update....

Correct. We have reverse engineered the calculations in the past and it just gives us dollar values and not what assumptions were used to arrive at the dollar values, which is what we need.

Michael Killeavy, LL.B., MBA, P.Eng.
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FYI, as probably the case with many of you, I will be out of the office starting Thursday next week until after the first week in January; however, we can continue to fine tune the model.

Thanks....

JCB

JoAnne C. Butler
Vice President, Electricity Resources

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Aleksandar Kojic

From: Deborah Langelaan
Sent: December 22, 2011 12:13 PM
To: JoAnne Butler; Michael Killeavy
Cc: Ronak Mozayyan; Keith Sandor
Subject: OGS Modelling - OPA Assumptions
Attachments: OPA_Assumptions.doc

JoAnne and Michael;

The attached document summarizes the assumptions that were used for our modelling purposes.

Deb

OPA Assumptions for Deemed Dispatch Model

Both the Deemed Dispatch and Energy Market Revenue models use HOEP and Natural Gas forward curves provided by PSP. The PSP commodity price forecast for Natural Gas follows a seasonal profile, averaging \$8.55/mmBtu per year and remains static throughout the 20-yr period. HOEP averages \$56/MWh over the 20-yr term, steadily increasing from the \$36.24/MWh (2014) to \$61.67/MWh (2033).

The resultant capacity factor is 62.7% which is higher than the expected 35% to 40%.

OPA Assumptions for Energy Market Revenue Model

To determine the energy market revenues the OPA's Deemed Dispatch model was revised to reflect the physical parameters of OGS. A contract term of 20 years was used to be consistent with the contract term used in TransCanada's Proforma. The Start-Up Gas volume from Exhibit B was used, 2,450 MMBTU/start-up.

In addition, SMS provided the following assumptions:

Nameplate Capacity

To the best of our knowledge TCE had not selected the steam turbine prior to contract cancellation. We therefore cannot confirm a nameplate capacity but based on the information provided by TCE and others we have assumed it to be 980 MW.

Actual Heat Rate

The actual as-fired heat rate cannot be properly determined until a steam turbine has been selected and its performance is known. For the purpose of OPA analysis we suggest that an average annual heat rate in the order of 6,800 Btu/kWh is reasonable. This heat rate includes a small allowance for heat rate degradation.

Start-up Maintenance Cost

Start-up maintenance cost is a "commercial" parameter used, or in this case not used, by project proponents. This cost is usually an integral part of O&M cost which is provided below.

LTSA Cost

The initial LTSA cost, which in this case is the cost of recommended initial spares, is an item that should be added separately to the fixed and variable LTSA costs. The initial LTSA cost, according to TCE and supported in LTSA agreement, is \$14,422,050 in 2008 dollars. Fixed and variable LTSA costs are included in the fixed O&M cost below.

Fixed O&M Costs

We have estimated O&M costs based on imputed hours calculated by OPA and information received by email from Keith Sandor. The gas turbines proposed for Oakville have maintenance intervals that depend on the number of operating hours as well as the number of starts/stops in addition to several other factors not mentioned here. If we were to consider that the number of imputed starts is equal to actual starts then the Facility's O&M life cycle cost may increase as a result of increased gas turbine inspection intervals.

Based on the number of imputed hours, we estimated that two combustors, two Class A, two Class B and two Class C gas turbine inspections will be required during contract term. Based on the foregoing we have estimated the cost of these inspections using in-house data and where available vendor information. For the steam turbine plant, we used a generic O&M cost since the steam turbine and boilers have not been selected by TCE, to the best of our knowledge, prior to contract cancellation.

Year	\$ Million	Deemed Generation (MWh)	O&M Costs (\$/MWh)
2014	27.81	1,784,580	15.583
2015	27.26	2,561,720	10.641
2016	27.56	2,526,440	10.909
2017	28.10	5,562,480	5.052
2018	28.46	6,299,440	4.518
2019	28.95	6,513,080	4.445
2020	29.15	6,820,800	4.274
2021	29.35	6,520,920	4.501
2022	30.16	5,826,100	5.177
2023	31.02	5,772,200	5.374
2024	31.12	5,428,220	5.733
2025	31.59	5,364,520	5.889
2026	32.37	5,406,660	5.987
2027	45.32	5,254,760	8.625
2028	33.27	5,545,820	5.999
2029	33.93	5,900,580	5.750
2030	34.14	6,071,100	5.623
2031	36.07	6,167,140	5.849
2032	34.92	6,184,780	5.646
2033	34.38	6,168,120	5.574
Avg.			6.557

OPA Assumptions for TransCanada's Proforma:

At this point in time the OPA has used TransCanada's Proforma to determine the Net Present Value of the cash flows. To calculate this we used the OPA's settlement model to determine the Imputed Net Revenue, the Actual Market Revenue, the Contingency Support Payment and the expenses for a contract term of 20 years. These values were then put into TransCanada's Proforma to determine the after-tax cash flows. The OPA then determined the Net Present Value of these cash flows using a discount rate of 5.25%.

Concerns Regarding TransCanda's Proforma

While running various scenarios using TransCanada's Proforma the results that were generated did not seem reasonable. The problem seems to reside with how the total annual revenue is depreciated and taxed.

Aleksandar Kojic

From: JoAnne Butler
Sent: December 22, 2011 12:30 PM
To: 'joannebutler@gmail.com'
Subject: Fw: OGS Modelling - OPA Assumptions
Attachments: OPA_Assumptions.doc

From: Deborah Langelaan
Sent: Thursday, December 22, 2011 12:13 PM
To: JoAnne Butler; Michael Killeavy
Cc: Ronak Mozayyan; Keith Sandor
Subject: OGS Modelling - OPA Assumptions

JoAnne and Michael;

The attached document summarizes the assumptions that were used for our modelling purposes.

Deb

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

OPA Assumptions for Deemed Dispatch Model

Both the Deemed Dispatch and Energy Market Revenue models use HOEP and Natural Gas forward curves provided by PSP. The PSP commodity price forecast for Natural Gas follows a seasonal profile, averaging \$8.55/mmBtu per year and remains static throughout the 20-yr period. HOEP averages \$56/MWh over the 20-yr term, steadily increasing from the \$36.24/MWh (2014) to \$61.67/MWh (2033).

The resultant capacity factor is 62.7% which is higher than the expected 35% to 40%.

OPA Assumptions for Energy Market Revenue Model

To determine the energy market revenues the OPA's Deemed Dispatch model was revised to reflect the physical parameters of OGS. A contract term of 20 years was used to be consistent with the contract term used in TransCanada's Proforma. The Start-Up Gas volume from Exhibit B was used, 2,450 MMBTU/start-up.

In addition, SMS provided the following assumptions:

Nameplate Capacity

To the best of our knowledge TCE had not selected the steam turbine prior to contract cancellation. We therefore cannot confirm a nameplate capacity but based on the information provided by TCE and others we have assumed it to be 980 MW.

Actual Heat Rate

The actual as-fired heat rate cannot be properly determined until a steam turbine has been selected and its performance is known. For the purpose of OPA analysis we suggest that an average annual heat rate in the order of 6,800 Btu/kWh is reasonable. This heat rate includes a small allowance for heat rate degradation.

Start-up Maintenance Cost

Start-up maintenance cost is a "commercial" parameter used, or in this case not used, by project proponents. This cost is usually an integral part of O&M cost which is provided below.

LTSA Cost

The initial LTSA cost, which in this case is the cost of recommended initial spares, is an item that should be added separately to the fixed and variable LTSA costs. The initial LTSA cost, according to TCE and supported in LTSA agreement, is \$14,422,050 in 2008 dollars. Fixed and variable LTSA costs are included in the fixed O&M cost below.

Fixed O&M Costs

We have estimated O&M costs based on imputed hours calculated by OPA and information received by email from Keith Sandor. The gas turbines proposed for Oakville have maintenance intervals that depend on the number of operating hours as well as the number of starts/stops in addition to several other factors not mentioned here. If we were to consider that the number of imputed starts is equal to actual starts then the Facility's O&M life cycle cost may increase as a result of increased gas turbine inspection intervals.

Based on the number of imputed hours, we estimated that two combustors, two Class A, two Class B and two Class C gas turbine inspections will be required during contract term. Based on the foregoing we have estimated the cost of these inspections using in-house data and where available vendor information. For the steam turbine plant, we used a generic O&M cost since the steam turbine and boilers have not been selected by TCE, to the best of our knowledge, prior to contract cancellation.

Year	\$ Million	Deemed Generation (MWh)	O&M Costs (\$/MWh)
2014	27.81	1,784,580	15.583
2015	27.26	2,561,720	10.641
2016	27.56	2,526,440	10.909
2017	28.10	5,562,480	5.052
2018	28.46	6,299,440	4.518
2019	28.95	6,513,080	4.445
2020	29.15	6,820,800	4.274
2021	29.35	6,520,920	4.501
2022	30.16	5,826,100	5.177
2023	31.02	5,772,200	5.374
2024	31.12	5,428,220	5.733
2025	31.59	5,364,520	5.889
2026	32.37	5,406,660	5.987
2027	45.32	5,254,760	8.625
2028	33.27	5,545,820	5.999
2029	33.93	5,900,580	5.750
2030	34.14	6,071,100	5.623
2031	36.07	6,167,140	5.849
2032	34.92	6,184,780	5.646
2033	34.38	6,168,120	5.574
Avg.			6.557

OPA Assumptions for TransCanada's Proforma:

At this point in time the OPA has used TransCanada's Proforma to determine the Net Present Value of the cash flows. To calculate this we used the OPA's settlement model to determine the Imputed Net Revenue, the Actual Market Revenue, the Contingency Support Payment and the expenses for a contract term of 20 years. These values were then put into TransCanada's Proforma to determine the after-tax cash flows. The OPA then determined the Net Present Value of these cash flows using a discount rate of 5.25%.

Concerns Regarding TransCanda's Proforma

While running various scenarios using TransCanada's Proforma the results that were generated did not seem reasonable. The problem seems to reside with how the total annual revenue is depreciated and taxed.

Aleksandar Kojic

From: Michael Killeavy
Sent: December 27, 2011 3:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...
Attachments: OGS Shadow Valuation Model - 27 Dec 2011 r5.xls

Importance: High

Sorry, I forgot to copy you on this.

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

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make INR=ANR, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if ANR=INR, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I ignore the terminal value in its entirety. If I use the same HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives and NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at \$8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at \$35/MWh and gas at \$4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let ANR=INR, so that the actual forward curves for HOEP and gas are irrelevant.

Michael

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Gas-fired Combined Cycle GS Financial Model With ANR * INR (Merchant Revenues Earned) - PROJECT ANALYSIS Using OPA Data

[illegible]

Capital Cost Allocation:	\$1.25% Multiple in 2002 \$	
CAPX to Class 5	33%	4%
CAPX to Class 17	34%	6%
CAPX to Class 48	29%	15%
Permitted CCA Rate	6.7%	

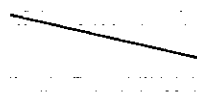
		APR	7%	Naval Development										Commercial Operation													
PERIOD			10%																								
Stations Per Day			23%																								
Contract (Variable) BMM			\$22.3M																								
Maximum Contract BMM			\$50.3M																								
Service Cost (CAPX) BMM			\$12.54M																								
APR			\$11.277	12-month																							
Fixed O&M			Per contract, provided by SMC (except Engineering)																								
Contract Variable O&M			\$3.05	12-month																							
Contract Net Rate			7728	12/12/18																							
Actual Net Rate			6000	12/12/18																							
Actual O&M Cost			11.58	12-month																							
12-month Cost			1406	12/12/18/19																							
Maximum 12-Mth Run Time D3			2	9																							
Service Factor			40%																								
Cost of Capital			12.5%		3	2	3		4	3	8		7	8	9	10	11	12	13	14	15	16	17	18	19	20	
12 CAPX Allocation to year				01/04/19	01/04/20	01/04/21	01/04/22	01/04/23	01/04/24	01/04/25	01/04/26	01/04/27	01/04/28	01/04/29	01/04/30	01/04/31	01										
12 CAPX (Fixed)			513.3	514.1	515.9	517.7	519.5	521.3	523.1	524.9	526.7	528.5	530.3	532.1	533.9	535.7	537.5	539.3	541.1	542.9	544.7	546.5	548.3	550.1	551.9	553.7	
Book Value at Expiry			513.3	514.0	515.8	517.5	519.2	520.9	522.6	524.3	526.0	527.7	529.4	531.1	532.8	534.5	536.2	537.9	539.6	541.3	543.0	544.7	546.4	548.1	549.8	551.5	
Total 12 CAPX Allocation @		12.37%																									

[illegible]

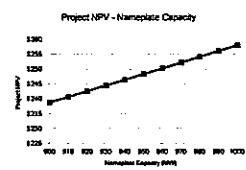
1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000
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TOTAL REVENUES																				
CHFC - FIVE Subsidiaries (15A)																				
	\$190	\$206	\$231	\$127	\$235	\$154	\$195	\$196	\$197	\$198	\$199	\$200	\$201	\$202	\$203	\$204	\$205	\$206	\$207	\$208
	\$27.8	\$27.8	\$27.8	\$28.1	\$28.1	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0	\$28.0
COSTS																				
	\$162	\$163	\$164	\$169	\$167	\$167	\$167	\$168	\$168	\$167	\$167	\$168	\$168	\$168	\$168	\$168	\$168	\$168	\$168	\$168
Operating UCC	\$13.13	\$13.63	\$14.04	\$15.03	\$15.79	\$15.94	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13	\$17.13
Depreciation Capital Cost Allocated	\$32	\$100	\$91	\$83	\$76	\$69	\$66	\$58	\$50	\$44	\$40	\$36	\$33	\$33	\$33	\$33	\$33	\$33	\$33	\$33
Operating UCC	\$13.41	\$1.01	\$0.93	\$0.79	\$0.74	\$0.79	\$0.74	\$0.62	\$0.54	\$0.46	\$0.40	\$0.36	\$0.33	\$0.33	\$0.33	\$0.33	\$0.33	\$0.33	\$0.33	\$0.33
Capitalized Interest																				
	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5	\$7.5
Taxable Income	\$32.6	\$34.2	\$43.6	\$73.6	\$11.3	\$25.8	\$80.0	\$10.3	\$26.4	\$11.3	\$11.3	\$12.4	\$13.4	\$13.4	\$13.4	\$13.4	\$13.4	\$13.4	\$13.4	\$13.4
Taxes Payable	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48	\$48
Form 990 - Present	\$5.83	\$2.92	\$1.25	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78	\$1.78
DEPR - Present	\$20.7	\$19.9	\$24.7	\$24.6	\$24.4	\$24.9	\$24.2	\$24.1	\$24.0	\$23.9	\$23.8	\$23.8	\$23.7	\$23.7	\$23.6	\$23.6	\$23.6	\$23.6	\$23.6	\$23.6
\$2.01 million in 100% S																				
8.23%																				
AMT - Present	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83
	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83	\$5.83
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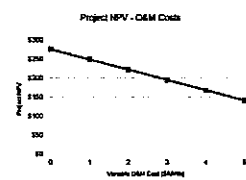
Heat Rate	\$2.68
60cwh	\$33.9
62.1h	\$30.6
63cwh	\$28.7
67.5c	\$25.6
70cwh	\$22.7
72.5h	\$20.6
750h	\$17.8



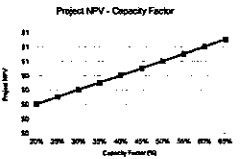
Harmonica	
Capacity	\$248
300	\$213
310	\$240
328	\$242
330	\$244
340	\$246
350	\$248
360	\$250
370	\$252
380	\$254
390	\$256
1000	\$258



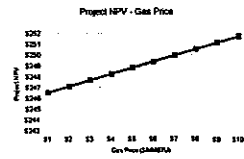
2016 (cont)		\$248
0	\$275	
1	\$288	
2	\$222	
3	\$194	
4	\$167	
5	\$140	



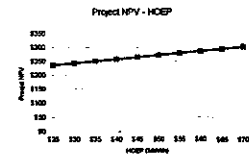
Cashew Nut	\$/lb
20%	\$8
33%	\$9
50%	\$9
66%	\$9
80%	\$9
90%	\$9
100%	\$9
110%	\$9
120%	\$9
130%	\$9
140%	\$9
150%	\$9



Gas Price	\$246
\$1	\$246
\$2	\$247
\$3	\$248
\$4	\$249
\$5	\$250
\$6	\$251
\$7	\$252
\$8	\$253
\$9	\$254
\$10	\$255



NOEP	\$148
\$25	\$149
\$30	\$150
\$35	\$151
\$40	\$152
\$45	\$153
\$50	\$154
\$55	\$155
\$60	\$156
\$65	\$157
\$70	\$158



Invest Rate	248.2946402
6000	334.3671844
6100	340.1825453
6200	346.0000000
6300	351.8175547
6400	357.6351094
6500	363.4526641
6600	369.2702188
6700	375.0877735
6800	380.9053282
6900	386.7228829
7000	392.5404376

Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 2:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

How do the nominal yearly cash flows for the twenty years compare to the nominal yearly TCE cash flows using your simpler model, ie. before you do any discounting??

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make $INR=ANR$, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if $ANR=INR$, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I ignore the terminal value in its entirety. If I use the same

HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives and NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at \$8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at \$35/MWh and gas at \$4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let ANR=INR, so that the actual forward curves for HOEP and gas are irrelevant.

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michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 6:15 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

As a follow up to my last email, I did an equity analysis, too. Their project NPV is not profits - deductions need to be made for paying off the debt.

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Sent: Wednesday, December 28, 2011 02:41 AM
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Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 8:56 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

To be clear, IO is not "hung" up" on the nominal cash flow issue, it was something that we collectively agreed to do to see if there was any way to correlate to the years and make sure that there were no big gaps. If it is something that cannot work because of differing forward curves of gas and HOEP and that it is a waste of time, then we need to come clean on that. Even if we got to an EBITDA level on a yearly basis that was reasonably close, that might help with future auditing. I do agree that getting close on an NPV value (regardless of what discount rate is assumed) is helpful.

I have a call today at ten thirty. I am thinking to going back to a set of principles that I talked about with David Livingston awhile back.

Here is my start on them:

- 1) Any discussion on terminal value goes right to Arbitration and all information needs to be disclosed, including the model;
- 2) The twenty year contract value will be based on our modelling and assumptions on HRate, capacity, availability, gas costs, O and M, major maintenance, etc., and ANR = INR.
- 3) Other market revenues in excess of contract will also be determined using our assumptions;
- 4) Discount Factor discussion needs to factor in inherent risks of operation and appropriate cost of debt and equity;
- 5) Per your earlier email, if we are just cutting them a cheque, "profits" need to be cut back to cover cost of debt. If we are looking at a replacement project, the profits can be used, assuming that they will finance in a similar fashion.

Other suggestions?

JCB

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 06:12 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

I don't know. I don't know why OEFC is so hung up on this. We don't have their modelling, so comparing line items is very hard to do. If the NPV of free cash flows (bottom line cash flow) is close to what they have in terms of NPV, then we independently have confirmed that their project NPV is about right - based on our reasonable assumptions (but their unrealistic "cost of equity" discount rate).

I cannot get their spread on ANR and INR with our assumptions on physical operation. They have \$80M in NPV terms (NPV of ANR-INR). I get it to be about \$40M. They likely have a higher nameplate capacity and/or lower heat rate. We used our own assumptions (950 MW and 6800 BTU/kWh). If you check the sensitivity analysis we can get up to their NPV, but we would need to change our physical assumptions for the plant.

I don't think comparing nominal cash flows on a yearly basis will get us very far. I could not replicate a lot of their line items (CCA, IDC, etc.). The underlying formulae and assumptions haven't been disclosed, so it's a mess trying to figure out how they arrived at some of their cash flows.

I'll ask Ronak to do a comparison for you.

Michael

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

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 9:10 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

Ok. I've asked Ronak to compare the nominal cash flows. At first blush, if the NPV's are close, then I think the nominal cash flows also must be close. We will do the check, though.

I was focussing on getting the math correct and plugging in reasonable assumptions for the model parameter - the result looks reasonable. I have asked Ronak and Keith to confirm that the model's working properly.

I have no other suggestions beyond us not waiving any rights to documentary evidence in any arbitration.

Tactically, proving damages is TCE's burden and not ours. I fear that with all the work we're agreeing to do with regard to modelling that we're assuming a burden of "disproving" their damages claim and proving what the damages ought to be. This puts us on defence and not offence. Since we don't have access to their detailed information this puts the ratepayer/taxpayer at a disadvantage. My advice is that we avoid having the tables turned on us.

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Michael.killeavy@powerauthority.on.ca

From: JoAnne Butler
Sent: Wednesday, December 28, 2011 08:55 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

To be clear, IO is not "hung" up" on the nominal cash flow issue, it was something that we collectively agreed to do to see if there was any way to correlate to the years and make sure that there were no big gaps. If it is something that cannot work because of differing forward curves of gas and HOEP and that it is a waste of time, then we need to come clean on that. Even if we got to an EBITDA level on a yearly basis that was reasonably close, that might help with future auditing. I do agree that getting close on an NPV value (regardless of what discount rate is assumed) is helpful.

I have a call today at ten thirty. I am thinking to going back to a set of principles that I talked about with David Livingston awhile back.

Here is my start on them:

1) Any discussion on terminal value goes right to Arbitration and all information needs to be disclosed, including the model;

- 2) The twenty year contract value will be based on our modelling and assumptions on HRate, capacity, availability, gas costs, O and M, major maintenance, etc., and ANR = INR.
- 3) Other market revenues in excess of contract will also be determined using our assumptions;
- 4) Discount Factor discussion needs to factor in inherent risks of operation and appropriate cost of debt and equity;
- 5) Per your earlier email, if we are just cutting them a cheque, "profits" need to be cut back to cover cost of debt. If we are looking at a replacement project, the profits can be used, assuming that they will finance in a similar fashion.

Other suggestions?

JCB

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 06:12 AM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

I don't know. I don't know why OEFC is so hung up on this. We don't have their modelling, so comparing line items is very hard to do. If the NPV of free cash flows (bottom line cash flow) is close to what they have in terms of NPV, then we independently have confirmed that their project NPV is about right - based on our reasonable assumptions (but their unrealistic "cost of equity" discount rate).

I cannot get their spread on ANR and INR with our assumptions on physical operation. They have \$80M in NPV terms (NPV of ANR-INR). I get it to be about \$40M. They likely have a higher nameplate capacity and/or lower heat rate. We used our own assumptions (950 MW and 6800 BTU/kWh). If you check the sensitivity analysis we can get up to their NPV, but we would need to change our physical assumptions for the plant.

I don't think comparing nominal cash flows on a yearly basis will get us very far. I could not replicate a lot of their line items (CCA, IDC, etc.). The underlying formulae and assumptions haven't been disclosed, so it's a mess trying to figure out how they arrived at some of their cash flows.

I'll ask Ronak to do a comparison for you.

Michael

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From: JoAnne Butler
Sent: Wednesday, December 28, 2011 02:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

How do the nominal yearly cash flows for the twenty years compare to the nominal yearly TCE cash flows using your simpler model, ie. before you do any discounting??

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

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Aleksandar Kojic

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Sent: December 28, 2011 1:42 PM
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Subject: RE: OGS Shadow Valuation Model ...
Attachments: NOMINAL DIFFERENCE.xls

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EBITDA

[illegible]

31-Dec-11	1-Apr-12	1-Jul-12	30-Sep-12	31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 41.2	\$ 167.5	\$ 167.8	\$ 168.6
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 162.40	\$ 163.98	\$ 163.78
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 41.18	\$ 5.11	\$ 3.86	\$ 4.81

1-Jul-17	1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
\$ 169.4	\$ 167.8	\$ 167.1	\$ 170.3	\$ 173.5	\$ 170.7	\$ 171.0	\$ 175.0	\$ 174.4	\$ 159.1	\$ 172.6	\$ 176.2
\$ 167.86	\$ 169.22	\$ 169.71	\$ 170.64	\$ 170.82	\$ 169.77	\$ 169.64	\$ 169.85	\$ 170.17	\$ 170.29	\$ 158.01	\$ 171.28
\$ 1.53	\$ 1.42	\$ 2.58	\$ 0.38	\$ 2.69	\$ 0.95	\$ 1.37	\$ 5.16	\$ 4.24	\$ 11.24	\$ 14.59	\$ 4.93

1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36	1-Jul-37	1-Jul-38	1-Jul-39	1-Jul-40	1-Jul-41
\$ 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
\$ 172.06	\$ 173.08	\$ 172.20	\$ 174.30	\$ 175.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
\$ 4.01	\$ 5.34	\$ 6.80	\$ 9.83	\$ 26.68	\$ 154.82	\$ 155.53	\$ 156.26	\$ 157.01	\$ 157.77	\$ 158.54	\$ 159.33	\$ 160.13

1-Jul-42	1-Jul-43	1-Jul-44
\$ 161.0	\$ 118.1	\$ -
\$ -	\$ -	\$ -
\$ 160.96	\$ 118.05	\$ -

Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 2:35 PM
To: 'joannebutler@gmail.com'
Subject: Fw: OGS Shadow Valuation Model ...
Attachments: NOMINAL DIFFERENCE.xls

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If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

EBITDA

[illegible]

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 5:08 PM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

This is really interesting...2026 and 2027 almost cancel out - \$3 mm difference...could be a timing issue on major maintenance? And the difference between 2013 and 2033 is about \$15 m - maybe another timing issue or they assume a few more months revenue? It will be interesting to see the next breakdowns after EBITDA...

Is this using your simpler model or the more complicated one?

I am trying to put off the meeting with IO until I get back, ie. Jan 9...will keep you posted how I do. We can catch up anyway when you are back in the office.

Thanks...

JCB

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Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

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Michael

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 5:23 PM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

It's TCE's project pro forma compared with the model I'd did over Christmas (only real model we have now) using our best forecast on HOEP and price of gas.

Ronak and Keith will finish checking the model calculations tomorrow.

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

From: JoAnne Butler
Sent: Wednesday, December 28, 2011 05:07 PM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

This is really interesting...2026 and 2027 almost cancel out - \$3 mm difference...could be a timing issue on major maintenance? And the difference between 2013 and 2033 is about \$15 m - maybe another timing issue or they assume a few more months revenue? It will be interesting to see the next breakdowns after EBITDA...

Is this using your simpler model or the more complicated one?

I am trying to put off the meeting with IO until I get back, ie. Jan 9...will keep you posted how I do. We can catch up anyway when you are back in the office.

Thanks...

JCB

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

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 01:42 PM
To: JoAnne Butler
Subject: RE: OGS Shadow Valuation Model ...

Ronak has compared EBITDA between our approach and TCE's. I've asked for a further breakdown, which is forthcoming.

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From: JoAnne Butler
Sent: December-28-11 2:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

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Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 5:23 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...
Attachments: NOMINAL DIFFERENCE.xls

This is a better breakdown.

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 02:48 PM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Michael, I separated everything because the two models are different.

Ronak Mozayyan
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T: 416.969.6057
F: 416.967.1947

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 1:08 PM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

Great. Thanks.

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 12:59 PM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Michael, the issue seems to reside with the Gross Market Revenue and I will do so – I'm just going to get lunch and I'll send you the information after, is that okay?

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 12:44 PM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

Ok.

Could you please add the NRR, Imputed Net Revenues, CSP, Fixed O&M, Variable O&M, and Fuel Costs to you spreadsheet?

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 12:16 PM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Not at this time...

Ronak Mozayyan

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 11:59 AM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

Do you have any idea for the differences (except for COD)?

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 10:50 AM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

It was good and Santa was good enough. ☺

Hope you had a great Christmas as well.

I just did a quick comparison of the EBITDA (I'm assuming that's what she was asking for) and the numbers are relatively close. Your model assumes COD in 2014 versus TCE's Nov 2013. I've highlighted the years where there is significant differences. I have attached a simple table above.

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 10:35 AM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

Ok. Great. How was your time off? I trust Santa was good to you?

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 10:28 AM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Just realized what she meant.

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 9:56 AM
To: Ronak Mozayyan
Subject: Re: OGS Shadow Valuation Model ...

I don't understand the question? Can you explain the reference she's making?

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From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 09:50 AM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

Michael, which simpler model is JoAnne referring to?

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From: Michael Killeavy
Sent: Wednesday, December 28, 2011 6:14 AM
To: Ronak Mozayyan
Subject: Fw: OGS Shadow Valuation Model ...

Can you please do the comparison JoAnne is looking for sometime today?

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EBITDA

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

NRR

		1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OPA	Non-Indexed NRR	\$ -	\$ -	\$ -	\$ -	\$ -
	Indexed NRR	\$ -	\$ -	\$ -	\$ -	\$ -
	Total NRR	\$ -	\$ -	\$ -	\$ -	\$ -
OGS \$M	Calculated NRR	\$ -	\$ -	\$ -	\$ -	\$ -
	Imputed Net Revenue	\$ -	\$ -	\$ -	\$ -	\$ -

CSP

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Fixed O&M

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Variable O&M

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Fuel Costs

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 41.2	\$ 167.5	\$ 167.8	\$ 168.6	\$ 169.4
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 162.40	\$ 163.98	\$ 163.78	\$ 167.86
\$ -	\$ -	\$ -	\$ -	\$ 41.18	\$ 5.11	\$ 3.86	\$ 4.81	\$ 1.53

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,455	\$ 3,525	\$ 3,595	\$ 3,667
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,277	\$ 17,346	\$ 17,417	\$ 17,488
\$ -	\$ -	\$ -	\$ -	\$ 47	\$ 186	\$ 187	\$ 188	\$ 189
\$ -	\$ -	\$ -	\$ -	\$ 1	\$ 14	\$ 23	\$ 46	\$ 45

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 45.03	\$ 172.72	\$ 164.25	\$ 142.27	\$ 143.23
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 266	\$ 261	\$ 272	\$ 203
\$ -	\$ -	\$ -	\$ -	\$ 45.0	\$ 93.6	\$ 96.6	\$ 129.9	\$ 59.4

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 7.7	\$ 23.9	\$ 25.0	\$ 26.2	\$ 26.8
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 27.81	\$ 27.26	\$ 27.56	\$ 28.10
\$ -	\$ -	\$ -	\$ -	\$ 7.7	\$ 3.9	\$ 2.3	\$ 1.3	\$ 1.3

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 0.4	\$ 2.0	\$ 3.5	\$ 5.4	\$ 5.6
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3.33	\$ 3.40	\$ 3.46	\$ 3.53
\$ -	\$ -	\$ -	\$ -	\$ 0.4	\$ 1.3	\$ 0.1	\$ 1.9	\$ 2.1

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 13.8	\$ 80.3	\$ 139.8	\$ 213.1	\$ 223.1
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 193.5	\$ 193.5	\$ 193.4	\$ 193.5
\$ -	\$ -	\$ -	\$ -	\$ 13.8	\$ 113.2	\$ 53.6	\$ 19.7	\$ 29.6

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 167.8	\$ 167.1	\$ 170.3	\$ 173.5	\$ 170.7	\$ 171.0	\$ 175.0	\$ 174.4	\$ 159.1	\$ 172.6
\$ 169.22	\$ 169.71	\$ 170.64	\$ 170.82	\$ 169.77	\$ 169.64	\$ 169.85	\$ 170.17	\$ 170.29	\$ 158.01
\$ 1.42	\$ 2.58	\$ 0.38	\$ 2.69	\$ 0.95	\$ 1.37	\$ 5.16	\$ 4.24	\$ 11.24	\$ 14.59

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ 3,740	\$ 3,815	\$ 3,891	\$ 3,969	\$ 4,049	\$ 4,130	\$ 4,212	\$ 4,296	\$ 4,382	\$ 4,470
\$ 17,562	\$ 17,637	\$ 17,713	\$ 17,791	\$ 17,870	\$ 17,951	\$ 18,034	\$ 18,118	\$ 18,204	\$ 18,292
\$ 189	\$ 190	\$ 191	\$ 192	\$ 193	\$ 194	\$ 194	\$ 195	\$ 196	\$ 197
\$ 44	\$ 52	\$ 54	\$ 39	\$ 50	\$ 35	\$ 45	\$ 30	\$ 38	\$ 47

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 144.97	\$ 138.29	\$ 136.59	\$ 153.20	\$ 142.98	\$ 158.11	\$ 149.95	\$ 165.50	\$ 158.51	\$ 149.93
\$185	\$182	\$176	\$184	\$203	\$205	\$215	\$216	\$216	\$221
\$ 40.4	\$ 43.6	\$ 39.1	\$ 30.5	\$ 59.9	\$ 46.8	\$ 64.9	\$ 50.9	\$ 57.9	\$ 70.9

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 27.1	\$ 27.6	\$ 28.3	\$ 28.4	\$ 28.7	\$ 28.7	\$ 29.6	\$ 29.5	\$ 44.0	\$ 30.8
\$ 28.46	\$ 28.95	\$ 29.15	\$ 29.35	\$ 30.16	\$ 31.02	\$ 31.12	\$ 31.59	\$ 32.37	\$ 45.32
\$ 1.4	\$ 1.4	\$ 0.9	\$ 1.0	\$ 1.4	\$ 2.3	\$ 1.5	\$ 2.1	\$ 11.6	\$ 14.5

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 5.3	\$ 5.8	\$ 6.7	\$ 5.9	\$ 6.0	\$ 5.1	\$ 6.3	\$ 5.2	\$ 5.4	\$ 6.1
\$ 3.60	\$ 3.68	\$ 3.75	\$ 3.82	\$ 3.90	\$ 3.98	\$ 4.06	\$ 4.14	\$ 4.22	\$ 4.31
\$ 1.7	\$ 2.2	\$ 2.9	\$ 2.1	\$ 2.1	\$ 1.1	\$ 2.2	\$ 1.0	\$ 1.2	\$ 1.8

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 213.0	\$ 233.8	\$ 264.3	\$ 236.2	\$ 240.1	\$ 207.0	\$ 251.1	\$ 207.2	\$ 218.8	\$ 245.6
\$193.5	\$193.5	\$193.4	\$193.5	\$193.5	\$193.5	\$193.4	\$193.5	\$193.5	\$193.5
\$ 19.5	\$ 40.4	\$ 70.9	\$ 42.8	\$ 46.6	\$ 13.5	\$ 57.7	\$ 13.8	\$ 25.3	\$ 52.1

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 176.2	\$ 176.1	\$ 178.4	\$ 179.0	\$ 184.1	\$ 149.1
\$ 171.28	\$ 172.06	\$ 173.08	\$ 172.20	\$ 174.30	\$ 175.81
\$ 4.93	\$ 4.01	\$ 5.34	\$ 6.80	\$ 9.83	\$ 26.68

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ 4,559	\$ 4,651	\$ 4,744	\$ 4,838	\$ 4,935	\$ 5,034
\$ 18,381	\$ 18,472	\$ 18,565	\$ 18,660	\$ 18,757	\$ 18,855
\$ 198	\$ 199	\$ 200	\$ 201	\$ 202	\$ 153
\$ 56	\$ 67	\$ 59	\$ 61	\$ 58	\$ 63

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 142.65	\$ 132.36	\$ 140.78	\$ 140.46	\$ 144.59	\$ 89.36
\$ 216	\$ 207	\$ 202	\$ 201	\$ 202	\$ 203
\$ 72.9	\$ 74.5	\$ 61.3	\$ 60.6	\$ 57.5	\$ 113.9

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 31.7	\$ 32.3	\$ 32.5	\$ 33.1	\$ 33.6	\$ 32.7
\$ 33.27	\$ 33.93	\$ 34.14	\$ 36.07	\$ 34.92	\$ 34.38
\$ 1.6	\$ 1.6	\$ 1.6	\$ 3.0	\$ 1.3	\$ 1.6

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 7.1	\$ 7.4	\$ 7.0	\$ 7.1	\$ 7.3	\$ 7.4
\$ 4.39	\$ 4.48	\$ 4.57	\$ 4.66	\$ 4.75	\$ 4.85
\$ 2.7	\$ 2.9	\$ 2.4	\$ 2.5	\$ 2.5	\$ 2.6

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 283.3	\$ 295.9	\$ 281.1	\$ 287.0	\$ 293.0	\$ 299.1
\$ 193.4	\$ 193.5	\$ 193.5	\$ 193.5	\$ 193.5	\$ 193.5
\$ 89.9	\$ 102.5	\$ 87.6	\$ 93.5	\$ 99.5	\$ 105.7

Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 5:25 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Please read this to understand the NRR comparison.

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

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

From: Ronak Mozayyan
Sent: Wednesday, December 28, 2011 03:32 PM
To: Michael Killeavy
Subject: RE: OGS Shadow Valuation Model ...

The Calculated NRR in TCE's model is the Total Monthly Fixed Capacity Payments and is the same for our model except that our COD is 2014. I should not have had that in the NRR table.

Ronak Mozayyan
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T: 416.969.6057
F: 416.967.1947

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

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 3:05 PM
To: Ronak Mozayyan
Subject: RE: OGS Shadow Valuation Model ...

Ronak,

Is "Calculated NRR" the annual fixed capacity charge, i.e., $\text{Indexed NRR} * \text{Contract Capacity} * 12 \text{ months/year}$?

Are we getting different annual fixed capacity charges? These numbers ought to be the same since we are using their bid NRR, NRRIF, and ACC?

Can you do the same thing for our/their INR and ANR, separately?

I am trying to understand where the big differences are. Is mine calculating correctly?

Thanks

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Ok.

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Just realized what she meant.

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From: JoAnne Butler
Sent: Wednesday, December 28, 2011 02:41 AM
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Subject: Re: OGS Shadow Valuation Model ...

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From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make $INR=ANR$, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if $ANR=INR$, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I

ignore the terminal value in its entirety. If I use the same HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives and NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at \$8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at \$35/MWh and gas at \$4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let ANR=INR, so that the actual forward curves for HOEP and gas are irrelevant.

Michael

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Aleksandar Kojic

From: JoAnne Butler
Sent: December 28, 2011 5:35 PM
To: 'joannebutler@gmail.com'
Subject: Fw: OGS Shadow Valuation Model ...
Attachments: NOMINAL DIFFERENCE.xls

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Sent: Wednesday, December 28, 2011 05:23 PM
To: JoAnne Butler
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This is a better breakdown.

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How do the nominal yearly cash flows for the twenty years compare to the nominal yearly TCE cash flows using your simpler model, ie. before you do any discounting??

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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 Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make $INR=ANR$, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

I think it is working alright, but perhaps you and Keith can check the calculations for me. As you would expect, if $ANR=INR$, the NPV result is lower than when we assume they are not equal and merchant revenues are earned. I have embedded comments throughout the sheet so that you can understand where parameters are coming from, and how the calculations are being performed.

Using reasonable input parameters, I get a project NPV that is about 5% less than the TCE project pro forma cash flow spreadsheet gives for NPV over the 20 year contract term. I ignore the terminal value in its entirety. If I use the same HOEP and gas price information that we used to do our own computation of INR and CSP, this model gives an NPV that is about 1% higher than the NPV TCE generates. Our own input parameters continue to bother me because I think the gas price is too high at \$8/MMBTU (the capacity factors are much too high). In the base case analysis I've done in the attached spreadsheet, I have set HOEP at \$35/MWh and gas at \$4/MMBTU in Year 1 and then just escalate then at 2% per year for the 20-year contract term. I have also forced the capacity factor to be 40%, because this is a reasonable capacity factor for a CC plant like this.

I also did an equity analysis. Despite what TCE claims, the project NPV is NOT all profit. A fair proportion of the NPV goes to repay debt and pay interest on corporate debt acquired to fund the project (why is their interest during construction on a plant that is purportedly funded with TCE equity?). As these debt obligations had not crystallized when the Premier announced that the plant had been cancelled, there can be no damage to TCE in respect of debt obligations that were never entered into. As you can see from the equity analysis, the NPV of the equity cash flows is considerably less than the NPV of the project cash flows. This needs to be reiterated in our settlement discussions with TCE.

I ask that you and Keith check the model calculations while you're modelling the physical operation of the facility. We can re-group when I get back and discuss the right input parameters for the model. It can be a challenge, so I am leaning heavily towards just taking a stand and saying that we'll let $ANR=INR$, so that the actual forward curves for HOEP and gas are irrelevant.

Michael

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

EBITDA

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

NRR

		1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OPA	Non-Indexed NRR	\$ -	\$ -	\$ -	\$ -	\$ -
	Indexed NRR	\$ -	\$ -	\$ -	\$ -	\$ -
	Total NRR	\$ -	\$ -	\$ -	\$ -	\$ -
OGS	Calculated NRR	\$ -	\$ -	\$ -	\$ -	\$ -
\$M	Imputed Net Revenue	\$ -	\$ -	\$ -	\$ -	\$ -

CSP

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Fixed O&M

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Variable O&M

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

Fuel Costs

	1-Jul-09	30-Sep-09	31-Dec-09	1-Apr-10	1-Jul-10
OGS	\$ -	\$ -	\$ -	\$ -	\$ -
OPA	\$ -	\$ -	\$ -	\$ -	\$ -
Delta	\$ -	\$ -	\$ -	\$ -	\$ -

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 41.2	\$ 167.5	\$ 167.8	\$ 168.6	\$ 169.4
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 162.40	\$ 163.98	\$ 163.78	\$ 167.86
\$ -	\$ -	\$ -	\$ -	\$ 41.18	\$ 5.11	\$ 3.86	\$ 4.81	\$ 1.53

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,455	\$ 3,525	\$ 3,595	\$ 3,667
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 17,277	\$ 17,346	\$ 17,417	\$ 17,488
\$ -	\$ -	\$ -	\$ -	\$ 47	\$ 186	\$ 187	\$ 188	\$ 189
\$ -	\$ -	\$ -	\$ -	\$ 1	\$ 14	\$ 23	\$ 46	\$ 45

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 45.03	\$ 172.72	\$ 164.25	\$ 142.27	\$ 143.23
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 266	\$ 261	\$ 272	\$ 203
\$ -	\$ -	\$ -	\$ -	\$ 45.0	\$ 93.6	\$ 96.6	\$ 129.9	\$ 59.4

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 7.7	\$ 23.9	\$ 25.0	\$ 26.2	\$ 26.8
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 27.81	\$ 27.26	\$ 27.56	\$ 28.10
\$ -	\$ -	\$ -	\$ -	\$ 7.7	\$ 3.9	\$ 2.3	\$ 1.3	\$ 1.3

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 0.4	\$ 2.0	\$ 3.5	\$ 5.4	\$ 5.6
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3.33	\$ 3.40	\$ 3.46	\$ 3.53
\$ -	\$ -	\$ -	\$ -	\$ 0.4	\$ 1.3	\$ 0.1	\$ 1.9	\$ 2.1

31-Dec-12	1-Apr-13	1-Jul-13	30-Sep-13	15-Nov-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
\$ -	\$ -	\$ -	\$ -	\$ 13.8	\$ 80.3	\$ 139.8	\$ 213.1	\$ 223.1
\$ -	\$ -	\$ -	\$ -	\$ -	\$ 193.5	\$ 193.5	\$ 193.4	\$ 193.5
\$ -	\$ -	\$ -	\$ -	\$ 13.8	\$ 113.2	\$ 53.6	\$ 19.7	\$ 29.6

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 167.8	\$ 167.1	\$ 170.3	\$ 173.5	\$ 170.7	\$ 171.0	\$ 175.0	\$ 174.4	\$ 159.1	\$ 172.6
\$ 169.22	\$ 169.71	\$ 170.64	\$ 170.82	\$ 169.77	\$ 169.64	\$ 169.85	\$ 170.17	\$ 170.29	\$ 158.01
\$ 1.42	\$ 2.58	\$ 0.38	\$ 2.69	\$ 0.95	\$ 1.37	\$ 5.16	\$ 4.24	\$ 11.24	\$ 14.59

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ 3,740	\$ 3,815	\$ 3,891	\$ 3,969	\$ 4,049	\$ 4,130	\$ 4,212	\$ 4,296	\$ 4,382	\$ 4,470
\$ 17,562	\$ 17,637	\$ 17,713	\$ 17,791	\$ 17,870	\$ 17,951	\$ 18,034	\$ 18,118	\$ 18,204	\$ 18,292
\$ 189	\$ 190	\$ 191	\$ 192	\$ 193	\$ 194	\$ 194	\$ 195	\$ 196	\$ 197
\$ 44	\$ 52	\$ 54	\$ 39	\$ 50	\$ 35	\$ 45	\$ 30	\$ 38	\$ 47

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 144.97	\$ 138.29	\$ 136.59	\$ 153.20	\$ 142.98	\$ 158.11	\$ 149.95	\$ 165.50	\$ 158.51	\$ 149.93
\$185	\$182	\$176	\$184	\$203	\$205	\$215	\$216	\$216	\$221
\$ 40.4	\$ 43.6	\$ 39.1	\$ 30.5	\$ 59.9	\$ 46.8	\$ 64.9	\$ 50.9	\$ 57.9	\$ 70.9

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 27.1	\$ 27.6	\$ 28.3	\$ 28.4	\$ 28.7	\$ 28.7	\$ 29.6	\$ 29.5	\$ 44.0	\$ 30.8
\$ 28.46	\$ 28.95	\$ 29.15	\$ 29.35	\$ 30.16	\$ 31.02	\$ 31.12	\$ 31.59	\$ 32.37	\$ 45.32
\$ 1.4	\$ 1.4	\$ 0.9	\$ 1.0	\$ 1.4	\$ 2.3	\$ 1.5	\$ 2.1	\$ 11.6	\$ 14.5

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 5.3	\$ 5.8	\$ 6.7	\$ 5.9	\$ 6.0	\$ 5.1	\$ 6.3	\$ 5.2	\$ 5.4	\$ 6.1
\$ 3.60	\$ 3.68	\$ 3.75	\$ 3.82	\$ 3.90	\$ 3.98	\$ 4.06	\$ 4.14	\$ 4.22	\$ 4.31
\$ 1.7	\$ 2.2	\$ 2.9	\$ 2.1	\$ 2.1	\$ 1.1	\$ 2.2	\$ 1.0	\$ 1.2	\$ 1.8

1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27
\$ 213.0	\$ 233.8	\$ 264.3	\$ 236.2	\$ 240.1	\$ 207.0	\$ 251.1	\$ 207.2	\$ 218.8	\$ 245.6
\$193.5	\$193.5	\$193.4	\$193.5	\$193.5	\$193.5	\$193.4	\$193.5	\$193.5	\$193.5
\$ 19.5	\$ 40.4	\$ 70.9	\$ 42.8	\$ 46.6	\$ 13.5	\$ 57.7	\$ 13.8	\$ 25.3	\$ 52.1

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 176.2	\$ 176.1	\$ 178.4	\$ 179.0	\$ 184.1	\$ 149.1
\$ 171.28	\$ 172.06	\$ 173.08	\$ 172.20	\$ 174.30	\$ 175.81
\$ 4.93	\$ 4.01	\$ 5.34	\$ 6.80	\$ 9.83	\$ 26.68

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822	\$ 13,822
\$ 4,559	\$ 4,651	\$ 4,744	\$ 4,838	\$ 4,935	\$ 5,034
\$ 18,381	\$ 18,472	\$ 18,565	\$ 18,660	\$ 18,757	\$ 18,855
\$ 198	\$ 199	\$ 200	\$ 201	\$ 202	\$ 153
\$ 56	\$ 67	\$ 59	\$ 61	\$ 58	\$ 63

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 142.65	\$ 132.36	\$ 140.78	\$ 140.46	\$ 144.59	\$ 89.36
\$ 216	\$ 207	\$ 202	\$ 201	\$ 202	\$ 203
\$ 72.9	\$ 74.5	\$ 61.3	\$ 60.6	\$ 57.5	\$ 113.9

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 31.7	\$ 32.3	\$ 32.5	\$ 33.1	\$ 33.6	\$ 32.7
\$ 33.27	\$ 33.93	\$ 34.14	\$ 36.07	\$ 34.92	\$ 34.38
\$ 1.6	\$ 1.6	\$ 1.6	\$ 3.0	\$ 1.3	\$ 1.6

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 7.1	\$ 7.4	\$ 7.0	\$ 7.1	\$ 7.3	\$ 7.4
\$ 4.39	\$ 4.48	\$ 4.57	\$ 4.66	\$ 4.75	\$ 4.85
\$ 2.7	\$ 2.9	\$ 2.4	\$ 2.5	\$ 2.5	\$ 2.6

1-Jul-28	1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33
\$ 283.3	\$ 295.9	\$ 281.1	\$ 287.0	\$ 293.0	\$ 299.1
\$ 193.4	\$ 193.5	\$ 193.5	\$ 193.5	\$ 193.5	\$ 193.5
\$ 89.9	\$ 102.5	\$ 87.6	\$ 93.5	\$ 99.5	\$ 105.7

Aleksandar Kojic

From: Michael Killeavy
Sent: December 28, 2011 9:05 PM
To: JoAnne Butler
Subject: Re: OGS Shadow Valuation Model ...

I really think this is going to come down to a difference of opinion as to future prices for electricity and gas. We'll know a bit more tomorrow.

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

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

From: JoAnne Butler
Sent: Wednesday, December 28, 2011 05:07 PM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

This is really interesting...2026 and 2027 almost cancel out - \$3 mm difference...could be a timing issue on major maintenance? And the difference between 2013 and 2033 is about \$15 m - maybe another timing issue or they assume a few more months revenue? It will be interesting to see the next breakdowns after EBITDA...

Is this using your simpler model or the more complicated one?

I am trying to put off the meeting with IO until I get back, ie. Jan 9...will keep you posted how I do. We can catch up anyway when you are back in the office.

Thanks...

JCB

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

From: Michael Killeavy
Sent: Wednesday, December 28, 2011 01:42 PM
To: JoAnne Butler
Subject: RE: OGS Shadow Valuation Model ...

Ronak has compared EBITDA between our approach and TCE's. I've asked for a further breakdown, which is forthcoming.

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

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

From: JoAnne Butler
Sent: December-28-11 2:41 AM
To: Michael Killeavy
Subject: Re: OGS Shadow Valuation Model ...

How do the nominal yearly cash flows for the twenty years compare to the nominal yearly TCE cash flows using your simpler model, ie. before you do any discounting??

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:30 PM
To: JoAnne Butler
Subject: Fw: OGS Shadow Valuation Model ...

Sorry, I forgot to copy you on this.

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Michael.killeavy@powerauthority.on.ca

From: Michael Killeavy
Sent: Tuesday, December 27, 2011 03:27 PM
To: Ronak Mozayyan
Cc: Keith Sandor; Deborah Langelaan
Subject: OGS Shadow Valuation Model ...

Ronak,

Attached is a very simple model of the OGS. I tried several times to use the December 2010 pro forma project cash flow spreadsheet from TCE, but it was giving me very strange, nonsensical results. I can appreciate your frustration in using it last week - I almost had an aneurysm trying to understand some of their calculations, e.g., CCA and IDC (for a project purported funded with TCE equity). I finally gave up and built my own model, which is based on the one we developed for the K-W peaking plant, and then extended to model Greenfield South generating station. The green highlighted cells show physical operation of the plant in the IESO-controlled market, and the blue highlighted cells show how imputed operation works. There is a switch at the top of the workbook that allows you to make INR=ANR, which is simply done by equating physical parameters with their contract counterparts (capacity, heat rate, and variable O&M).

Aleksandar Kojic

From: Susan Kennedy
Sent: October 5, 2010 5:24 PM
To: Colin Andersen
Cc: Michael Lyle
Subject: Draft Letter Agreement
Attachments: TransCanada Energy6 Ltd.docx

Privileged and Confidential (Solicitor and Client Privilege)

Attached is draft letter agreement re TC/SWGTA.

Draft contains some draft notes and some end notes providing alternate phrasing options.

Mike Lyle suggested discussion of the document at tomorrow's ETM.

I am on blackberry (in commuting mode) for a bit. I will have proper email access once I get home (around 7:30pm) if necessary.

Susan H. Kennedy
Director, Corporate/Commercial Law Group
Ontario Power Authority
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F: 416-969-6383
E: susan.kennedy@powerauthority.on.ca

TransCanada Energy Ltd.
450-1st Street
Calagary, AB T2P 5H1

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

Dear Sirs/Mesdames:

The OPA and the Supplier each confirm and agree the Parties shall negotiate in good faith the terms on which the Contract will be terminated.

The OPA and the Supplier each confirms and agrees that, as and from [insert date][October •, 2010] and until such time as the Parties otherwise agree in writing [Note to Draft: The other alternative it to provide unilateral right for OPA to end the Suspension period – this may receive pushback from Supplier.]ⁱ (the “Suspension Period”), each of the Supplier and the OPA shall be excused and relieved from performing or complying with any and all of its respective obligations under the Contract and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses in the case of the Supplier) to, or incurred by, the other Party in respect of or relating to such Party’s failure to so perform or comply during the Suspension Period.ⁱⁱ

The OPA and the Supplier each further confirms and agrees that, should the OPA and the Supplier, ultimately agree to continue under the Contract, then all Milestone Dates in the Contract shall be extended for such time as the Supplier may reasonably request to ensure that the Supplier suffers no prejudice as a result the Suspension Period. [Note to Draft: This provides the Supplier with the same relieve that it would have as a result of a Force Majeure Event and provides Supplier with comfort that should Contract continue it will not be prejudiced by the delay re compliance with Contract and achieving COD for Facility.]

To indicate the Supplier’s agreement with the provisions herof please sign and date the duplicate copy of this letter and return it to the OPA to the attention of [name], [insert title].

Sincerely,

ONTARIO POWER AUTHORITY

Per: _____

Name:

Title:

I have the authority to bind the corporation.

By delivering a signed version of this letter back to the OPA, the undersigned confirms its agreement with the foregoing as of the _____ day of _____, 2010.

TRANSCANADA ENERGY LTD.

Per: _____

Name:

Title:

I have the authority to bind the corporation.

ⁱ Alternate Phrasing Options: "...until the date of termination of the Contract or such other time as the Parties otherwise agree in writing"/"... until the date of termination of the Contract or the date on which the OPA give the Supplier written notice of the end of the Suspension Period {Note that if we go with this language the paragraph regarding Milestone Date extension will require modification: "... should the OPA and the Supplier, ultimately agree to continue under the Contract or the OPA give written notice of the end of the Suspension Period",

ⁱⁱ Phrasing if relief is only to be unilateral (Supplier relief only): The OPA confirms and agrees that, as and from [insert date][October •, 2010] and until such time as the Parties otherwise agree in writing (the "Suspension Period"), the Supplier shall be excused and relieved from performing or complying with any and all of the Supplier's obligations under the Contract and shall not be liable for any liabilities, damages, losses, payments, costs, expenses or Indemnifiable Losses to, or incurred by, the OPA in respect of or relating to the Suppliers failure to so perform or comply during the Suspension Period.

Aleksandar Kojic

From: Susan Kennedy
Sent: October 5, 2010 5:52 PM
To: Colin Andersen
Cc: Michael Lyle
Subject: Re: Draft Letter Agreement

Futher to the below, do we know whether TC wants their security back as part of the arrangement? The language in the draft is sufficiently broad to relieve them of that obligation. If return not part of deal, will need to tweak to keep that obligation alive. If part of deal should prob reference reposting if Contract comes back to life.

On a more administrative note, should add sentence clarifing that capitalized terms in letter (not otherwise defined) have same meaning as in Contract.

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

From: Susan Kennedy
To: Colin Andersen
CC: Michael Lyle
Sent: Tue Oct 05 17:23:52 2010
Subject: Draft Letter Agreement

Privileged and Confidential (Solicitor and Client Privilege)

Attached is draft letter agreement re TC/SWGTA.

Draft contains some draft notes and some end notes providing alternate phrasing options.

Mike Lyle suggested discussion of the document at tomorrow's ETM.

I am on blackberry (in commuting mode) for a bit. I will have proper email access once I get home (around 7:30pm) if necessary.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

T: 416-969-6054

F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca <<mailto:susan.kennedy@powerauthority.on.ca>>

Aleksandar Kojic

From: Colin Andersen
Sent: October 5, 2010 6:14 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: Re: Draft Letter Agreement

Timing chnge. Announcement now thurs so we havve tomorrow morning to worrk on . Expect more suggestions and quick turnaround

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

From: Susan Kennedy
To: Colin Andersen
CC: Michael Lyle
Sent: Tue Oct 05 17:51:32 2010
Subject: Re: Draft Letter Agreement

Futher to the below, do we know whether TC wants their security back as part of the arrangement? The language in the draft is sufficiently broad to relieve them of that obligation. If return not part of deal, will need to tweak to keep that obligation alive. If part of deal should prob reference reposting if Contract comes back to life.

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

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To: Colin Andersen
CC: Michael Lyle
Sent: Tue Oct 05 17:23:52 2010
Subject: Draft Letter Agreement

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Susan H. Kennedy

Director, Corporate/Commercial Law Group

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F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca <<mailto:susan.kennedy@powerauthority.on.ca>>

Aleksandar Kojic

From: Michael Lyle
Sent: October 5, 2010 6:16 PM
To: Colin Andersen; Susan Kennedy
Subject: Re: Draft Letter Agreement

Ok good. Do you think we can find a few minutes at Exec to talk about this?

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

From: Colin Andersen
To: Susan Kennedy
CC: Michael Lyle
Sent: Tue Oct 05 18:14:28 2010
Subject: Re: Draft Letter Agreement

Timing chnge. Announcement now thurs so we havve tomorrow morning to worrk on . Expect more suggestions and quick turnaround

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

From: Susan Kennedy
To: Colin Andersen
CC: Michael Lyle
Sent: Tue Oct 05 17:51:32 2010
Subject: Re: Draft Letter Agreement

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

From: Susan Kennedy
To: Colin Andersen
CC: Michael Lyle
Sent: Tue Oct 05 17:23:52 2010
Subject: Draft Letter Agreement

Privileged and Confidential (Solicitor and Client Privilege)

Attached is draft letter agreement re TC/SWGTA.

Draft contains some draft notes and some end notes providing alternate phrasing options.

Mike Lyle suggested discussion of the document at tomorrow's ETM.

I am on blackberry (in commuting mode) for a bit. I will have proper email access once I get home (around 7:30pm) if necessary.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

T: 416-969-6054

F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca <<mailto:susan.kennedy@powerauthority.on.ca>>

Aleksandar Kojic

From: Colin Andersen
Sent: October 5, 2010 6:43 PM
To: Michael Lyle; Susan Kennedy; Amir Shalaby; Ben Chin; Irene Mauricette; Joe Toneguzzo
Subject: Reminder

Please keep tight document control and a need to know basis incl all staff

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

From: Michael Lyle
To: Colin Andersen; Susan Kennedy
Sent: Tue Oct 05 18:16:15 2010
Subject: Re: Draft Letter Agreement

Ok good. Do you think we can find a few minutes at Exec to talk about this?

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From: Colin Andersen
To: Susan Kennedy
CC: Michael Lyle
Sent: Tue Oct 05 18:14:28 2010
Subject: Re: Draft Letter Agreement

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Aleksandar Kojic

From: Amir Shalaby
Sent: October 5, 2010 6:45 PM
To: Colin Andersen
Subject: Re: Reminder

Acknowledged

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From: Colin Andersen
To: Michael Lyle; Susan Kennedy; Amir Shalaby; Ben Chin; Irene Mauricette; Joe Toneguzzo
Sent: Tue Oct 05 18:42:45 2010
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Aleksandar Kojic

From: Michael Killeavy
Sent: November 17, 2010 1:53 PM
To: 'RSebastiano@osler.com'
Cc: Deborah Langelaan; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: Fw: TransCanada M501F & M501GAC Fast Start Indicative Information

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To: Michael Killeavy
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Thanks,
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Date: Wed, 17 Nov 2010 11:41:23 -0500
To: <safouh@smsenergy-engineering.com>
Subject: Fw: TransCanada M501F & M501GAC Fast Start Indicative Information

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Can you comment on the cost of the fast-start option?

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From: Deborah Langelaan
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CC: 'safouh@smsenergy-engineering.com' <safouh@smsenergy-engineering.com>; JoAnne Butler; Ben Chin; Amir Shalaby; 'esmith@osler.com' <esmith@osler.com>
Sent: Wed Nov 17 09:02:31 2010
Subject: Fw: TransCanada M501F & M501GAC Fast Start Indicative Information

Rocco,

Please see Terry's remarks below regarding MPS extension terms.

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Wed Nov 17 08:49:10 2010
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I'd be happy to meet here at APPRO if you would like to chat further.

Regards,
Terry

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Wednesday, November 17, 2010 06:32 AM
To: Terry Bennett
Subject: Re: TransCanada M501F & M501GAC Fast Start Indicative Information

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Please pass along to your team as appropriate.

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Terry

From: Terri Steeves
Sent: Tuesday, November 16, 2010 04:31 PM
To: Terry Bennett
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Please find attached an excerpt from an e-mail from MPS regarding estimated cost for conversion to GAC fast start. Please note the items not included in the estimate. \$20 million may be a more realistic end point.

Thanks,

Terri

From: Prigge, Phil [mailto:Phil.Prigge@mpshq.com]
Sent: Friday, November 05, 2010 9:59 AM
To: Terri Steeves; CHRIS Douglass; Bill Small
Cc: Hasegawa, Koji; Muyama, Akimasa; Koeneke, Carlos; Hiura, Daisuke; McDeed, David; Pyros, George; Ishikura, Kazuki; Yoshida, Minoru; Ueki, Shinichi; Dueck, Robert; Newsom, Bill; Namba, Kotaro; Wunder, Gregory; Prigge, Phil
Subject: TransCanada M501F & M501GAC Fast Start Indicative Information

Dear Terri,

In reply to your request, please see the following.

3. Preliminary price adder to convert from 501GAC to 501GAC Fast

US\$15Million per 2 GTs

[Conditions]

- (1) This price adder is based on the same site condition (Oakville generation station).
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Please let me know if you have any questions,

Best regards,

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From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: November 17, 2010 2:07 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Michael Lyle; JoAnne Butler; Colin Andersen
Subject: RE: TransCanada M501F & M501GAC Fast Start Indicative Information

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To: JoAnne Butler; Colin Andersen
Cc: Deborah Langelaan; Michael Lyle; 'RSebastiano@osler.com'
Subject: Re: TransCanada M501F & M501GAC Fast Start Indicative Information

I'm fine with Rocco's advice. We'll need them to move faster than 21 December, though.

Is everyone alright with Deb getting back to TCE on these terms, i.e., we want the additional 30 days for 5%, but we want firm pricing on the fast-start no later than 10 December 2010?

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To: Terry Bennett
Subject: Re: TransCanada M501F & M501GAC Fast Start Indicative Information

Terry,

I'm at APPrO today so I don't have access to my notes. Please remind me when your meeting with MPS occurs. Has MPS provided TCE with proposed terms to extend the deadline to end of year that the OPA can review?

Deb

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

From: Terry Bennett <terry_bennett@transcanada.com>
To: Deborah Langelaan
Sent: Tue Nov 16 18:52:07 2010
Subject: Fw: TransCanada M501F & M501GAC Fast Start Indicative Information

Deborah, please see the email chain below in response to your request on fast start costs.

Please pass along to your team as appropriate.

Would you like to schedule a call tomorrow to discuss your response to the MPA extension offer?

Regards,
Terry

From: Terri Steeves
Sent: Tuesday, November 16, 2010 04:31 PM
To: Terry Bennett
Subject: FW: TransCanada M501F & M501GAC Fast Start Indicative Information

Please find attached an excerpt from an e-mail from MPS regarding estimated cost for conversion to GAC fast start. Please note the items not included in the estimate. \$20 million may be a more realistic end point.

Thanks,

Terri

From: Prigge, Phil [mailto:Phil.Prigge@mpshq.com]
Sent: Friday, November 05, 2010 9:59 AM
To: Terri Steeves; CHRIS Douglass; Bill Small
Cc: Hasegawa, Koji; Muyama, Akimasa; Koeneke, Carlos; Hiura, Daisuke; McDeed, David; Pyros, George; Ishikura, Kazuki; Yoshida, Minoru; Ueki, Shinichi; Dueck, Robert; Newsom, Bill; Namba, Kotaro; Wunder, Gregory; Prigge, Phil
Subject: TransCanada M501F & M501GAC Fast Start Indicative Information

Dear Terri,

In reply to your request, please see the following.

3. Preliminary price adder to convert from 501GAC to 501GAC Fast

US\$15Million per 2 GTs

[Conditions]

- (1) This price adder is based on the same site condition (Oakville generation station).
- (2) This price adder is based on the assumption that only if 501GAC is converted to 501GAC Fast right now so that escalation factor etc. for the future when possibly the conversion will be made is not included.
- (3) The size of generators may need to be changed due to the size change of SFC. Generator size change price is not included in the above price adder.
- (4) Any costs due to the suspension such as storage fee, escalation, payment interest, engineering and administration cost to re-start the project and any modification due to site condition and specification changes are not included in the above price adder.
- (5) This price is only preliminary and nonbinding budgetary number with above conditions. Once the detail new project specification (such as new site condition, expected delivery date) is fixed, price must be quoted officially.

Please let me know if you have any questions,

Best regards,

Phil

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Aleksandar Kojic

From: Michael Lyle
Sent: November 17, 2010 9:07 PM.
To: Colin Andersen; JoAnne Butler; Ben Chin; Amir Shalaby
Cc: Michael Killeavy; Susan Kennedy
Subject: TCE draft directive
Attachments: Waterloodirective.doc

Colin: you had asked me to prepare a draft directive to see what it would look like. You will note that there are a lot of questions. This may be something else we want to discuss at our 1:30 meeting if we have time.

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

The need for gas-fired generation in the Regional Municipality of Waterloo ("Waterloo") **[NTD: this incorporates Kitchener, Waterloo and Cambridge and some other more rural areas; it does not include Guelph – I have used this term because of what I have heard is the apparent concern with referring to KWCG – Obviously, it does not then completely align with the IPSP]** was identified in the integrated power system plan (the "IPSP"). This was based in part on the expectation that Waterloo would continue to be a high-growth area of the Province experiencing higher load growth than the provincial average. The Ministry in coordination with the OPA has reviewed the need for such a facility and confirmed that a gas-fired generation facility located in Waterloo continues to be needed. This conclusion is based in part on the continued expectation that load in Waterloo will continue to grow at a rate which is higher than the provincial average. **[NTD: we should discuss what other reasons justify the need and what type of plant is selected? We should build a record we can point to as our analytical work that led to this conclusion.]**

Therefore, I direct the OPA to assume responsibility from the Crown for this initiative and procure a xx MW **[NTD: type? Combined/single cycle?]** gas-fired generation facility in Waterloo **[NTD: alternatively, may wish to specify a particular site]**. The OPA shall enter into negotiations with Trans-Canada Enterprises ("TCE") for the procurement of the facility. TCE has a great deal of experience in the development of gas-fired generation facilities. The Government believes that it is in the best interests of ratepayers for TCE to be awarded the contract for this facility as it will mitigate the impact on ratepayers of any potential loss TCE may have experienced as a result of the cancellation of the SWGTA gas-fired generation facility. **[NTD: This may be too blunt. We will need to build out the rationale for giving the project to TCE. We could specifically reference them winning the SWGTA competitive procurement as a rationale for giving them this project – makes a little bit of sense if project is same size and type.]** The contract shall be on terms that reflect a reasonable cost to Ontario electricity ratepayers and a reasonable balancing of risk and reward for the project developer. **[NTD: I am assuming that the Ministry will want something like this but it could be problematic. Could tie it to the outcome of SWGTA RFP as a base to begin negotiations if we end up going with the 900 MW combined cycle option]**

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

Aleksandar Kojic

From: Michael Killeavy
Sent: November 17, 2010 9:26 PM
To: Michael Lyle; Colin Andersen; JoAnne Butler; Ben Chin; Amir Shalaby
Cc: Susan Kennedy
Subject: RE: TCE draft directive

Importance: High

Mike,

My only substantive comment is that if the Directive says "...any potential loss TCE may have experienced as a result of the cancellation of the SWGTA gas-fired generation facility" it puts a frame around the quantum of their claimed damages and doesn't leave us much to negotiate. Could we use the vaguer language of "making TCE whole", perhaps, or something like that?

Michael

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

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

From: Michael Lyle
Sent: Wed 11/17/2010 9:06 PM
To: Colin Andersen; JoAnne Butler; Ben Chin; Amir Shalaby
Cc: Michael Killeavy; Susan Kennedy
Subject: TCE draft directive

Colin: you had asked me to prepare a draft directive to see what it would look like. You will note that there are a lot of questions. This may be something else we want to discuss at our 1:30 meeting if we have time.

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

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Aleksandar Kojic

From: Kristin Jenkins
Sent: March 7, 2011 10:32 AM
To: Colin Andersen
Subject: Fw: OGS Strategy

Sent using BlackBerry

From: JoAnne Butler
Sent: Sunday, March 06, 2011 02:15 PM
To: Michael Killeavy; Deborah Langelaan; anshul.mather@powerauthority.on.ca
<anshul.mather@powerauthority.on.ca>; Kristin Jenkins
Subject: OGS Strategy

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

I have prepared this in advance of our meeting tomorrow as a go forward strategy for OGS. I am open to comments and suggestions. No need to respond today, I just wanted to get it out since I am in the Leadership meeting all tomorrow morning.

We can also discuss in light of what the TCE letter says, which we will also review tomorrow.

Kristin, this will really come down to how we communicate the outcome as well (in a no win situation for the OPA) so if you can make it tomorrow at 2:30 PM that would be great....

Thanks...

JCB

OGS STRATEGY
March 6, 2011

We are doing a disservice to the rate payer by not getting to a point of either a deal or litigation. Delays on the Government or the OPA will only increase the risk and therefore, increase the final cost of this procurement.

Litigation is not preferred. It is not cheap; we will not necessarily win and the ratepayer will get no MW's out of it. TCE will litigate based on the promises received by them from the Premier's office. We also need to show that we have tried to mitigate. Only lawyers will make money out of this.

This is not a competitive procurement and we need to recognize that and back up with third party validation our rationale for the difference (increase) in NRR to a competitive peaker plant procurement. At this moment, there is \$36 MM of additional costs from OGS, plus capital costs have increased since the procurement of NYR (CERA data to validate), plus an "additional" revenue promised by the Government.

We are going to build our own credible counter proposal based to the current TCE offer, using the following concepts:

- Our model is sufficiently good to build up our own NRR based on capital costs, return expectations, O&M, etc. Anything that does not match can be assumed to be excessive profits from TCE. We can back that out of our model and pare back accordingly.
- We will continue to work on our CAPEX build-up with the assumption that we WILL NEVER GET TO AN AGREEMENT UNTIL WE HAVE A SITE. Therefore, it is essential that we agree on a model to share the decreases in CAPEX. TCE has proposed one that seems reasonable and is similar to what they use with their EPC contractors to share in the risk and reward. If this is not acceptable to us, then we will propose a regulated model similar to our HESA agreements.
- Technical data will continue to be validated by our technical consultant. All outside the boundary costs will assume to be have been covered on a straight pass through basis.
- A commercial consultant will validate the backend residual value. They need to be on board NOW. (Requested Feb. 17 – will check with BSS to single source due to urgency of requirement).
- A matrix of NRR's will be calculated based on back end discount rates, CAPEX, etc.
- We will go through the TCE offer point by point and accept or deny based on our NRR buildup.
- Proposal or array of proposals to be vetted with Exec Committee the week of March 14th with the intent to get counter back to TCE by end of that week.
- On the assumption that our counter will not be acceptable to TCE, negotiations will commence to get or not get to, final agreement by end of March, 2011.

Aleksandar Kojic

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

For discussion at 2:00 pm.

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

Kristin,

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

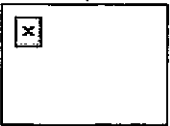
Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

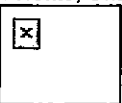
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Yes.

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

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

Press Release:

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

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

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

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

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

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

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

Litigation Privilege/Solicitor and Client Privilege

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

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

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

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

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

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

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

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

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

Have we heard back yet? KJ is wondering.

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

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

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

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OPA Key Messages in event TCE Files Notice of Claim

1. TCE is claiming \$1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. OPA believes that it is unreasonable for TCE to claim \$1B against the Ontario ratepayers in connection with the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
5. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. ~~OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers. TCE is claiming \$1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.~~
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. ~~OPA does not believe it is reasonable or necessary for~~ OPA believes that it is unreasonable for TCE to claim \$1B against the Ontario ratepayers to pay (\$1 billion) to TCE as compensation for in connection with the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.
5. ~~OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.~~

Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 2:34 PM
To: Colin Andersen
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette
Subject: Slide Deck for Tomorrow's Board Meeting
Attachments: OGS_BOD_CM_20110420 v1.pptx

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

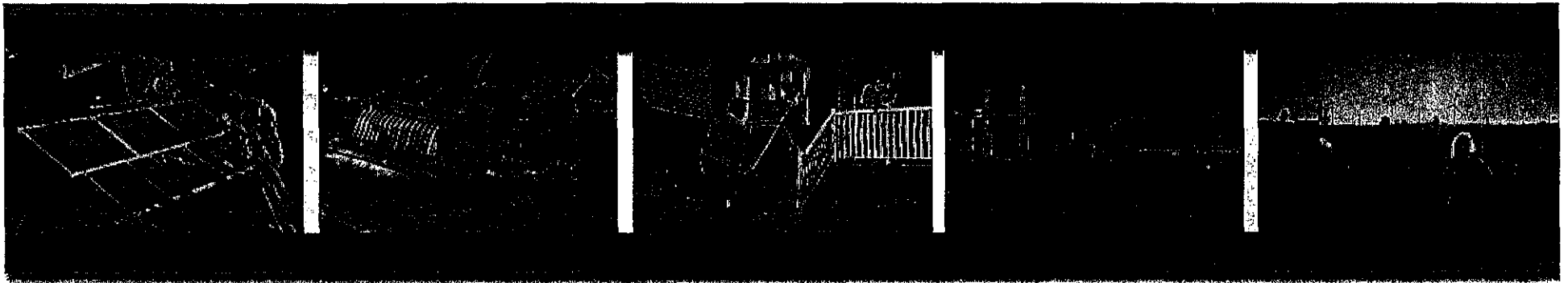
Colin, here are our proposed slides for tomorrow's meeting. John has promised to send them out today so if you have any changes, please let him know.

JCB

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

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

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

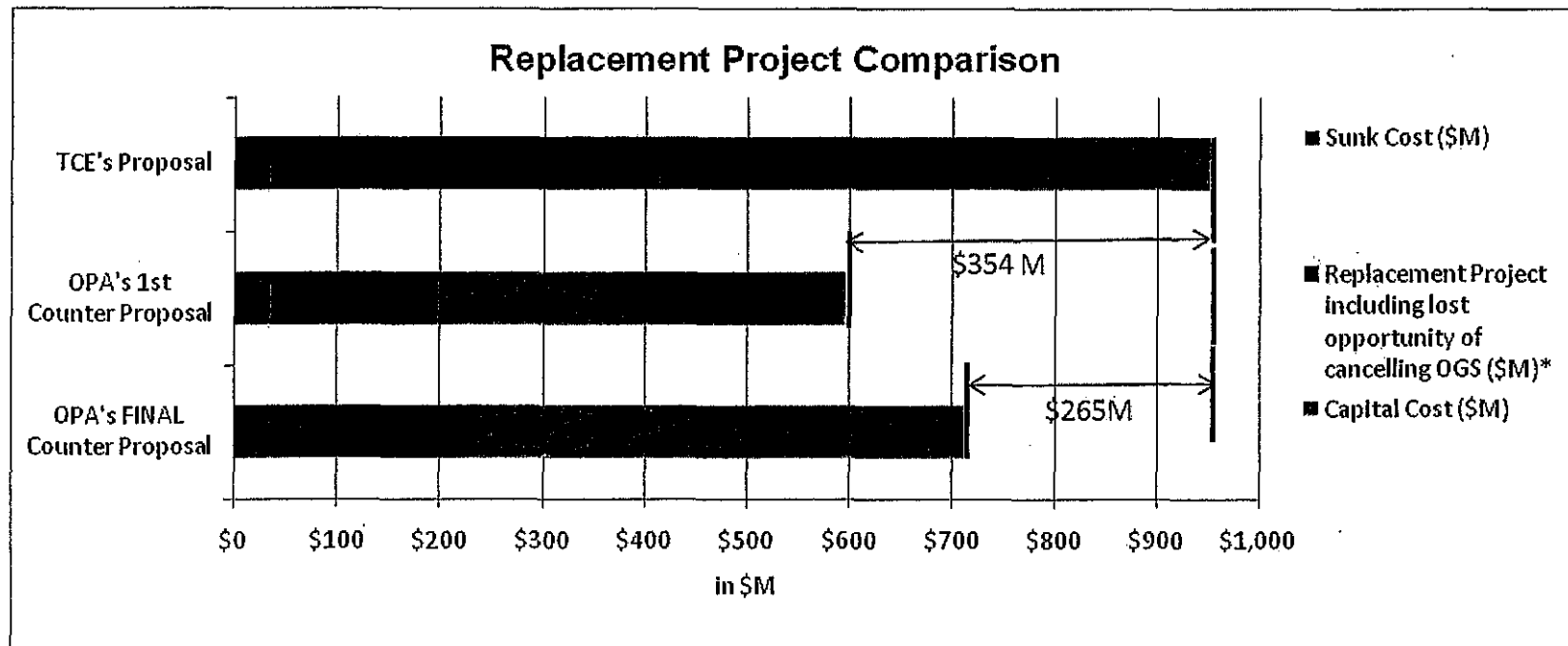
- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
- TCE's approach of "divide and conquer" has worked as Government is now integrally involved and being heavily lobbied by GR rep from TransCanada.
- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal.
- We believe that this proposal closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.
- TCE has sent letter from their litigation counsel on April 19 asking to sit down with our internal counsel to determine the appropriate dispute mechanism for resolving the matter. TCE remains willing to discuss alternatives, but not willing to suspend the formal process.

OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April 21, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Extension.	25 Years	25 Years	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Quantum Comparison

	SUNK COSTS (\$M)	OGS LOST OPPORTUNITY (\$M)	CAPITAL EXPENDITURES (\$M)	GAP (\$M)
TCE Proposal	37	375	540	
OPA's First Proposal	37	160	400	354
OPA's Final Proposal	37	200	475	265



Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Next Steps

- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – legal teams will determine appropriate mechanism to resolve the matter. However, we have lost our leverage to try and get the dispute mechanisms on the table first.
- Reasonable probability that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.

Aleksandar Kojic

From: JoAnne Butler
Sent: April 19, 2011 4:54 PM
To: Colin Andersen
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette; Michael Lyle
Subject: RE: Slide Deck for Tomorrow's Board Meeting
Attachments: OGS_BOD_CM_20110420 v1.pptx

Follow Up Flag: Follow up
Flag Status: Completed

John,

Here are the revised slides with typos fixed and have addressed all of Colin's comments except for the last point. We will look at that in the Exec Committee tomorrow. Thanks...

JCB

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

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

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

From: Colin Andersen
Sent: Martes, 19 de Abril de 2011 03:27 p.m.
To: JoAnne Butler
Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette
Subject: RE: Slide Deck for Tomorrow's Board Meeting

2 typos p 3 -- "Extention" row 3, col2, and "howp ever" row 7, col 5

Add the share over/under to the \$475m cap ex box

How are we addressing the Boards confusion from strategy day?

What about "Sean's way" -- I'm guessing Jim will ask -- variation on "walkaway" (sunk cost +turbines+lost profit = money for nothing) vs "all in for ratepayer" (same but adds in KW as still have to do a KW plant eventually) -- noting that in both cases the turbine cost will be < 215 since they will be sold/repurposed for something on the dollar

Colin Andersen
Chief Executive Officer

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Please consider your environmental responsibility before printing this email

From: JoAnne Butler
Sent: Tuesday, April 19, 2011 2:34 PM
To: Colin Andersen

Cc: Kristin Jenkins; John Zych; Michael Killeavy; Irene Mauricette

Subject: Slide Deck for Tomorrow's Board Meeting

Importance: High

Colin, here are our proposed slides for tomorrow's meeting. John has promised to send them out today so if you have any changes, please let him know.

JCB

JoAnne C. Butler

Vice President, Electricity Resources

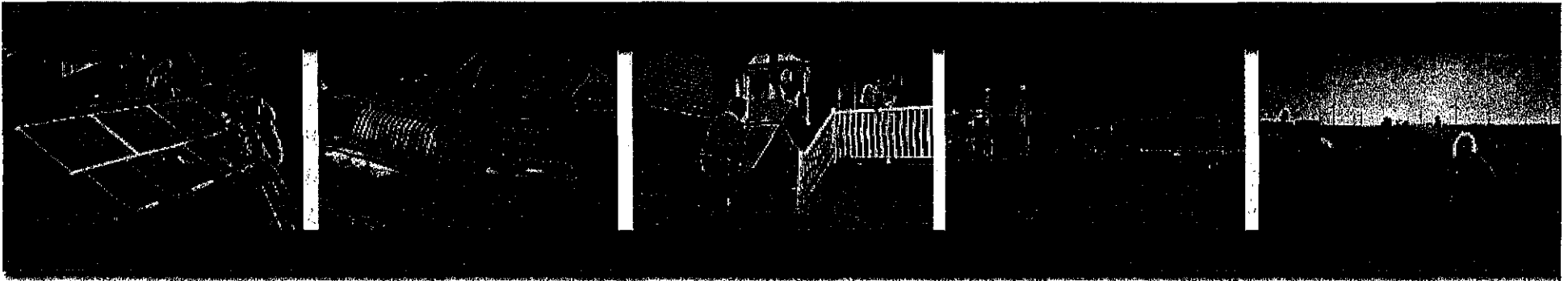
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joanne.butler@powerauthority.on.ca



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

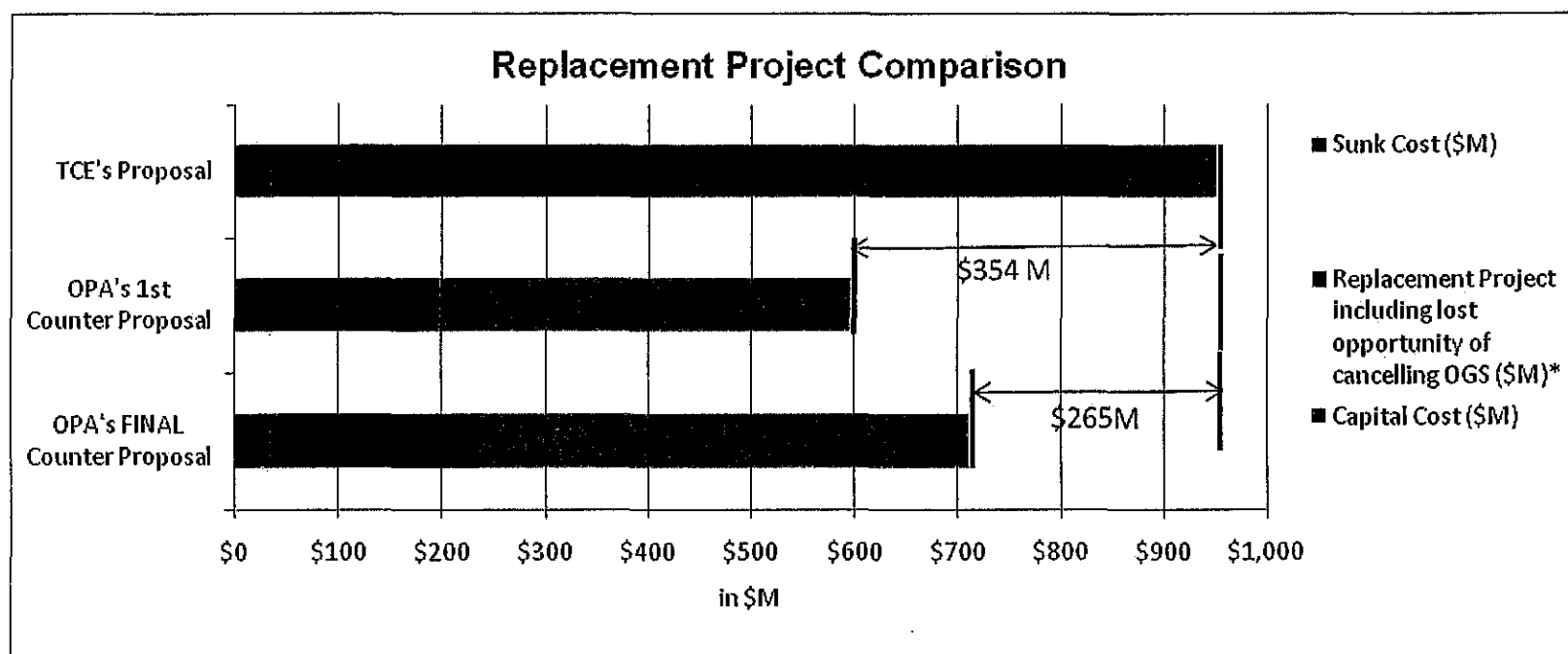
- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
- TCE's approach of "divide and conquer" has worked as Government is now integrally involved and being lobbied by Government Relations rep from TransCanada.
- Government verbally directed us to send counter proposal which puts us in a position of weakness, ie. negotiating with ourselves. Government informed TCE that OPA would be coming back with another proposal.
- We believe that this proposal closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.
- TCE has sent letter from their litigation counsel on April 19 asking to sit down with our internal counsel to determine the appropriate dispute mechanism for resolving the matter. TCE remains willing to discuss alternatives, but not willing to suspend the formal process.

OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April 21, 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project.. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Exemption	25 Years	25 Years	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$100mm; however, cannot really substantiate why. We are still proposing a target cost on CAPEX where there is a \$25 upper/lower band and then increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	In the second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Quantum Comparison

	SUNK COSTS (\$M)	OGS LOST OPPORTUNITY (\$M)	CAPITAL EXPENDITURES (\$M)	GAP (\$M)
TCE Proposal	37	375	540	
OPA's First Proposal	37	160	400	354
OPA's Final Proposal	37	200	475	265



Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Proposal covers OGS and KWCG profits, no double dipping

Next Steps

- Send out new counter proposal.
- TCE accepts – proceed to sign Implementation Agreement and work towards completing contract.
- TCE does not accept – legal teams will determine appropriate mechanism to resolve the matter. However, we have lost our leverage to try and get the dispute mechanisms on the table first.
- Reasonable probability that Government will continue to direct us to meet TCE's demands for fear of either private arbitration or public litigation.
- Send out strongly worded letter (prepared) to TCE indicating that they have breached their terms of the confidentiality agreement with us and are not negotiating in good faith.

Aleksandar Kojic

From: Michael Killeavy
Sent: May 20, 2011 1:29 PM
To: Colin Andersen
Cc: Brett Baker; JoAnne Butler
Subject: FW: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

FYI. Please see below.

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: May 20, 2011 12:19 PM
To: Deborah Langelan
Cc: Michael Killeavy; JoAnne Butler; Michael Barrack; John Finnigan; Geoff Murray; Terry Bennett; John Cashin; Jody Johnson; Doug McLean
Subject: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

With Prejudice

Dear Deborah,

Further to my e-mail of January 31, 2011 wherein we informed you of our decision to release MPS Canada, Inc. ("MPS") from suspension, we are nearing completion of the negotiation of the amended Equipment Supply Agreement No. 6519 ("ESA") with MPS. The amended ESA incorporates modifications to the original agreement in accordance with the firm price proposal provided by MPS on February 28, 2011 (and communicated to the OPA on the same date) for conversion of the ESA to fast start and simple cycle configuration, with the exception that the additional scope (the closed cooling system and stacks) previously a fixed price, has now been incorporated as an exclusive supply option in favour of MPS that will be triggered as a change order at a future date. The option is only triggered if the MPS gas turbines are installed by TransCanada in a simple cycle configuration under a contract between TransCanada and the OPA to replace the SW GTA Clean Energy Supply Contract. In addition, MPS has a first right of offer to provide the power train for a combined cycle build out, consistent with the letter agreements (also shared with the OPA) should the turbines be installed by TransCanada in a combined cycle application under a contract between TransCanada and the OPA to replace the SW GTA Clean Energy Supply Contract. Given the fact there is no agreement with the OPA to date on the Cambridge project or an alternative project that would utilize the gas turbines, TransCanada has proceeded with this solution on the basis that it preserves the ability to use the turbines in a future simple cycle or combined cycle replacement project, but mitigates the exposure to further cost increases and increases the marketability of the turbines for reuse or resale in the event a replacement project is not defined.

In addition to the above changes, MPS and TransCanada have also agreed to include "make good" performance on ramp rate and start-up time in the amended contract. The start-up time has been restated to be "press start to 100% load" and allows for new NFPA requirements, resulting in guaranteed start-up time of 26 minutes to 100% load.

TransCanada will execute the amended MPS agreement as described above as it provides both TransCanada and the OPA with maximum flexibility in the future, both in terms of mitigation efforts and any potential future projects. We trust that the OPA concurs with this decision.

Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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Aleksandar Kojic

From: JoAnne Butler
Sent: June 6, 2011 11:30 AM
To: John Zych
Cc: Colin Andersen
Subject: FW: DRAFT MAY 18 - 19 BOARD MINUTES
Attachments: DRAFT Minutes of Board of Directors Meeting - May 18 - 19, 2011.doc

John,

I have looked at the OGS comments and please check with Colin on how he wants to word the "government instructed" part of the minutes. I know that that was what was agreed on at the time but my sense was the JH was not happy with the wording. Please do not send out until Colin is comfortable with them.

I will let my Director's respond to their sections, although I thought that they were ok. I believe that Kevin Dick presented the Atikokan section, not Darryl Yahoda.

Thanks...

JCB

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

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joanne.butler@powerauthority.on.ca

From: John Zych
Sent: Lunes, 06 de Junio de 2011 11:08 a.m.
To: Kim Marshall; Elizabeth Squissato; Terry Gabriele; Deborah Langelaan; JoAnne Butler; Barbara Ellard; Stephen Nusbaum; Darryl Yahoda; Andrew Pride; Karen Frecker
Subject: DRAFT MAY 18 - 19 BOARD MINUTES

Please review these minutes by the end of day so that I may send them to Colin Andersen for his review tomorrow.

John Zych
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MEETING OF THE BOARD OF DIRECTORS

MINUTES of a meeting of the Board of Directors of the Ontario Power Authority held on Wednesday, May 18, 2011 at 1:30 p.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 (by telephone)
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
Kristin Jenkins, Acting Vice President, Communications
Barbara Ellard, Director, Policy and Analysis, Electricity Resources
Tabitha Bull, Manager, Policy and Analysis, Electricity Resources
Kevin Dick, Director, Clean Energy Procurement, Electricity Resources
Steve Nussbaum, Manager, Clean Energy Procurement, Electricity Resources
Darryl Yahoda, Manager, Generation Procurement, Electricity Resources
Richard Duffy, Manager, Generation Procurement, Electricity Resources
Ali Golriz, Business Analyst, Clean Energy Procurement, Electricity Resources
Deborah Langelaan, Manager, Contract Management, Electricity Resources
Brett Baker, Senior Advisor, Policy and Strategy
John Zych, Corporate Secretary

1. Constitution of the Meeting

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

9. Oakville Generating Station Update

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

Ms. JoAnne Butler advised that OPA had been instructed by the government to make a second counter-proposal to the TransCanada Energy Ltd. ("TCE") proposal of 10 March 2011. This government-instructed counter-proposal to settle was submitted on April 21, 2011. It had an effective financial value of \$712 million. On April 29, 2011 TCE rejected the counter-proposal. TCE also served the government with 60-day advance notice of its intent to sue the Crown pursuant to Section 7(1) of the *Proceedings Against the Crown Act*. Ms. Butler advised that certain aspects of the TCE rejection of the counter-proposal were unclear to the OPA. Therefore, the OPA had sent a letter to TCE requesting clarification of certain aspects of the TCE rejection letter and advising TCE that the OPA wanted its counsel and TCE's counsel to commence talks on submitting the dispute to arbitration. The next step would be for OPA's counsel will be meet with TCE's counsel to discuss the terms of reference for the arbitration of the dispute.

Aleksandar Kojic

From: Kristin Jenkins
Sent: June 6, 2011 5:31 PM
To: Colin Andersen
Cc: JoAnne Butler; Michael Lyle; Amir Shalaby
Subject: Greenfield South
Attachments: Greenfield South Chronology - 06-6-11 Revised.docx; Greenfield South Comparison to OGS.doc

Colin,

For your information, today, we were asked to prepare the attached chronology. Also attached is a comparison that the ministry prepared between Greenfield South and OGS. Based on call we had today with ministry, sounds like current focus in terms of taking any action is around the fact that Greenfield does not have a connection agreement in place yet with Hydro One. We received two media calls today Global and ReNew Canada. We were asked not to respond in the first instance because the MOE was going to talk to Global. Hazel McCallion was on CFRB this morning on the topic and Amir tells me that John Tory is blasting the location as I type. Media have not been particularly interest in OPA on the issue. We seem to only be getting calls when reporters don't hear back from the government.

Kristin

From: Kristin Jenkins
Sent: June 6, 2011 5:11 PM
To: Kristin Jenkins; 'Feairs, Jon (MEI)'; 'Kulendran, Jesse (MEI)'; 'Jennings, Rick (MEI)'; 'garry.mckeever@ontario.ca'; '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

Still tracking down two dates – when in 2008 or 2009, the first FM ended and when in 2008 Eastern applied for a building permit. Please note, the second FM was in July **2009**. The first draft said 2008.

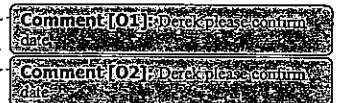
From: Kristin Jenkins
Sent: June 6, 2011 4:45 PM
To: 'Feairs, Jon (MEI)'; 'Kulendran, Jesse (MEI)'; 'Jennings, Rick (MEI)'; 'garry.mckeever@ontario.ca'; 'Botond, Erika (MEI)'; 'MacLennan, Craig (MEI)'; 'Block, Andrew (MEI)'
Cc: Patricia Phillips; Mary Bernard; Tim Butters; Derek Leung; Michael Lyle
Subject: 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

Chronology Greenfield South Power Plant

- June 2004 Ministry of Energy launches 2,500 MW CES RFP
- April 2005 Eastern Power awarded two contracts. The two contracts were 280MW each for a Greenfield South plant (Hwy 427 & QEW) and a Greenfield North plant (Hwy 407 & Hwy 10); 2007 original in-service dates for these facilities to coincide with the then coal shutdown date.
- August 2005 Greenfield North contract terminated under a mutual agreement between the OPA and Eastern Power; moved in-service date for Greenfield South to July 2009.
- September 2005, Eastern Power filed a force majeure (FM) notice with the OPA because the Ministry of the Environment (MOE) received requests to elevate the project to an individual EA
- January 2006, the Director of the MOE denied the elevation request
- March 2006, City of Mississauga passed zoning by-laws that would not allow Greenfield South to be built at the proposed site
- October 2007, OMB issued an Order in favour of Eastern power after Eastern Power appealed the City of Mississauga ruling to the OMB
- July 2008, the Minister of the Environment concurred with the decision made by the Director of the MOE and Eastern Power receives EA approval
- ? ~~2008~~ Eastern Power terminates first FM
- ? ~~2008~~ Eastern Power applies for a building permit from the City of Mississauga; permit, by law, to be issued within 30 days of completing application. This does not happen.
- July 2009, Greenfield files second force majeure due to delays in obtaining building permit.
- March 2009, resulting from delay between 2005 and 2008, the OPA and Eastern Power amend agreement with new in service date of Sept 2012 (from July 2009); agreement also amended so that proponent no longer has option of burning oil if natural gas prices increase.
- March 2011, Eastern Power determines that they can obtain project financing and terminates second FM
- May 2011, OPA and Eastern Power agree to revised milestone date for commercial operation resulting from the building permit delay.
- May 2011, project financing achieved through EIG Management and Credit Suisse
- May 2011, Eastern Power obtained building permit from the City of Mississauga ;mobilization is in process and major foundation work is planned to commence in July 2011
- Project is presently advanced into detailed design stage; major equipment procurement is underway with steam turbine generator delivered and in storage



	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
Current Status	Environmental approvals complete. Municipal building permit obtained. Equipment being moved to site with construction beginning in July.	Cancelled. Had not received environmental or municipal approvals.
In-Service Date CONFIDENTIAL	Q3 2014	2013 (projected)
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

Aleksandar Kojic

From: Michael Lyle
Sent: June 17, 2011 11:16 AM
To: Colin Andersen; JoAnne Butler
Cc: Michael Killeavy
Subject: FW: Memo re Strategic Options for Arbitration with TCE
Attachments: Memo re Strategic Considerations for Arbitration with TCE 20838721_2.DOC

FYI

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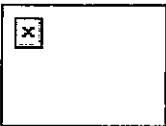
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From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Sebastiano, Rocco
Subject: Memo re Strategic Options for Arbitration with TCE

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.

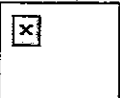
Elliot



Elliot Smith
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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: 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%;

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

Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: June 21, 2011 8:51 AM
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

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,

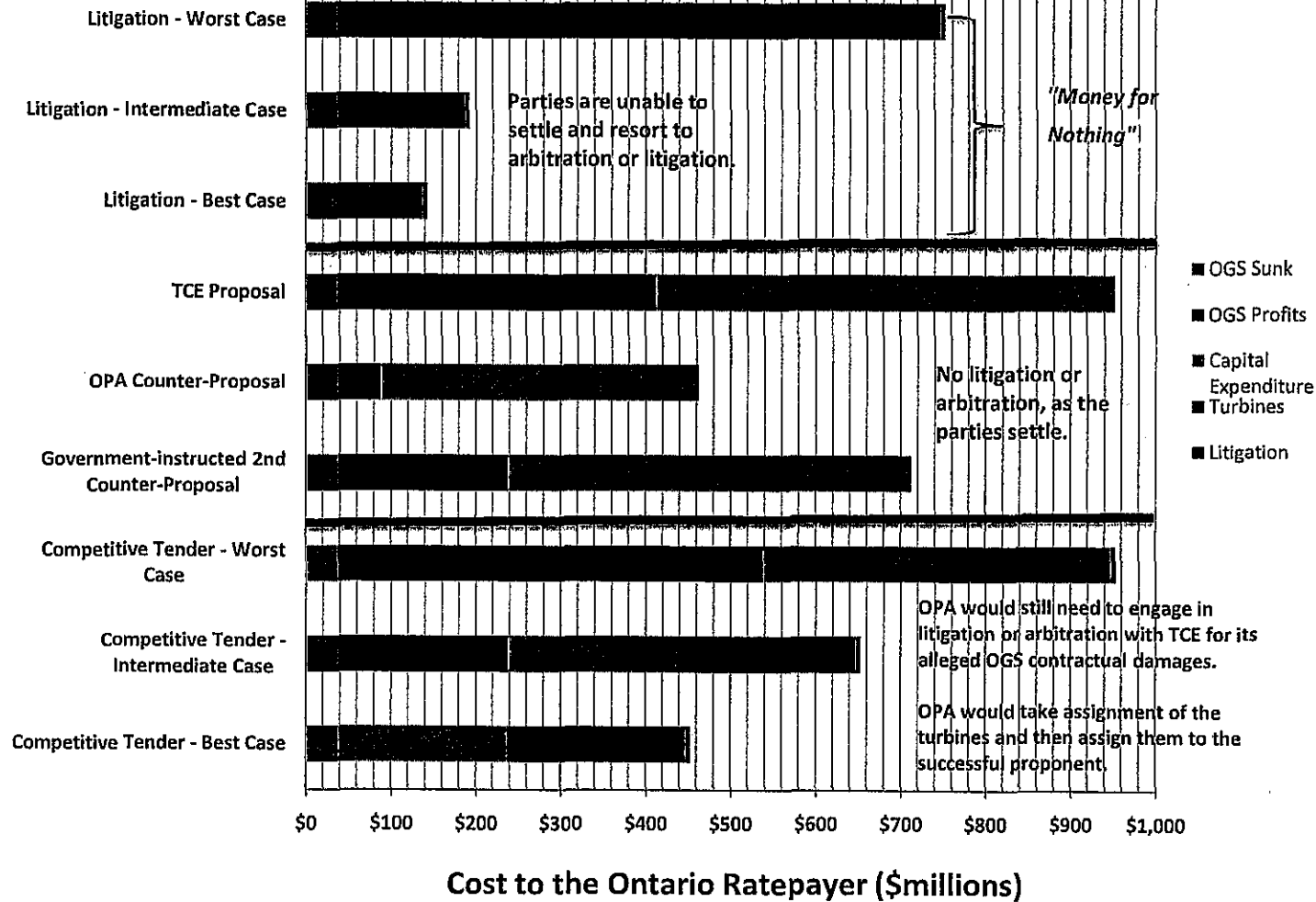
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Jim Hinds
(416) 524-6949

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

Comparison of Scenarios 20 April 2011



SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	\$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed “unleveraged” discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10- Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a “nice to have” sweetener. Precedent for 25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the <i>Planning Act</i> .	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Questions

1. Please clarify the Annual Average Contract Capacity ("AACC") used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.
2. Please clarify the 2009 and 2010 CAPEX amounts detailed in your 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA? These amounts total to \$42 million. We believe that these amounts are actually OGS sunk costs. Is this correct?
3. Please clarify TCE cost of capital used in its financial model, including how it is arrived at, i.e., proportion and cost of both debt and equity portions.
4. Please clarify the NRRIF used in your financial model? In your 29 April 2011 letter to Colin Andersen, you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA, you indicate 20%.
5. Can you please specify your concerns about testing ramp rates for the Replacement Plant?
6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your 29 April 2011 letter where you state that it is "one-sided"?
7. In your letter of 29 April 2011 you mention that TCE has shared its cash flow model with the OPA. Actually, you shared a pro-forma income statement for the project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?
- 8.

DRAFT

Aleksandar Kojic

From: jim.hinds@irish-line.com
Sent: June 21, 2011 12:12 PM
To: JoAnne Butler; James Hinds; Michael Lyle
Cc: Colin Andersen; Michael Killeavy
Subject: Re: Privileged - KW Peaker

Thanks for the quick response. I'll review the attachments when I'm back at a laptop tonight.
J.

Sent from my BlackBerry device on the Rogers Wireless Network

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

From: "JoAnne Butler" <joanne.butler@powerauthority.on.ca>
Date: Tue, 21 Jun 2011 11:05:49
To: James Hinds<jim.hinds@irish-line.com>; Michael Lyle<Michael.Lyle@powerauthority.on.ca>
Cc: Colin Andersen<Colin.Andersen@powerauthority.on.ca>; Michael Killeavy<Michael.Killeavy@powerauthority.on.ca>
Subject: RE: Privileged - KW Peaker

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.
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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

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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
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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 Langelaan; 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.

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

Michael Killeavy, LL.B., MBA, P.Eng.
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*** ALL WORKSHEETS ARE PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF

Plant Capacity	450 MW
Convert to KW	1000

TCE Bilateral Deal vs. K-C Competitive Procurement

	Lowest Cost Tender		Intermediate
	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE
Capital Expenditures (BOP)	\$330,000,000	\$200,000,000	\$330,000,000
Turbine Equipment Cost	\$210,000,000	\$210,000,000	\$210,000,000
O&G Sunk Costs	\$37,000,000	\$37,000,000	\$37,000,000
O&G Profits	\$375,000,000	\$375,000,000	\$375,000,000
Litigation Costs	\$5,000,000	\$5,000,000	\$5,000,000
Total	\$957,000,000	\$827,000,000	\$957,000,000
\$/MW	\$2,126,667	\$1,837,778	\$2,126,667
\$/KW	\$2,127	\$1,838	\$2,127
Premium		\$130,000,000	

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

Total Project Costs (including turbines) **\$ 525,443,218**

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

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

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

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 turb

Siemens SGT6-PAC 500F for the York Energy Center was not disclosed in its proposal, however, both Siemens "F" class gas turbines. Although the Cost of the turbines seem low in comparison to the \$21 contract capacity of 641.5 MW and 393 MW for Halton Hills and York Energy Center are significantly plant.

Based on the total project cost above, low, intermediate and high case scenarios were estimated for of \$200M was estimated from VERESEN and SMS's data. The Intermediate and High case scenarios c

LITIGATION ***

Input

Cost Tender		High Cost Tender	
Competitive Procurement		Bilateral Deal TCE	Competitive Procurement
\$270,000,000		\$330,000,000	\$315,000,000
\$210,000,000		\$210,000,000	\$210,000,000
\$37,000,000		\$37,000,000	\$37,000,000
\$375,000,000		\$375,000,000	\$375,000,000
\$5,000,000		\$5,000,000	\$5,000,000
\$897,000,000		\$957,000,000	\$942,000,000
\$1,993,333		\$2,126,667	\$2,093,333
\$1,993		\$2,127	\$2,093
\$60,000,000			\$15,000,000

Intermediate

\$ 480,356,628

\$ 195,473,218

\$ 210,000,000

\$ 270,356,628

ines at an estimated cost of about \$82 M. The cost of the two

Halton Hills and York Energy Center have implemented two LO M proposed by TCE for its two "G" class gas turbines, the lower than the potential 900 MW Contract Capacity of the SWGTA

CAPEX for competitive procurement: The low case scenario CAPEX of \$270M and \$315M, respectively, were estimated from CERA.

Aleksandar Kojic

From: Michael Killeavy
Sent: July 15, 2011 1:08 PM
To: 'David.Livingston@infrastructureontario.ca'
Cc: Colin Andersen; JoAnne Butler; Michael Lyle
Subject: TCE Matter - Background Briefing
Attachments: Briefing_for_Govt_20110715.pptx

Importance: High

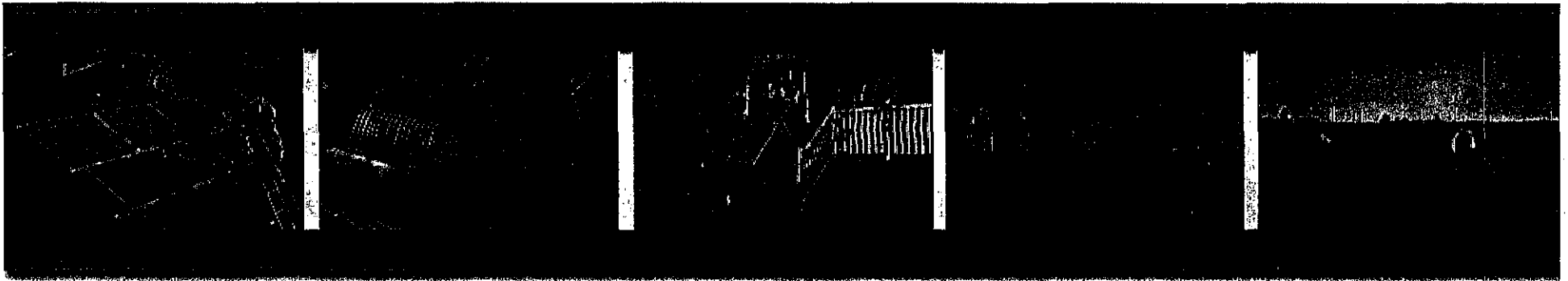
Follow Up Flag: Follow up
Flag Status: Completed

David,

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Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
Toronto, Ontario
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Winding Up of the Oakville Generating Station (OGS) Contract

Background Briefing

July 15, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

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- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

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- The \$503 million NPV is calculated over the thirty year life of the project, whereas the contract has a 20-year term.
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Comparison of Settlement Proposals

	TCE Proposal (March 16, 2014)	OPA Counter-Proposal (March 28, 2014)	Government-Proposed Counter-Proposal (March 28, 2014)	OPA Response to Government-Proposed Counter-Proposal (April 23, 2014)	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.
Required 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
Overall financial Interrelationship	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100MM ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	\$475 mm	Unknown but we infer from the reference to a ~\$65 mm difference that it is \$540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by \$75MM; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Status of Negotiations

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

Arbitration

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

Litigation

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

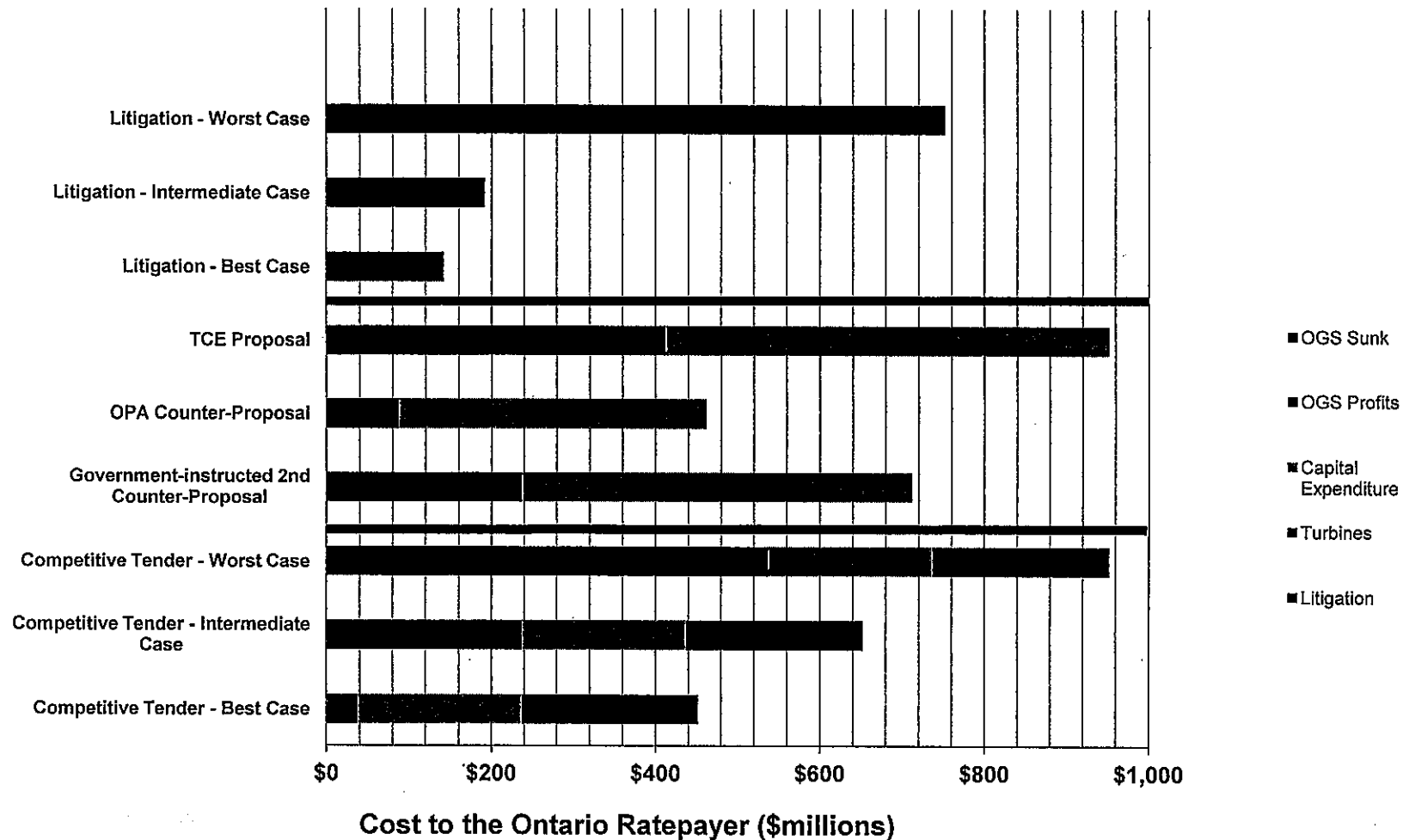
Competitive Procurement

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

Potential Outcomes

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

Financial Value of Potential Outcomes



[REDACTED]

APPENDIX

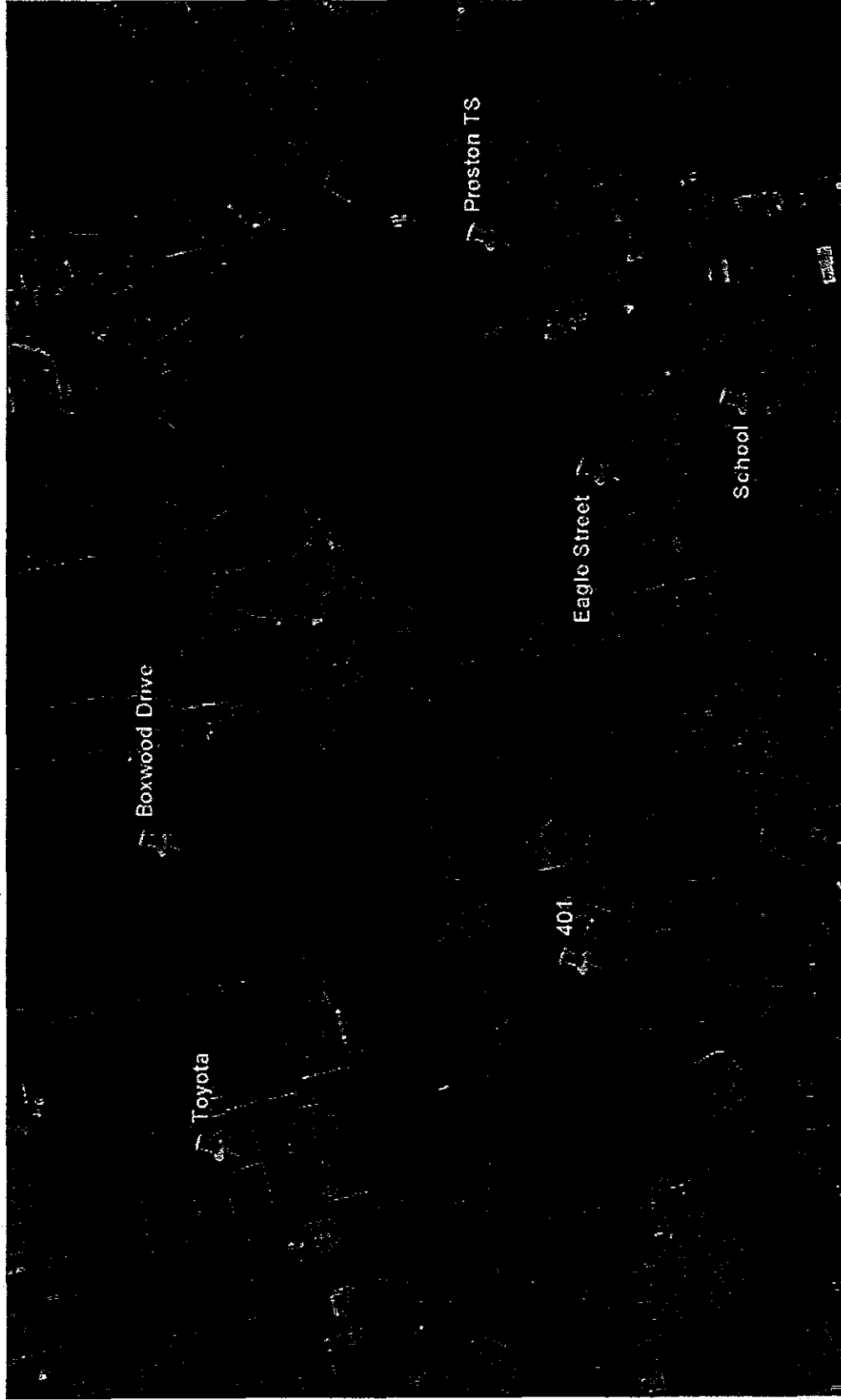
OPA Negotiating Team

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

TransCanada Energy (TCE) Negotiating Team

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

Boxwood Site



Mitsubishi (MPS) Gas Turbines (GT's)

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

Mitsubishi (MPS) Gas Turbines (GT's)

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

Aleksandar Kojic

From: 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: Completed

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
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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 Killeavy
Sent: July 19, 2011 5:35 PM
To: Colin Andersen; Irene Mauricette
Subject: Fw: TCE Matter - Background Briefing
Attachments: Briefing_for_Govt_20110715.pptx

Importance: High

As requested.

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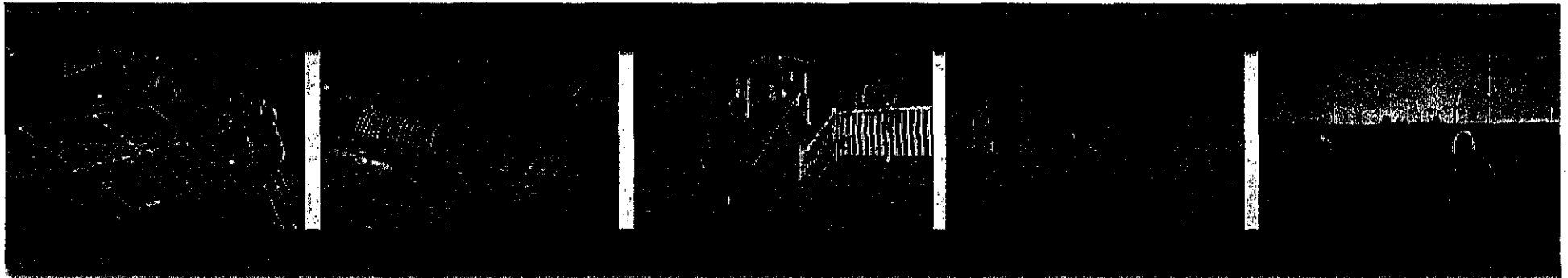
From: Michael Killeavy
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Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second 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
Cost of Capital Assumptions	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.
Operating Expenses (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the Planning Act.	In the Government-instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continue until another option is found.

Status of Negotiations

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

Arbitration

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

Litigation

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

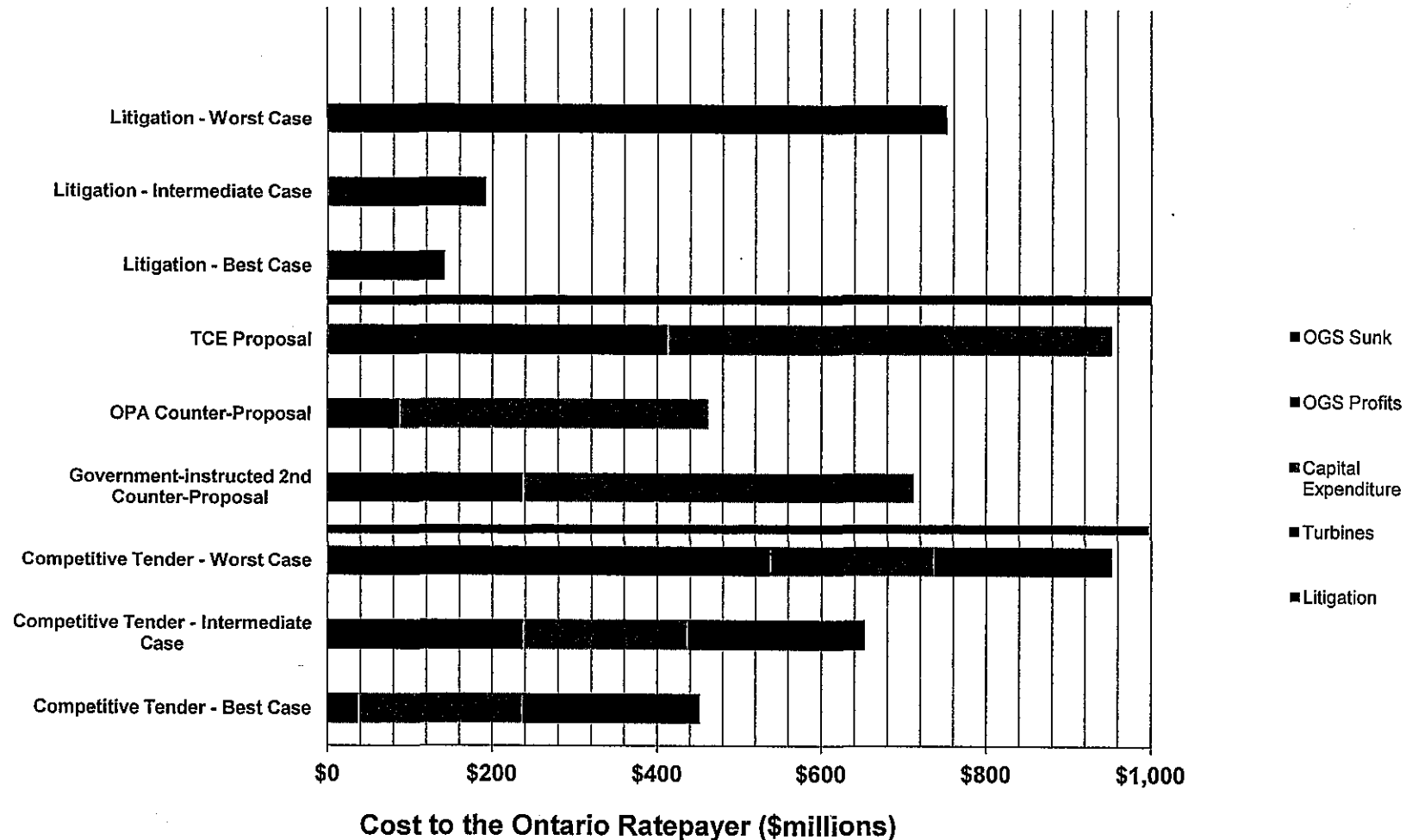
Competitive Procurement

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

Potential Outcomes

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

Financial Value of Potential Outcomes



APPENDIX

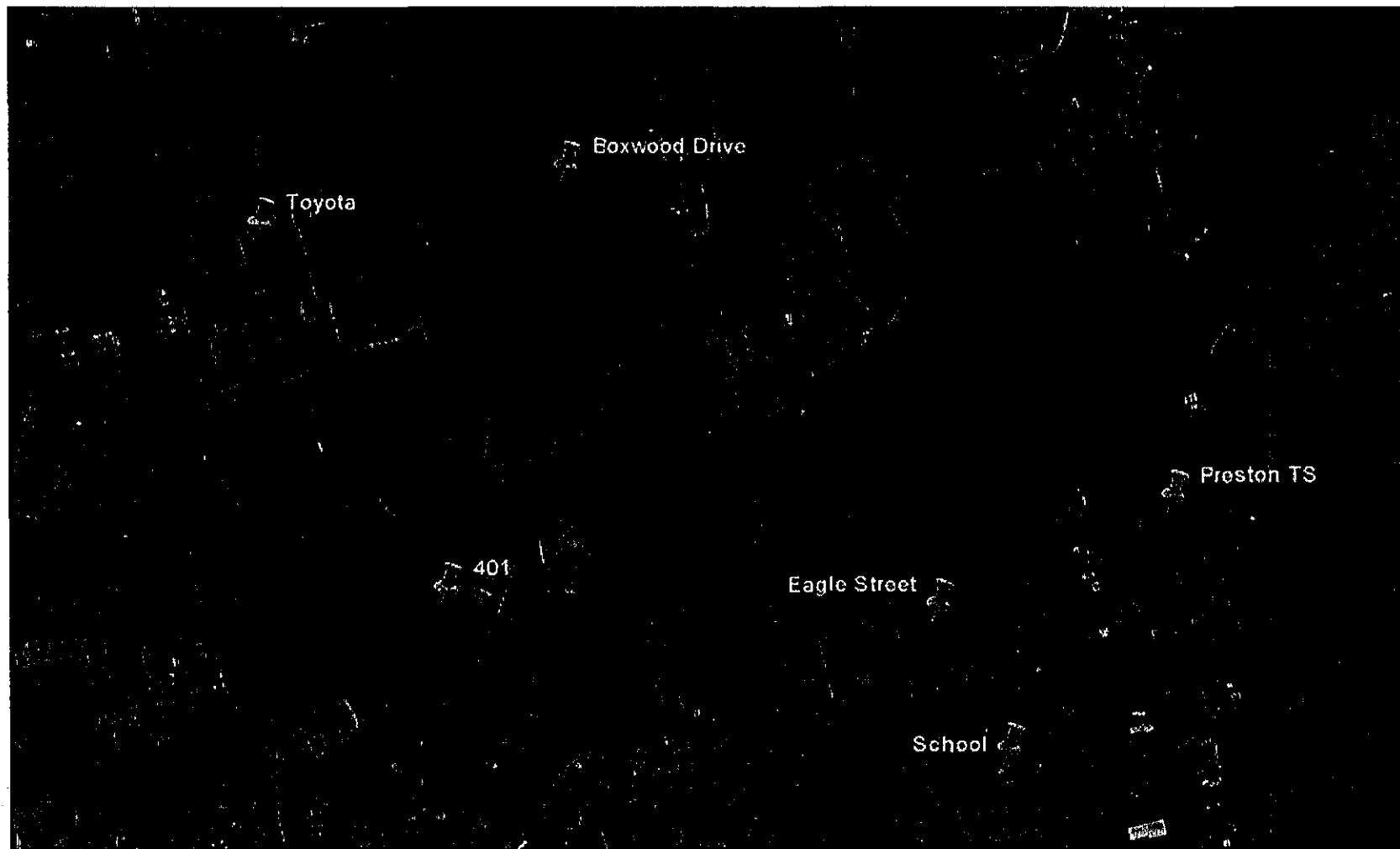
OPA Negotiating Team

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

TransCanada Energy (TCE) Negotiating Team

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

Boxwood Site



Mitsubishi (MPS) Gas Turbines (GT's)

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

Mitsubishi (MPS) Gas Turbines (GT's)

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

Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: July 30, 2011 10:04 AM
To: Michael Lyle; Colin Andersen
Subject: Re: Arbitration Agreement

We can use the Monday slot to provide information to Board on TCE as well as update Board on NTP/Samsung. We can keep the Wednesday slot for decision on TCE if it suits. Charlie drops off the Board at some point in the next few days.

Jim Hinds
(416) 524-6949

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

From: "Colin Andersen" [Colin.Andersen@powerauthority.on.ca]
Date: 07/30/2011 08:15 AM
To: "Michael Lyle" <Michael.Lyle@powerauthority.on.ca>
Subject: Re: Arbitration Agreement

Ok had a quick look. Talked to david l last night after board meeting. I gather the govt's expectation is that our board will review at wed board meeting. They approved version 2 - us in. Hard for us to change anything as that will require a trip back through their decision process. Jim we will review in more detail but looks like will need decision item with board at one of upcoming slots, once we are ready.

From: Michael Lyle
Sent: Friday, July 29, 2011 08:07 PM
To: Colin Andersen
Subject: Fw: Arbitration Agreement

FYi. I am on road to a family wedding but will look at it tomorrow morning.

From: David Livingston [mailto:David.Livingston@infrastructureontario.ca]
Sent: Friday, July 29, 2011 07:54 PM
To: Michael Lyle
Cc: Dermot Muir <Dermot.Muir@infrastructureontario.ca>
Subject: FW: Arbitration Agreement

Mike,

I spoke to Colin tonight and would appreciate you making sure he gets this draft of the agreement, which has come a long way from where we started. I expect to be talking to him again sometime over the weekend, given the time crunch between now and your Board meeting next Wednesday, and I am sure he would be immeasurably helped by knowing exactly what the agreement currently has to say.

Thanks.

David

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'

Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

Please find attached the latest version of the arbitration agreement. I have blacklined it to the version circulated last night. If possible I would appreciate speaking to you later this evening or tomorrow once you have had a chance to review. Please feel free to call me on my bb 416-473-5667.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

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Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: July 31, 2011 1:30 PM
To: Michael Lyle; Colin Andersen
Subject: Re: Arbitration Agreement

I read through the draft arbitration agreement and skimmed the black-line. I have no expertise in arbitration so treat the following comments accordingly.

I was struck by the stark concession, in the recitals, of any legal defenses which might have been available against TCE. It truly is only about quantum.

With Ontario and OPA as parties, it is unclear where any arbitration award might fall - taxpayer or ratepayer. Is there anything in the way that an arbitrator might find which could affect that outcome? Would this be any different if the Assets of Interest section 7.3 becomes operative, either from the point of view of the arbitrator or from any contract which OPA might have with an Asset of Interest?

In respect of our Board, I assume that execution of the Arbitration Agreement would require Board approval. What are the commercial reasons why the Board would opt for arbitration rather than litigation? If there are none or if they are inadequate, would the Board require a Directive to enter into arbitration?

Jim Hinds
(416) 524-6949

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Sent: Friday, July 29, 2011 07:54 PM
To: Michael Lyle
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Subject: FW: Arbitration Agreement

Mike,

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To: 'Michael.Lyle@powerauthority.on.ca'
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Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
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777 Bay Street, 9th Floor
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M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

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Aleksandar Kojic

From: Michael Lyle
Sent: July 31, 2011 2:31 PM
To: 'jim_hinds@irish-line.com'; Colin Andersen
Subject: Re: Arbitration Agreement

You are right about the concessions. TCE has (with the possible exception of terminal value) gotten everything it was looking for with respect to the scope of the arbitration. However, this is consistent with what we had predicted some months ago was likely to happen given the Crown's strong desire to avoid litigation. In the normal course, given that we are the counterparty I would expect damages to fall on OPA and hence the ratepayer. The Crown may be liable for the tort of interference with contractual relations but focus of arbitration is on quantum and so this issue may not even come up. I have spoken to counsel for the Crown and asked that it be made clear that the provision re an asset of interest only relates to assets owned directly or indirectly by the Crown. The OPA does not have assets (other than furniture etc) but rather obligations to pay.

Yes, the board will have to approve agreement. We may have commercial reasons to prefer arbitration even on these terms to TCE accepting the offer we have already made but a determination of whether that statement is true requires a review of numbers previously presented by Michael K. There is no explicit authority for Minister to give directive in these circumstances and so this presents issues. I have told IO that our board needs to understand entire deal including Lennox etc components to review arb agreement. I will be speaking to David Livingston tonight on this subject.

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

From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Sunday, July 31, 2011 01:29 PM
To: Michael Lyle; Colin Andersen
Subject: Re: Arbitration Agreement

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Sent: Friday, July 29, 2011 7:19 PM
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Aleksandar Kojic

From: Adele Hurley [adele@adelehurley.com]
Sent: August 2, 2011 7:12 PM
To: John Zych
Cc: Colin Andersen; jmichaelcostello@gmail.com; Richard Fitzgerald; James Hinds; Ron Jamieson; Bruce Lourie; Lyn McLeod; pjmon; Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

Noted. Thank you.
Adele

On Tue, Aug 2, 2011 at 3:52 PM, John Zych <John.Zych@powerauthority.on.ca> wrote:

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

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

We attach the following materials:

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

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

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

The call-in details are as follows:

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

John Zych

Corporate Secretary

Ontario Power Authority

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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Aleksandar Kojic

From: ferrari@execulink.com
Sent: August 2, 2011 7:16 PM
To: John Zych; Colin Andersen; jmichaelcostello@gmail.com; Richard Fitzgerald; James Hinds; Adele Hurley; Bruce Lourie; Lyn McLeod; pjmon
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

I will be on the call. Thx. Ron

Sent wirelessly from my BlackBerry device on the Bell network.
Envoyé sans fil par mon terminal mobile BlackBerry sur le réseau de Bell.

From: "John Zych" <John.Zych@powerauthority.on.ca>
Date: Tue, 2 Aug 2011 15:52:46 -0400
To: Colin Andersen<Colin.Andersen@powerauthority.on.ca>; <jmichaelcostello@gmail.com>; Richard Fitzgerald<rfitzgerald7@sympatico.ca>; James Hinds<jim_hinds@irish-line.com>; Adele Hurley<adele@adelehurley.com>; Ron Jamieson<ferrari@execulink.com>; Bruce Lourie<blourie@ivey.org>; Lyn McLeod<lynandneil@sympatico.ca>; pjmon<pjmon@yorku.ca>
Cc: Amir Shalaby<Amir.Shalaby@powerauthority.on.ca>; Michael Lyle<Michael.Lyle@powerauthority.on.ca>; JoAnne Butler<joanne.butler@powerauthority.on.ca>; Kim Marshall<Kim.Marshall@powerauthority.on.ca>; Andrew Pride<Andrew.Pride@powerauthority.on.ca>; Kristin Jenkins<Kristin.Jenkins@powerauthority.on.ca>; Brett Baker<Brett.Baker@powerauthority.on.ca>; Nimi Visram<Nimi.Visram@powerauthority.on.ca>
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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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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

(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 isare 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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5 SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6 CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

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

Section 6.3 Cross Examinations on Affidavits

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

Comment [A6]: Significant case with large quantum of damages and TCE with the most information re calculation of damages. If 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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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**

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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**
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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

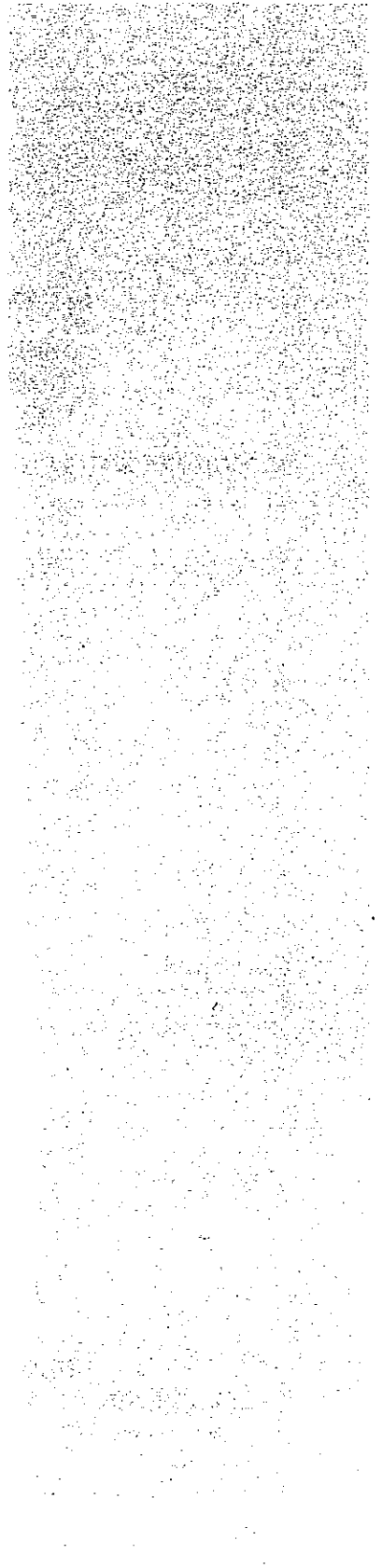
-and-

•

("•")

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

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

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

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

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

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

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

Comment [A9]: Why are legal advisors included?

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

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

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____
Title

Aleksandar Kojic

From: Colin Andersen
Sent: August 2, 2011 8:48 AM
To: 'jim_hinds@irish-line.com'; Michael Lyle
Subject: Re: Confidential - TCE Arbitration

Yes after we talked yesterday I asked mike to followup with Finance about "the accounting" - basically with the same idea in mind.

I had heard said "the OPA didn't cancel this so why should they have to wear it". That being said since opg asset won't be determined until end of aug and maybe not even then I don't know how determinate we will get now. Worth putting back into the discourse though.

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From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Monday, August 01, 2011 06:48 PM
To: Colin Andersen; Michael Lyle
Subject: Confidential - TCE Arbitration

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As I thought this through some more afterwards, I would like your advice on whether we should proactively seek an understanding of this split with the Government now, before we execute the arbitration agreement. We do have some leverage now; afterwards, we do not. And even if we do not get a specific agreement, an agreement to discuss the issue in the future along some broad parameters might be better than nothing.

Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: August 2, 2011 9:11 AM
To: Michael Lyle; Colin Andersen
Subject: Re: Confidential - TCE Arbitration

I took a call last night from a Director who was concerned with the potentially open-ended liability of OPA to an arbitration award. "What happens to the ratepayer if an arbitrator awards \$1B to TCE?" It is a valid question.

OPA's primary concern should be value to the ratepayer. To the extent that there is any arbitrator award which creates no value for the ratepayer (ie no electrons), we have a problem. To the extent that there is a negotiated solution which creates value for the ratepayer (Assets of Interest), ratepayer can bear defensible costs to support the solution.

If there is an arbitrator award which creates no value to the ratepayer, it would be consistent with our past and soon to be present business practices to pay some of the costs of the failed project: sunk costs (in original documentation) and equipment losses with mitigation (NTP directive). The difficulty is the lost profits component, which is we have specifically excluded in other deals.

So ... OPA could propose an arrangement whereby in return for signing the arbitration agreement, OPA and Government agree as follows: (1) OPA is supportive of a negotiated Assets of Interest solution and will be supportive to the extent of a defensible expense on behalf of the ratepayer and (2) if no Asset of Interest solution is forthcoming and an award is made, OPA will bear the costs on behalf of the ratepayer for normal contractual failure, being sunk cost and mitigated losses on the turbine; Gov will bear the rest.

Comments/views?

Jim Hinds
(416) 524-6949

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

From: "Colin Andersen" [Colin.Andersen@powerauthority.on.ca]
Date: 08/02/2011 08:48 AM
To: jim_hinds@irish-line.com, "Michael Lyle" <Michael.Lyle@powerauthority.on.ca>
Subject: Re: Confidential - TCE Arbitration

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Aleksandar Kojic

From: Colin Andersen
Sent: August 2, 2011 1:39 PM
To: 'jim_hinds@irish-line.com'; Michael Lyle
Subject: Re: Confidential - TCE Arbitration

That is what I was floating yesterday but you are muchmore articulate

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

From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Tuesday, August 02, 2011 09:11 AM
To: Michael Lyle; Colin Andersen
Subject: Re: Confidential - TCE Arbitration

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Jim Hinds
(416) 524-6949

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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.

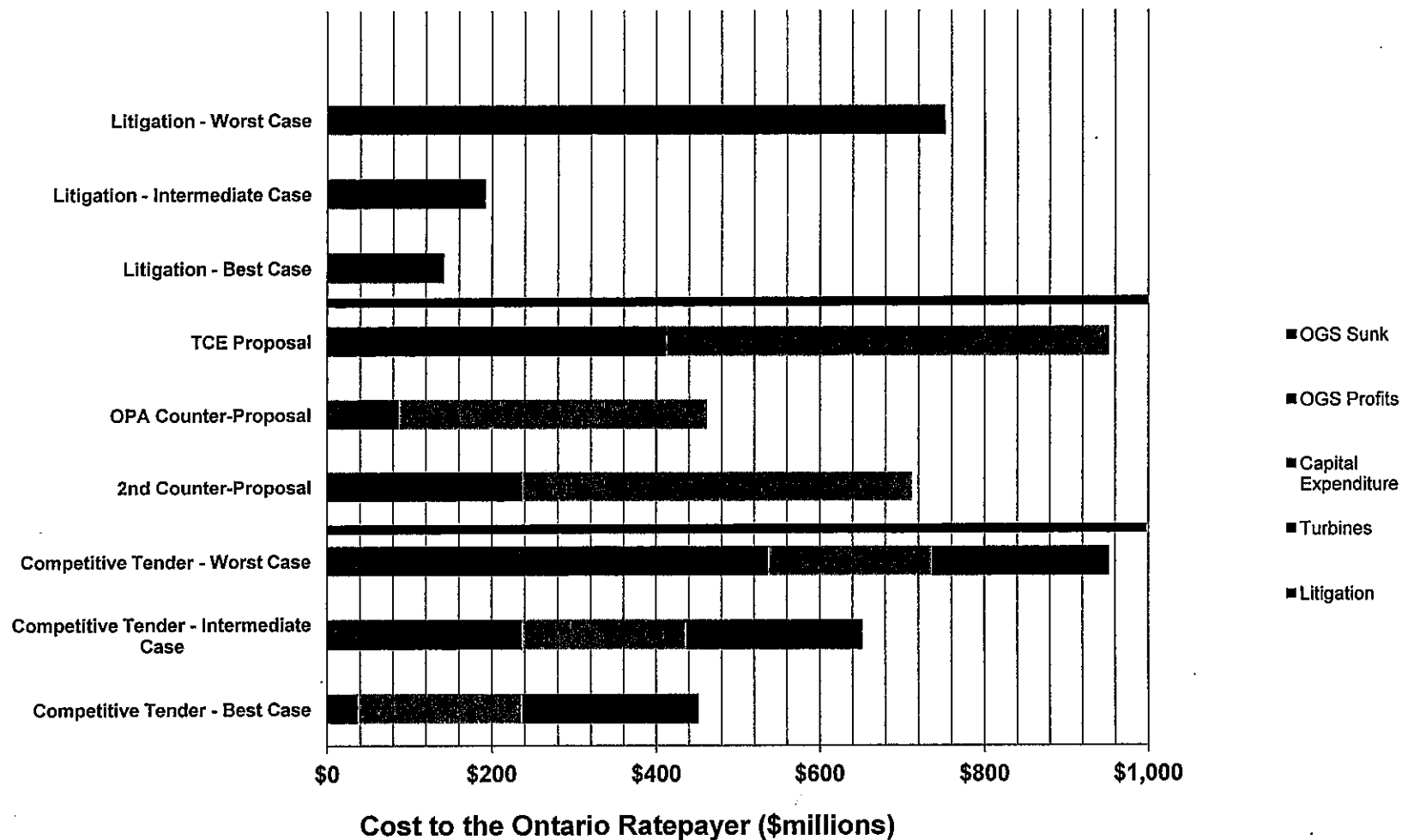
Comparison of Settlement Proposals

	Portlands Energy Centre Offer (15 Dec 11)	Portlands Energy Centre Counter Offer (23 Feb 12)	Portlands Energy Centre Counter Offer (23 Feb 12) Accepted by TCE	Portlands Energy Centre Counter Offer (23 Feb 12) Accepted by TCE Accepted by TCE	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 Costs (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/Electricity 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



Arbitration Agreement – OPA Key Concerns

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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.

Proposal

OPG
Preferred
Term Sheet

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
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 31, 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: James Hinds [jim_hinds@irish-line.com]
Sent: August 2, 2011 6:49 PM
To: Colin Andersen; Michael Lyle
Subject: NTP and Samsung - Do Not Share

Just got a call from PO checking in and thanking OPA for burning midnight oil to get all this stuff done. He said their photocopier is under heavy stress with all the documents getting ready for tomorrow.

I took the opportunity to raise TCE arbitration, and mentioned the difficulty that we were going to have entering into arbitration agreement without in some way limiting ratepayer exposure. Mentioned that I believed discussions were underway broaching the issue with Finance and that we would need to resolve this issue soon. He was open to the conversation and was going to check with Finance to see where they stood. He thinks the flow is arbitration agreement very soon, then sort out Assets of Interest later in the fall. I mentioned that this ratepayer cap concept involves only Gov and OPA; it does not involve TCE.

Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: RICHARD P FITZGERALD [rfitzgerald7@sympatico.ca]
Sent: August 2, 2011 7:31 PM
To: Mr. Ron Jameson ; John Zych; Colin Andersen; Michael Costello ; James Hinds ; Adele Hurley ; Bruce Lourie ; Lyn McLeod ; Patrick Moynehan
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30P.M., TORONTO TIME

Will be on the call at 430pm. Rick
Sent from my BlackBerry device on the Rogers Wireless Network

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

From: ferrari@execulink.com
Date: Tue, 2 Aug 2011 23:16:03
To: <John.Zych@powerauthority.on.ca>; <Colin.Andersen@powerauthority.on.ca>; <jmichaelcostello@gmail.com>; <rfitzgerald7@sympatico.ca>; <jim.hinds@irish-line.com>; <adele@adelehurley.com>; <blourie@ivey.org>; <lynandneil@sympatico.ca>; <pjmon@yorku.ca>
Cc: <Amir.Shalaby@powerauthority.on.ca>; <Michael.Lyle@powerauthority.on.ca>; <joanne.butler@powerauthority.on.ca>; <Kim.Marshall@powerauthority.on.ca>; <Andrew.Pride@powerauthority.on.ca>; <Kristin.Jenkins@powerauthority.on.ca>; <Brett.Baker@powerauthority.on.ca>; <Nimi.Visram@powerauthority.on.ca>
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

I will be on the call. Thx. Ron

Sent wirelessly from my BlackBerry device on the Bell network. Envoyé sans fil par mon terminal mobile BlackBerry sur le réseau de Bell.

From: "John Zych" <John.Zych@powerauthority.on.ca>
Date: Tue, 2 Aug 2011 15:52:46 -0400
To: Colin Andersen<Colin.Andersen@powerauthority.on.ca>; <jmichaelcostello@gmail.com>; Richard Fitzgerald<rfitzgerald7@sympatico.ca>; James Hinds<jim.hinds@irish-line.com>; Adele Hurley<adele@adelehurley.com>; Ron Jamieson<ferrari@execulink.com>; Bruce Lourie<blourie@ivey.org>; Lyn McLeod<lynandneil@sympatico.ca>; pjmon<pjmon@yorku.ca>
Cc: Amir Shalaby<Amir.Shalaby@powerauthority.on.ca>; Michael Lyle<Michael.Lyle@powerauthority.on.ca>; JoAnne Butler<joanne.butler@powerauthority.on.ca>; Kim Marshall<Kim.Marshall@powerauthority.on.ca>; Andrew Pride<Andrew.Pride@powerauthority.on.ca>; Kristin Jenkins<Kristin.Jenkins@powerauthority.on.ca>; Brett Baker<Brett.Baker@powerauthority.on.ca>; Nimi Visram<Nimi.Visram@powerauthority.on.ca>
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 <<mailto:John.Zych@powerauthority.on.ca>>

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Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: August 2, 2011 8:52 PM
To: Colin Andersen; jmichaelcostello@gmail.com; rfitzgerald7@sympatico.ca; adele@adelehurley.com; ferrari@execulink.com; blourie@ivey.org; lynandneil@sympatico.ca; pjmon@yorku.ca; John Zych
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

Just so you all know, we expect tomorrow's meeting will be for information only. We do not expect to decide this issue tomorrow.

Livingston will be in attendance for part of the meeting and we will continue the discussions after he leaves. I will very clearly announce his arrival and his departure.

Jim Hinds
(416) 524-6949

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

From: "John Zych" [John.Zych@powerauthority.on.ca]
Date: 08/02/2011 03:53 PM
To: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>, jmichaelcostello@gmail.com, "Richard Fitzgerald" <rfitzgerald7@sympatico.ca>, "James Hinds" <jim_hinds@irish-line.com>, "Adele Hurley" <adele@adelehurley.com>, "Ron Jamieson" <ferrari@execulink.com>, "Bruce Lourie" <blourie@ivey.org>, "Lyn McLeod" <lynandneil@sympatico.ca>, "pjmon" <pjmon@yorku.ca>
CC: "Amir Shalaby" <Amir.Shalaby@powerauthority.on.ca>, "Michael Lyle" <Michael.Lyle@powerauthority.on.ca>, "JoAnne Butler" <joanne.butler@powerauthority.on.ca>, "Kim Marshall" <Kim.Marshall@powerauthority.on.ca>, "Andrew Pride" <Andrew.Pride@powerauthority.on.ca>, "Kristin Jenkins" <Kristin.Jenkins@powerauthority.on.ca>, "Brett Baker" <Brett.Baker@powerauthority.on.ca>, "Nimi Visram" <Nimi.Visram@powerauthority.on.ca>
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
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Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: August 3, 2011 7:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Follow Up Flag: Follow up
Flag Status: Flagged

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 Lyle
Sent: August 3, 2011 9:28 AM
To: Colin Andersen
Subject: Re: Board materials

Nimi is looking into the problem with slide. Not clear from the material what difference is between class A and B limited partnership units. It may relate to voting rights and/or certainty of income stream as with common and preferred shares. No explanation given as to why OEFC but I can only speculate that TCE would prefer to deal with them.

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

From: Colin Andersen
Sent: Wednesday, August 03, 2011 06:25 AM
To: Michael Lyle
Subject: Board materials

For some reason couldn't see slide 10 on my ipad - is it the same sideways bar chart from before?

Pls remind me difs between class A and B shares of relevance to the matter at hand

Contract is with oefc? Why?

Aleksandar Kojic

From: Irene Mauricette
Sent: August 3, 2011 9:49 AM
To: Colin Andersen
Cc: Michael Lyle; John Zych; Nimi Visram
Subject: FW: Slide Deck - PowerPoint
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pdf

Colin, attached is the slide deck resaved to pdf. I've tested the file on the iPad in GoodReader and can view all the slides. Please let me know if this file works, or I can recreate the pdf.

Thnx
Nimi

Nimi Visram on behalf of
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
Email: irene.mauricette@powerauthority.on.ca
Web: www.powerauthority.on.ca

From: Nimi Visram
Sent: August 3, 2011 9:38 AM
To: Nimi Visram
Cc: Irene Mauricette
Subject: Slide Deck - PowerPoint

Nimi Visram | Ontario Power Authority | Executive Assistant & Board Coordinator, to General Counsel & Vice President, Legal, Aboriginal and Regulatory Affairs

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

☎ Phone: 416.969.6027 | 📠 Fax: 416.969.6383 | ✉ Email: nimi.visram@powerauthority.on.ca

🌱 Please consider your environmental responsibility before printing this email.



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.

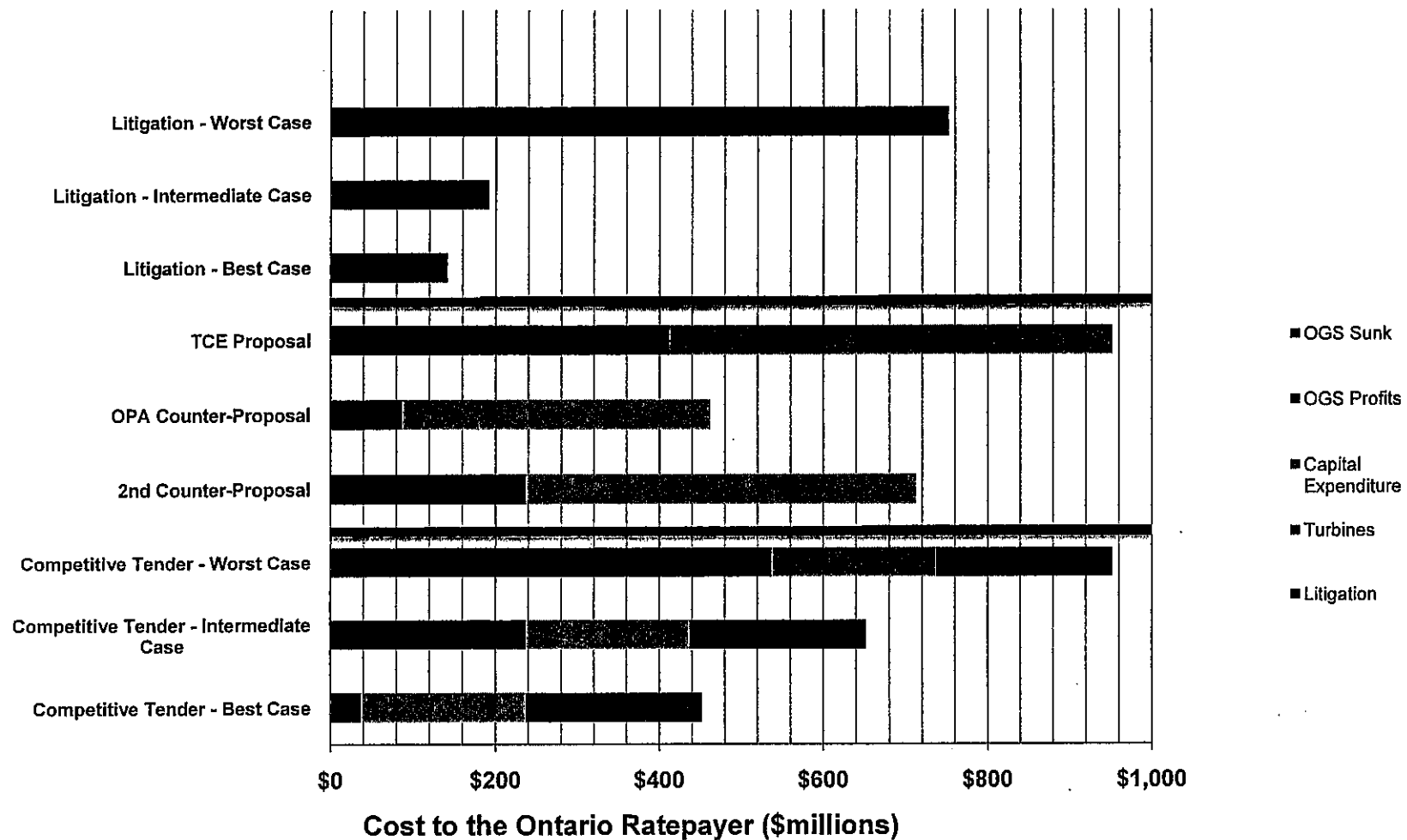
Comparison of Settlement Proposals

	Portlands Energy Centre (\$/MW-month)	Portlands Energy Centre (\$/MW-month)	Subsequent Additional Proposals to Respond to OGS	Portlands Energy Centre (\$/MW-month)	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.
Portlands Capacity (Available MW)	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 Payment	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/Electricity Interconnection	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 Expenditure (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.

Aleksandar Kojic

From: Michael Lyle
Sent: August 3, 2011 11:00 AM
To: 'James Hinds'; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

You and I are scheduled to meet at 4pm to prep for the Board call. I have invited Amir, JoAnne and Michael Killeavy along to that meeting to discuss your question with you.

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

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Jim Hinds
(416) 524-6949

Aleksandar Kojic

From: James Hinds [jim_hinds@irish-line.com]
Sent: August 3, 2011 11:19 AM
To: Amir Shalaby; JoAnne Butler; Michael Lyle
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

OK. You and I will need the first 10 minutes to block through the staging of the meeting, including the handling of visitors like Livingston and Oslers. Leaves us about 15 minutes to discuss Lennox.

Jim Hinds
(416) 524-6949

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

From: "Michael Lyle" [Michael.Lyle@powerauthority.on.ca]
Date: 08/03/2011 11:00 AM
To: "James Hinds" <jim_hinds@irish-line.com>, "Amir Shalaby" <Amir.Shalaby@powerauthority.on.ca>, "JoAnne Butler" <joanne.butler@powerauthority.on.ca>
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You and I are scheduled to meet at 4pm to prep for the Board call. I have invited Amir, JoAnne and Michael Killeavy along to that meeting to discuss your question with you.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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120 Adelaide Street West, Suite 1600
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Email: michael.lyle@powerauthority.on.ca

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

From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: August 3, 2011 7:38 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.

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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 Lyle
Sent: August 3, 2011 11:20 AM
To: 'James Hinds'; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

Ok.

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: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: August 3, 2011 11:19 AM
To: Amir Shalaby; JoAnne Butler; Michael Lyle
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

OK. You and I will need the first 10 minutes to block through the staging of the meeting, including the handling of visitors like Livingston and Oslers. Leaves us about 15 minutes to discuss Lennox.

Jim Hinds
(416) 524-6949

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

From: "Michael Lyle" [Michael.Lyle@powerauthority.on.ca]
Date: 08/03/2011 11:00 AM
To: "James Hinds" <jim_hinds@irish-line.com>, "Amir Shalaby" <Amir.Shalaby@powerauthority.on.ca>, "JoAnne Butler" <joanne.butler@powerauthority.on.ca>
CC: "Colin Andersen" <Colin.Andersen@powerauthority.on.ca>
Subject: RE: Confidential - TCE and Lennox

You and I are scheduled to meet at 4pm to prep for the Board call. I have invited Amir, JoAnne and Michael Killeavy along to that meeting to discuss your question with you.

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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Jim Hinds
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Aleksandar Kojic

From: Michael Lyle
Sent: August 3, 2011 10:54 PM
To: Colin Andersen; JoAnne Butler; Michael Killeavy; Brett Baker
Subject: TCE
Attachments: arbagereementnewclauses.doc

See attached proposed clauses for the arbitration agreement developed by Oslers.

Michael Lyle
General Counsel and Vice President
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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), 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 Measure 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 Measure. 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 Measure 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.

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: arbitrageementnewclauses-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

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Aleksandar Kojic

From: Michael Lyle
Sent: August 4, 2011 1:22 PM
To: Colin Andersen
Subject: New clauses
Attachments: proposed new clauses comprehensive.docx

Follow Up Flag: Follow up
Flag Status: Completed

Here is the version which incorporates the three changes. Note that for the bottom one the only language changes are those words in bold. Also, below is one of the recitals in the first version of the arbitration agreement we received last Thursday when OPA was not to be a party to the agreement. You will note that the Crown was going to take on all liability.

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

Michael Lyle
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TCE shall give OPA at least 60 days notice before it assigns, sells or otherwise disposes of the Gas Turbines. Prior to the earlier of the assignment, sale or other disposition of the Gas Turbines and the commencement of the Arbitration Hearing, OPA shall have the option 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 option 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.

Section 4.3(c)(ii) Reasonable Damages

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

(i).....

(ii) the reasonable damages including the anticipated financial value of the CES Contract is understood to be comprised of [NTD: language in bold replaces early "to include" language] the following components:

(A) the net profit to be earned by TCE **under the CES Contract** over the 20 year life of the CES Contract;

Aleksandar Kojic

From: Michael Lyle
Sent: August 5, 2011 8:20 AM
To: Colin Andersen
Subject: Fw: TCE

Nickel and dime?

From: Michael Killeavy
Sent: Friday, August 05, 2011 08:18 AM
To: Michael Lyle; 'Sebastiano, Rocco' <RSebastiano@osler.com>
Subject: RE: TCE

We did some number crunching. The OR market in Ontario is a bit fickle, but assuming that a TCE were to have captured all the OR that is could with the plant, we think that this revenue stream might be worth \$2-\$4 million annually, or in NPV terms over a 20-year term with a 5.25% discount rate it's worth \$24 to \$48 million.

Michael Killeavy, LL.B., MBA, P.Eng.
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Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario
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416-969-6288
416-520-9788 (CELL)
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From: Michael Lyle
Sent: August 4, 2011 9:11 PM
To: 'Sebastiano, Rocco'; Michael Killeavy
Subject: TCE

Not surprisingly, TCE has stated that it does not like either of the changes to limit their damages to exclude other financial loss arising outside the contract or the option for the turbines. On the first issue, they asserted they were being "nickel and dimed". Do we have any sense of what might be the potential additional damages from ancillary services income etc? Of course, we are on a crazy deadline. TCE has threatened to "do something" if we have not all signed the arbitration agreement by 2 tomorrow.

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Aleksandar Kojic

From: Colin Andersen
Sent: August 5, 2011 8:47 AM
To: Michael Lyle
Subject: Re: TCE

Pls ensure dermot is aware and passes along. I will likewise to Murray and David. For the record as they unlikely to reinsert as they felt lowrisk. Priority is finalize sharing mechanism.

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Aleksandar Kojic

From: Michael Lyle
Sent: August 5, 2011 8:56 AM
To: Colin Andersen
Subject: RE: TCE

Spoke to John Kelly, lawyer at MAG and he indicated that TCE's unwillingness to rule out claiming for this type of damages would be of significant concern to Murray.

Michael Lyle
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Aleksandar Kojic

From: Kristin Jenkins
Sent: September 21, 2011 5:09 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 Lyle
Sent: September 22, 2011 7:49 AM
To: Kristin Jenkins; JoAnne Butler; Michael Killeavy
Cc: Colin Andersen; Susan Kennedy
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Aleksandar Kojic

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Director, Contract Management
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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

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Aleksandar Kojic

From: Susan Kennedy
Sent: September 22, 2011 9:29 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Kristin Jenkins
Cc: Colin Andersen
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Susan H. Kennedy
Associate General Counsel &
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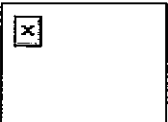
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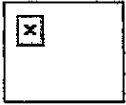
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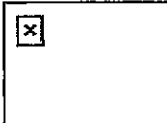
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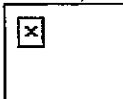
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From: Michael Killeavy
Sent: September 22, 2011 10:45 AM
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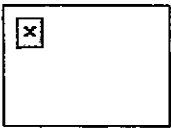
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To: Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'
Subject: Toronto Star Request - Cancellation of Oakville Contract

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**

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Aleksandar Kojic

From: Brett Baker
Sent: October 17, 2011 6:29 PM
To: Colin Andersen
Cc: Michael Lyle
Subject: TCE - Sedar Filings
Attachments: 20111017171119.pdf

Colin,

I have reviewed SEDAR (publicly traded corporate disclosure public reporting site) and have appended the relevant portions of TCE's disclosure for the OGS plant:

1. The September 30, 2009 press release announcing the 20 year OPA contract;
2. TCE's February 14, 2011 MD&A detailing the Ontario Government's decision to not proceed with the project;
3. TCE's April 28, 2011 MD&A detailing their intentions regarding economic recovery for the cancelled project; and
4. TCE's July 28, 2011 MD&A disclosure regarding the OGS plant.

I have reviewed all TCE's public filings (i.e., financial statements, MD&A, AIFs, etc.) since the contract award and see no evidence that there has been a material change (i.e., press release) issued for the action, arbitration.

Upon your review, happy to discuss.

Brett.

NewsRelease

TransCanada to Build \$1.2 Billion Power Plant in Southern Ontario

CALGARY, Alberta – September 30, 2009 – The Ontario Power Authority (OPA) has advised TransCanada Corporation (TSX, NYSE: TRP) (TransCanada) it has been awarded a 20-year Clean Energy Supply Contract to build, own and operate the 900 megawatt (MW) Oakville Generating Station (OGS) in Oakville, Ontario. TransCanada expects to invest approximately \$1.2 billion in the natural gas fired combined cycle plant which is scheduled to start producing power by the end of 2013.

“We look forward to providing additional electricity supply and reliability within this key North American market,” said Hal Kvisle, TransCanada’s chief executive officer. “This facility strengthens our presence as the largest private sector power company in Ontario and Canada. The Oakville generating station is a strong fit with our strategy of developing large scale energy infrastructure projects that will produce stable, long-term returns for our shareholders.”

TransCanada’s bid for the OGS was submitted in response to the OPA’s Southwest Greater Toronto Area Request for Proposals (SW GTA RFP). According to the OPA, the OGS will help meet critical energy and stability needs in the area. The plant will provide the reliability required to support Ontario’s growing renewable energy electricity production such as wind and solar and contribute toward replacing coal-fired generation.

Approximately 600 construction jobs will be created during the construction period of about 28 months. There will also be significant local spending on goods and services including food, lodging and supplies during construction and throughout the operating life of the plant. Additionally, approximately 25 permanent jobs will be created. The generating station is expected to be completed at the end of 2013.

Next steps involve completing an Environmental Review Report which will be made available for public review and comment in the fall. Emissions from OGS will meet or better all environmental regulatory standards. TransCanada must receive approval from the Ministry of the Environment on impacts such as air quality and noise before construction of the facility can proceed. Local community input is very important and extensive consultations will continue with stakeholders.

The OGS will be located on private, industrial land in the town of Oakville on Royal Windsor Drive, situated just east of the Queen Elizabeth Way (QEW) and will provide reliable, clean power to help meet the specific needs of the area.

TransCanada will work with the OPA to finalize the contract by mid-October 2009.

Quarterly Report to Shareholders

Management's Discussion and Analysis

Management's Discussion and Analysis (MD&A) dated July 28, 2011 should be read in conjunction with the accompanying unaudited Consolidated Financial Statements of TransCanada Corporation (TransCanada or the Company) for the three and six months ended June 30, 2011. In 2011, the Company will prepare its consolidated financial statements in accordance with Canadian generally accepted accounting principles (GAAP) as defined in Part V of the Canadian Institute of Chartered Accountants (CICA) Handbook, which is discussed further in the Changes in Accounting Policies section in this MD&A. This MD&A should also be read in conjunction with the audited Consolidated Financial Statements and notes thereto, and the MD&A contained in TransCanada's 2010 Annual Report for the year ended December 31, 2010. Additional information relating to TransCanada, including the Company's Annual Information Form and other continuous disclosure documents, is available on SEDAR at www.sedar.com under TransCanada Corporation's profile. "TransCanada" or "the Company" includes TransCanada Corporation and its subsidiaries, unless otherwise indicated. Amounts are stated in Canadian dollars unless otherwise indicated. Abbreviations and acronyms used but not otherwise defined in this MD&A are identified in the Glossary of Terms contained in TransCanada's 2010 Annual Report.

Forward-Looking Information

This MD&A may contain certain information that is forward looking and is subject to important risks and uncertainties. The words "anticipate", "expect", "believe", "may", "should", "estimate", "project", "outlook", "forecast" or other similar words are used to identify such forward-looking information. Forward-looking statements in this document are intended to provide TransCanada security holders and potential investors with information regarding TransCanada and its subsidiaries, including management's assessment of TransCanada's and its subsidiaries' future financial and operational plans and outlook. Forward-looking statements in this document may include, among others, statements regarding the anticipated business prospects, projects and financial performance of TransCanada and its subsidiaries, expectations or projections about the future, strategies and goals for growth and expansion, expected and future cash flows, costs, schedules (including anticipated construction and completion dates), and operating and financial results, and expected impact of future commitments and contingent liabilities. All forward-looking statements reflect TransCanada's beliefs and assumptions based on information available at the time the statements were made. Actual results or events may differ from those predicted in these forward-looking statements. Factors that could cause actual results or events to differ materially from current expectations include, among others, the ability of TransCanada to successfully implement its strategic initiatives and whether such strategic initiatives will yield the expected benefits, the operating performance of the Company's pipeline and energy assets, the availability and price of energy commodities, capacity payments, regulatory processes and decisions, changes in environmental and other laws and regulations, competitive factors in the pipeline and energy sectors, construction and completion of capital projects, labour, equipment and material costs, access to capital markets, interest and currency exchange rates, technological developments and economic conditions in North America. By its nature, forward-looking information is subject to various risks and uncertainties, including those material risks discussed in the Financial Instruments and Risk Management section in this MD&A, which could cause TransCanada's actual results and experience to differ materially from the anticipated results or expectations expressed. Additional information on these and other factors is available in the reports filed by TransCanada with Canadian

Sundance A

The binding arbitration process to resolve the Sundance A PPA dispute arising out of TransAlta Corporation's claims of force majeure and economic destruction has commenced. The arbitration panel is expected to hold a hearing in March and April 2012 for these claims. Assuming the hearing concludes within the time allotted, TransCanada expects to receive a decision in mid-2012. As the limited information received by TransCanada to date does not support these claims, TransCanada continues to record revenues and costs under the PPA as though this event was a normal plant outage.

Ravenswood

The July 2011 spot price for capacity sales in the New York Zone J market has settled at materially lower levels than prior periods resulting from the manner in which the New York Independent System Operator (NYISO) has treated price mitigation for a new power plant that recently began service in this market. TransCanada believes that this treatment by the NYISO is in direct contravention of a series of Federal Energy Regulatory Commission (FERC) orders which direct how new entrant capacity is to be treated for the purpose of determining capacity price. TransCanada and a number of other parties have filed a series of complaints with the FERC. The outcome of the complaints and the long-term impact that this development may have on TransCanada's Ravenswood operations are unknown.

The demand curve reset process continues with the NYISO's June 20, 2011 compliance filing resulting in an increased demand curve for 2011 to 2014. The FERC has not yet responded to this filing and, as a result, it is not yet known when the revised demand curves will be effective.

Bruce Power

Loading of fuel commenced on the refurbished Bruce A Unit 2 in second quarter 2011 and was completed in July. Fuel channel assembly was completed on Unit 1 during second quarter 2011, which was the final stage of Atomic Energy of Canada Limited's work on the reactors. Demobilization of refurbishment activity continues as the work transitions from construction to commissioning.

Subject to regulatory approval, Bruce Power expects to achieve a first synchronization of the Unit 2 generator to the electrical grid by the end of 2011, with commercial operation expected to occur in first quarter 2012. Bruce Power expects to load fuel into Unit 1 in third quarter 2011, with a first synchronization of the generator during first quarter 2012 and commercial operation is expected to occur during third quarter 2012. TransCanada's share of the total capital cost is expected to be approximately \$2.4 billion, of which \$2.1 billion was incurred as of June 30, 2011.

Bécancour

In June 2011, Hydro-Québec notified TransCanada it would exercise its option to extend the agreement to suspend all electricity generation from the Bécancour power plant throughout 2012. Under the original agreement signed in June 2009, Hydro-Québec has the option, subject to certain conditions, to extend the suspension on an annual basis until such time as regional electricity demand levels recover. TransCanada will continue to receive payments under the agreement similar to those that would have been received under the normal course of operation.

Oakville

In October 2010, the Government of Ontario announced that it would not proceed with the \$1.2 billion Oakville generating station. The Company continues to negotiate a settlement with the Ontario government and its agencies that would terminate the 20-year Clean Energy Supply contract

TransCanada had previously been awarded and would compensate TransCanada for the economic consequences associated with the contract's termination.

Zephyr

In June 2011, Zephyr terminated the precedent agreements with its potential shippers as the parties were unable to resolve key commercial issues. In July 2011, one of Zephyr's potential shippers exercised its contractual rights to acquire 100 per cent of the Zephyr project from TransCanada.

Cartier Wind

Construction continues on the five-stage, 590 MW Cartier Wind project in Québec. The 58 MW Montagne-Sèche project and the 101 MW first phase of the Gros-Morne wind farm are expected to be operational in December 2011. The 111 MW Gros-Morne phase two is expected to be operational in December 2012. These are the fourth and fifth Québec-based wind farms of Cartier Wind, which are 62 per cent owned by TransCanada. All of the power produced by Cartier Wind is sold under a 20-year PPA to Hydro-Québec.

Share Information

At July 25, 2011, TransCanada had 703 million issued and outstanding common shares, and had 22 million Series 1, 14 million Series 3 and 14 million Series 5 issued and outstanding first preferred shares that are convertible to 22 million Series 2, 14 million Series 4 and 14 million Series 6 preferred shares, respectively. In addition, there were eight million outstanding options to purchase common shares, of which six million were exercisable as at July 25, 2011.

Selected Quarterly Consolidated Financial Data⁽¹⁾

<i>(unaudited)</i> <i>(millions of dollars except per share amounts)</i>	2011		2010				2009	
	Second	First	Fourth	Third	Second	First	Fourth	Third
Revenues	2,143	2,243	2,057	2,129	1,923	1,955	1,986	2,049
Net income attributable to controlling interests	367	429	283	391	295	303	387	345
Share Statistics								
Net income per common share – Basic and Diluted	\$0.50	\$0.59	\$0.39	\$0.54	\$0.41	\$0.43	\$0.56	\$0.50
Dividend declared per common share	\$0.42	\$0.42	\$0.40	\$0.40	\$0.40	\$0.40	\$0.38	\$0.38

⁽¹⁾ The selected quarterly consolidated financial data has been prepared in accordance with Canadian GAAP and is presented in Canadian dollars.

Factors Affecting Quarterly Financial Information

In Natural Gas Pipelines, which consists primarily of the Company's investments in regulated natural gas pipelines and regulated natural gas storage facilities, annual revenues, EBIT and net income fluctuate over the long term based on regulators' decisions and negotiated settlements with shippers. Generally, quarter-over-quarter revenues and net income during any particular fiscal year remain relatively stable with fluctuations resulting from adjustments being recorded due to regulatory decisions and negotiated settlements with shippers, seasonal fluctuations in short-term throughput volumes on U.S. pipelines, acquisitions and divestitures, and developments outside of the normal course of operations.

Management's Discussion and Analysis (MD&A) dated February 14, 2011 should be read in conjunction with the accompanying audited Consolidated Financial Statements of TransCanada Corporation (TransCanada or the Company) and the notes thereto for the year ended December 31, 2010 which are prepared in accordance with Canadian generally accepted accounting principles (GAAP). This MD&A covers TransCanada's financial position and operations as at and for the year ended December 31, 2010. "TransCanada" or "the Company" includes TransCanada Corporation and its subsidiaries, unless otherwise indicated. Amounts are stated in Canadian dollars unless otherwise indicated. Abbreviations and acronyms not defined in this MD&A are defined in the Glossary of Terms in the Company's 2010 Annual Report.

TRANSCANADA OVERVIEW

With more than 50 years experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure, including natural gas and oil pipelines, power generation and natural gas storage facilities.

In pursuing its vision to be the leading energy infrastructure company in North America, TransCanada strives to execute on its portfolio of large, attractive growth projects. Each of these new projects is supported by strong business fundamentals and long-term contracts.

With assets of approximately \$47 billion and a substantial growth portfolio, TransCanada believes it is well positioned to build on its track record of strong and sustainable earnings and cash flow.

At December 31, 2010, TransCanada had completed construction and placed in service, or will place in service in early 2011, approximately \$10 billion of its \$20 billion capital growth program. In 2010, TransCanada spent \$2.3 billion to advance or complete construction of several major Natural Gas Pipeline and Energy projects, including placing five projects in service. In addition, the Company completed the first two phases of the Keystone crude oil pipeline with capital expenditures of \$2.7 billion.

TransCanada's 2010 Key Accomplishments

The Company advanced a significant portion of the Keystone oil pipeline extending from Hardisty, Alberta to markets in the United States (U.S.) Midwest, including the following:

- commenced operating at a low operating pressure as the first phase of Keystone began delivering oil to Wood River and Patoka in Illinois (Wood River/Patoka) in June 2010; and
- completed construction of the extension to Cushing, Oklahoma (Cushing Extension) and commenced line fill in late 2010. The Cushing Extension was in service at the beginning of February 2011.

The Company completed construction, placed in service and advanced the following initiatives in natural gas pipelines, which included connecting new shale and unconventional natural gas supply:

- completed the final portion of the \$800 million North Central Corridor (NCC) pipeline in northern Alberta in early 2010, providing capacity to shippers on the Alberta System to address increasing natural gas supply in northwestern Alberta and northeastern British Columbia (B.C.). The project was completed on schedule and under budget;
- completed the US\$630 million Bison pipeline in late December 2010, delivering natural gas from the Powder River Basin in Wyoming. The pipeline was placed in service in January 2011;
- completed the \$155 million Groundbirch pipeline in December 2010, on schedule and under budget, and began transporting natural gas from the Montney shale gas formation into the Alberta System;
- received approval from the National Energy Board (NEB) in January 2011 to construct the approximate \$310 million Horn River natural gas pipeline, which is expected to transport natural gas from the Horn River shale gas formation starting in second quarter 2012; and
- advanced construction of the Guadalajara pipeline, which will move natural gas from Manzanillo to Guadalajara in Mexico and was 70 per cent complete as of December 31, 2010. The US\$360 million project is expected to be operational in second quarter 2011.

Halton Hills The \$700 million Halton Hills generating station went into service on September 1, 2010, on time and on budget. Power from the 683 MW natural gas-fired power plant in Halton Hills, Ontario is sold to the OPA under a 20-year Clean Energy Supply contract.

Oakville In September 2009, the OPA awarded TransCanada a 20-year Clean Energy Supply contract to build, own and operate a 900 MW power generating station in Oakville, Ontario. TransCanada expected to invest approximately \$1.2 billion in the natural gas-fired, combined-cycle plant. In October 2010, the Government of Ontario announced that it would not proceed with the Oakville generating station. TransCanada is negotiating a settlement with the OPA that would terminate the Clean Energy Supply contract and compensate TransCanada for the economic consequences associated with the contract's termination.

Kibby Wind The 66 MW second phase of the Kibby Wind power project went into service in October 2010 and included the installation of an additional 22 turbines, which were all erected ahead of schedule and on budget. The two phases of the project have a combined capacity of 132 MW and total capital cost of US\$350 million. A total of 30 MW of energy and associated renewable energy credits produced by Kibby Wind have been sold at fixed prices for a term of 10 years. Phase one of the project received government incentive payments totalling US\$44 million under the federal U.S. stimulus package. Phase two is also expected to qualify for payments under the program.

Sundance A On February 8, 2011, TransCanada received from TransAlta Corporation (TransAlta) notice under the Sundance A PPA that TransAlta has determined that the Sundance 1 and 2 generating units cannot be economically repaired, replaced, rebuilt or restored and that TransAlta therefore seeks to terminate the PPA in respect of those units. TransCanada has not received any information that would validate TransAlta's determination that the units cannot be economically restored to service.

TransCanada has 10 business days from the date of TransAlta's notice to either agree with or dispute TransAlta's determination that the Sundance 1 and 2 generating units cannot be economically repaired, replaced, rebuilt or restored. TransCanada will assess any information provided by TransAlta during this 10-day period. If TransCanada disputes TransAlta's determination, the issue will be resolved using the dispute resolution procedure under the terms of the PPA.

In December 2010, the Sundance 1 and 2 generating units were withdrawn from service for testing. In January 2011, these same units were subject to a force majeure claim by TransAlta under the PPA. TransCanada has received insufficient information to make an assessment of TransAlta's force majeure claim and therefore has recorded revenues under the PPA as though this event was a normal plant outage.

Sundance B In second quarter 2010, Sundance B Unit 3 experienced an unplanned outage related to mechanical failure of certain generator components that the facility operator, TransAlta, has asserted is a force majeure event. TransCanada has received no information that validates a claim of force majeure and therefore has recorded revenues under the PPA as though this event was a normal plant outage. TransCanada is pursuing the remedies available to it under the terms of the PPA.

Coolidge At December 31, 2010, construction of the US\$500 million Coolidge generating station located near Phoenix, Arizona was approximately 95 per cent complete and commissioning was approximately 80 per cent finished. The 575 MW, simple-cycle, natural gas-fired peaking power facility is expected to be in service in second quarter 2011. All of the power produced by the facility will be sold under a 20-year PPA to the Salt River Project Agricultural Improvement and Power District based in Phoenix.

Cartier Wind Construction activity on the 212 MW Gros-Morne and 58 MW Montagne-Sèche wind farms continued throughout 2010. The Montagne-Sèche project and the 101 MW first phase of the Gros-Morne project are expected to be operational by the end of 2011. The 111 MW second phase of the Gros-Morne project is expected to be operational by the end of 2012. Gros-Morne and Montagne-Sèche are the fourth and fifth wind farms of the Cartier Wind project in Québec. Once they are complete, Cartier Wind, which is 62 per cent owned by TransCanada, will be capable of producing 590 MW of electricity. All of the power produced by Cartier Wind is sold to Hydro-Québec under a 20-year PPA.

Quarterly Report to Shareholders

Management's Discussion and Analysis

Management's Discussion and Analysis (MD&A) dated April 28, 2011 should be read in conjunction with the accompanying unaudited Consolidated Financial Statements of TransCanada Corporation (TransCanada or the Company) for the three months ended March 31, 2011. In 2011, the Company will prepare its consolidated financial statements in accordance with Canadian generally accepted accounting principles (GAAP) as defined in Part V of the Canadian Institute of Chartered Accountants (CICA) Handbook, which is discussed further in the Changes in Accounting Policies section in this MD&A. This MD&A should also be read in conjunction with the audited Consolidated Financial Statements and notes thereto, and the MD&A contained in TransCanada's 2010 Annual Report for the year ended December 31, 2010. Additional information relating to TransCanada, including the Company's Annual Information Form and other continuous disclosure documents, is available on SEDAR at www.sedar.com under TransCanada Corporation. "TransCanada" or "the Company" includes TransCanada Corporation and its subsidiaries, unless otherwise indicated. Amounts are stated in Canadian dollars unless otherwise indicated. Abbreviations and acronyms used but not otherwise defined in this MD&A are identified in the Glossary of Terms contained in TransCanada's 2010 Annual Report.

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Coolidge

Construction of the US\$500 million Coolidge generating station is complete. The 575 MW simple-cycle, natural gas-fired peaking power facility is expected to be placed in service on May 1, 2011.

Ravenswood

The parameters that drive U.S. Power capacity prices are reset periodically and are affected by a number of factors, including the cost of entering the market, reflected in administratively-set demand curves, available supply and fluctuations in forecast demand. With the downturn in the economy, there has been a decrease in demand that, combined with increased supply, has put downward pressure on capacity prices. On January 28, 2011, the FERC issued a decision in a rate filing made by the New York Independent System Operator (NYISO) relating to the periodic reset of the demand curves. The FERC made several determinations related to such demand curves and ordered the NYISO to make revisions in a compliance filing no later than March 29, 2011. The NYISO issued revisions to its compliance filing on March 29, 2011, to which the FERC has not yet issued a decision. While TransCanada expects the FERC's decision to result in higher demand curve price levels and to positively affect capacity prices, it is unclear what the specific impact will be until the NYISO compliance filing is fully implemented.

Oakville

In September 2009, the OPA awarded TransCanada a 20-year Clean Energy Supply contract to build, own and operate a 900 MW power generating station in Oakville, Ontario. TransCanada expected to invest approximately \$1.2 billion in the natural gas-fired, combined-cycle plant. In October 2010, the Government of Ontario announced that it would not proceed with the Oakville generating station. TransCanada is negotiating a settlement with the OPA that would terminate the Clean Energy Supply contract and compensate TransCanada for the economic consequences associated with the contract's termination.

Cartier Wind

Construction continues on the Cartier Wind project in Québec. The 58 MW Montagne-Sèche project and the 101 MW first phase of the Gros-Morne wind farm are expected to be operational in December 2011. The 111 MW second phase of Gros-Morne is expected to be operational in December 2012. These are the fourth and fifth Québec-based wind farms of Cartier Wind, which is 62 per cent owned by TransCanada. All of the 590 MW of power to be produced by Cartier Wind is sold under a 20-year power purchase arrangement to Hydro-Québec.

Share Information

At April 26, 2011, TransCanada had 700 million issued and outstanding common shares, and had 22 million Series 1, 14 million Series 3 and 14 million Series 5 issued and outstanding first preferred shares that are convertible to 22 million Series 2, 14 million Series 4 and 14 million Series 6 preferred shares, respectively. In addition, there were nine million outstanding options to purchase common shares, of which six million were exercisable as at April 26, 2011.

Aleksandar Kojic

From: MCNEIL Patrick -CORPBUSDEV [patrick.mcneil@opg.com]
Sent: October 21, 2011 7:30 AM
To: 'david.livingston@rogers.blackberry.net'; 'david.lindsay@ontario.ca'; Colin Andersen; 'peter.wallace@ontario.ca'
Cc: 'jonathan.weisstub@infrastructureontario.ca'; 'serge.imbrogno@ofina.on.ca'; Amir Shalaby; 'rick.jennings@ontario.ca'
Subject: Project Apple

OPG CONFIDENTIAL and COMMERCIALY SENSITIVE

Quick update.

The first meeting with TCE after the election set for November 2nd. TCE has been unavailable due to pressing regulatory matters and vacations.

I spoke with Bill Taylor of TCE just before Thanksgiving and he said TCE was very interested in having discussions with OPG on the term sheet forwarded to them.

Bill also indicated TCE was not in a rush to trigger the arbitration agreement given the results of the election. He suggested that might occur in the new year.

He did express concern about how real some of the options on the term sheet are. The decisions on the gas conversion of Nanticoke and Lambton are a long way off.

Additionally, the "cancellation" of the Mississauga plant gave him concerns on how likely a KWC plant will proceed. That said he said TCE was willing to take some risk on some of the revenue streams. He, of course, expressed the view that part of TCE's compensation has to be more certain.

The OPG Board was updated on the file last week and they remain open to a transaction(s) with the proviso it is in OPG's commercial interests.

D. Patrick McNeil
Senior Vice-President, Corporate Business Development and Chief Risk Officer Ontario Power Generation

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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

Follow Up Flag: Follow up
Flag Status: Completed

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: Kristin Jenkins
Sent: October 25, 2011 5:13 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby
Cc: Brett Baker; Irene Mauricette
Subject: Greenfield
Attachments: Greenfield South Media Protocol.docx; Greenfield Messaging - 10-25-11.docx; OGS-GS Comparison.docx

Follow Up Flag: Follow up
Flag Status: Completed

As discussed this morning, attached are drafts for your review and comment of an OPA/Ministry media protocol, key messages and comparison between OGS and GS. We are currently working on Qs and As and will circulate a draft by midday tomorrow.

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

Greenfield South Media Protocol

1. OPA and Ministry of Energy will inform each other as soon as possible about media inquiries and communications activities around Greenfield South.
2. The OPA and Ministry will share draft messaging for responses and statements in advance of release.
3. The OPA and the Ministry will initiate their approval processes as soon as possible. If necessary the Ministry will escalate to Cabinet Office.
4. The Ministry and the OPA will commit to timely approval of messaging to ensure that that deadlines are met and good relations with media are maintained.
5. Should responses be delayed to 30 minutes before deadline, OPA will inform the Ministry that the deadline is approaching and the messaging will be deemed approved if there is no final word within those 30 minutes.

DRAFT & CONFIDENTIAL

OPA ASKS EASTERN TO STOP CONSTRUCTION AND TO START DISCUSSIONS TO MUTUALLY AGREE ON TERMS TO RELOCATE THE PLANT

EASTERN SAYS YES:

1) NEGOTIATED AGREEMENT

- Side-deal to stop construction while negotiations take place
- Relocation deal possible
- Financial settlement possible
- Negotiations break down move to other options – unilateral termination of contract or legislation as set out below

Communications impact – best case scenario, construction stops and perceived collaborative process underway

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Construction at the Greenfield South site has now stopped.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

EASTERN SAYS NO:

1) NEGOTIATED AGREEMENT

- Relocation deal possible
- Financial compensation deal possible
- If negotiations unsuccessful move to other options – unilateral termination or legislation
- The plant could be completed and operated as a merchant plant without OPA contract

Communications impact – problematic because construction continues

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Eastern Power is exercising its legal right to continue construction at the current site despite requests that they stop construction while negotiations are underway.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.

- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

2) OPA UNILATERAL TERMINATION OF CONTRACT

- Limits taxpayer/ratepayer exposure as Eastern now required to mitigate damages
- Litigation likely
- Construction not guaranteed to stop
- Without OPA contract, plant still could be completed and operated as a merchant plant

Communications impact – negative as the government’s plan for relocation viewed as failing, costing a lot of money due to likely litigation. And, the plant potentially continues to get built.

KEY MESSAGES

- OPA hoped to reach a negotiated agreement that provided fair treatment to Eastern Power and value to Ontario taxpayers and ratepayers. Unfortunately, this was not possible.
- OPA has terminated the contract with Eastern Power in order to protect the interests of taxpayers and ratepayers. Eastern Power will now be responsible for any additional costs if they choose to continue construction of the plant.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA will not be making any further public comments as this matter is now the subject of a legal proceeding.

3) LEGISLATION

- Construction stops and merchant facility not possible

Communications impact - government’s plan for relocation viewed as failing; sends chill through investment community; litigation likely and perceived as costly route

KEY MESSAGES (Government)

- The provincial government hoped that a negotiated agreement could have been reached that provided fair treatment to Eastern and value to Ontario taxpayers/ratepayers.
- Unfortunately, Eastern Power was not interested in negotiating such an agreement and refused to stop construction of the plant.
- Legislation is the only option that guarantees that the Greenfield South plant is not built and operated in Mississauga.
- OPA/government will not be making any further public comments as this matter is now the subject of legal proceedings.

Developer	Project	Proponent	System Impacts
<p>TransCanada Oakville</p> <p>Generating Station</p>	<ul style="list-style-type: none"> • 900 MW combined cycle • \$1.2 B construction cost • No environmental or municipal approvals • Pre-construction • One of many TCE gas plants • Procured through OPA-led RFP process • Self-financed 	<ul style="list-style-type: none"> • Experienced, sophisticated developer • Public company • Ongoing interest in investing in Ontario • Owns and operates two other gas plants in Ontario 	<ul style="list-style-type: none"> • OGS meet address SWGTA supply & reliability issues • Without OGS transmission upgrades required by 2018
<p>Eastern Power</p> <p>Greenfield South</p>	<ul style="list-style-type: none"> • 280 MW combined cycle • \$300-400 M construction cost • Environmental & Municipal approvals • Construction underway; major expenditures committed • OPA contract provides low rate of return • Procured through Ministry-led RFP process • Secured lenders 	<ul style="list-style-type: none"> • First gas plant for developer • Private family-run business • Emotional attachment to the Greenfield South Project 	<ul style="list-style-type: none"> • Greenfield South address SWGTA supply & reliability issues • Without GS transmission upgrades required in 2015 or 2016

Aleksandar Kojic

From: Kristin Jenkins
Sent: October 26, 2011 12:01 PM
To: Colin Andersen; Michael Lyle; Michael Killeavy; Amir Shalaby; JoAnne Butler
Cc: Patricia Phillips; Irene Mauricette; Brett Baker
Subject: Greenfield Materials
Attachments: Greenfield Messaging - 10-25-11.docx; Greenfield South Media Protocol.docx; OGS-GS Comparison.docx

Follow Up Flag: Follow up
Flag Status: Completed

Updated drafts attached..

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

DRAFT & CONFIDENTIAL

KEY MESSAGING RESOLVING GREENFIELD SOUTH

BACKGROUND

The provincial government has authorized the OPA to start discussions with Eastern Power to relocate the Greenfield South power plant to a more suitable location. As a first step, the OPA will ask Eastern to stop construction and to enter discussions to mutually agree on relocation terms. This document sets out the possible scenarios that could develop from this request along with the associated recommended key messages.

EASTERN SAYS YES TO STOPPING CONSTRUCTION AND STARTING DISCUSSIONS:

1) NEGOTIATED AGREEMENT

- Side-deal to stop construction while negotiations take place
- Relocation deal possible
- Financial settlement possible
- Negotiations break down move to other options – unilateral termination of contract or legislation as set out below

Communications impact – best case scenario, construction stops and perceived collaborative process underway

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Construction at the Greenfield South site has now stopped.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

EASTERN SAYS NO TO STOPPING CONSTRUCTIONS:

1) NEGOTIATED AGREEMENT

- Construction continues during negotiations
- Relocation deal possible
- Financial compensation deal possible
- If negotiations unsuccessful move to other options – unilateral termination or legislation
- As all required regulatory approvals are in place, the plant could be completed and operated as a merchant plant without OPA contract

Communications impact – problematic because construction continues; likely creates perception Eastern will receive lucrative deal because government under enormous pressure to settle quickly to stop construction

KEY MESSAGES

- OPA and Eastern Power have mutually agreed to enter into negotiations to discuss opportunities for relocating the Greenfield South power plant to a more suitable location.
- Eastern Power is exercising its legal right to continue construction at the current site despite requests that they stop construction while negotiations are underway.
- OPA is seeking an agreement that provides both fair treatment for Eastern Power and value for Ontario ratepayers.
- More details will be made available when the negotiations are concluded.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA cannot speculate on the outcome of these talks and will not be making further public comments while they are underway.

2) OPA UNILATERAL TERMINATION OF CONTRACT

- Limits taxpayer/ratepayer exposure as Eastern now required to mitigate damages
- Litigation likely
- Construction not guaranteed to stop
- Without OPA contract, plant still could be completed and operated as a merchant plant

Communications impact – negative as government's plan for relocation viewed as failing, costing a lot of money due to likely litigation and because plant potentially continues to get built and operated as merchant facility

KEY MESSAGES

- OPA hoped to reach a negotiated agreement that provided fair treatment to Eastern Power and value to Ontario taxpayers and ratepayers. Unfortunately, Eastern Power did not support this approach.
- OPA has terminated the contract with Eastern Power in order to protect the interests of taxpayers and ratepayers. Eastern Power will now be responsible for any additional costs if they choose to continue construction of the plant.
- Electricity supply in the southwest GTA is sufficient at this time. Planned transmission upgrades will need to be accelerated but will be able to accommodate the need the Greenfield plant was intended to serve.
- OPA will not be making any further public comments as this matter is now the subject of a legal proceeding.

3) LEGISLATION

- Construction stops and merchant facility not possible

Communications impact - government's plan for relocation viewed as failing; sends chill through investment community; litigation likely and perceived as very costly

KEY MESSAGES (Government)

- The provincial government hoped that a negotiated agreement could have been reached that provided fair treatment to Eastern and value to Ontario taxpayers/ratepayers.
- Unfortunately, Eastern Power was not interested in negotiating such an agreement and refused to stop construction of the plant.
- Legislation is the only option that guarantees that the Greenfield South plant is not built and operated in Mississauga.
- OPA/government will not be making any further public comments as this matter is now the subject of legal proceedings.

Ontario Power Authority/Ministry of Energy Greenfield South Media Protocol

1. OPA and Ministry of Energy will inform each other as soon as possible about media inquiries and communications activities around Greenfield South.
2. The OPA and Ministry will share draft messaging for responses and statements in advance of release.
3. The OPA and the Ministry will initiate their approval processes as soon as possible. If necessary the Ministry will escalate to Cabinet Office.
4. The Ministry and the OPA will commit to timely approval of messaging to ensure that that deadlines are met and good relations with media are maintained.
5. Should responses be delayed to 30 minutes before deadline, OPA will inform the Ministry that the deadline is approaching and the messaging will be deemed approved if there is no final word within those 30 minutes.

Comparison of Oakville Generating Station and Greenfield South Power Plant

Developer	Project	Proponent	System Impacts
TransCanada Oakville Generating Station	<ul style="list-style-type: none"> • 900 MW combined cycle • \$1.2 B construction cost • No environmental or municipal approvals • Pre-construction • One of many TCE gas plants • Procured through OPA-led RFP process • Self-financed 	<ul style="list-style-type: none"> • Experienced, sophisticated developer • Public company • Ongoing interest in investing in Ontario • Owns and operates two other gas plants in Ontario 	<ul style="list-style-type: none"> • OGS addressed SWGTA supply & reliability issues • Without OGS, transmission upgrades required by 2019
Eastern Power Greenfield South Power Plant	<ul style="list-style-type: none"> • 280 MW combined cycle • \$300-400 M construction cost • Environmental & municipal approvals • Construction underway; major expenditures committed • OPA contract provides low rate of return • Procured through Ministry-led RFP process • Secured lenders 	<ul style="list-style-type: none"> • First gas plant for developer • Private family-run business • Emotional attachment to the Greenfield South Project 	<ul style="list-style-type: none"> • Greenfield addressed SWGTA supply & reliability issues • Without Greenfield transmission upgrades required in 2017 or 2018

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: Michael Killeavy
Sent: November 18, 2011 11:49 AM
To: Colin Andersen
Subject: FW: OGS Damages Calculation - Information Required ...
Attachments: Need to Know 16 Nov 2011.docx

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

I did this a while ago and updated it yesterday in preparation for today's teleconference.

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 17, 2011 1:43 PM
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
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
Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

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: Kristin Jenkins
Sent: November 21, 2011 12:16 PM
To: 'Botond, Erika (ENERGY)'; 'Kett, Jennifer (ENERGY)'; 'Cayley, Daniel (MEI)'; Tim Butters; Patricia Phillips; Colin Andersen; Michael Lyle
Subject: Greenfield - Toronto Star & Mississauga News
Follow Up Flag: Follow up
Flag Status: Completed

I spoke to Tanya Talaga. Pretty much focused on cost issue but a couple of other issues came up that I want to flag. She asked about the ongoing need in SWGTA for additional electricity supply which raised the issue of the transmission that will be built to replace the cancelled Oakville plant. She also asked if the Greenfield plant would be relocated in the SWGTA. I told her that relocation was part of discussion with Greenfield and could not get into the details. I also said that I was not aware if the government had made any comments on relocating the plant in the GTA or not and suggested she follow up with the government on that. Mississauga News just wanted to know if there was any additional information on costs etc that could be provided. I told the reporter there isn't at this time.

We've also had calls from the Karen Howlett, John Spears and Christian Gregoire at Radio Canada. Have left messages with them. Will send you summary after we connect.

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: Colin Andersen
Sent: November 21, 2011 1:00 PM
To: Kristin Jenkins
Subject: Re: Greenfield - Toronto Star & Mississauga News

Tks. JS is here at oen.

From: Kristin Jenkins
Sent: Monday, November 21, 2011 12:15 PM
To: 'Botond, Erika (ENERGY)' <Erika.Botond@ontario.ca>; Kett, Jennifer (ENERGY) <Jennifer.Kett@ontario.ca>; 'Cayley, Daniel (MEI)' <Daniel.Cayley@ontario.ca>; Tim Butters; Patricia Phillips; Colin Andersen; Michael Lyle
Subject: Greenfield - Toronto Star & Mississauga News

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Aleksandar Kojic

From: Kristin Jenkins
Sent: November 21, 2011 1:06 PM
To: Colin Andersen
Subject: RE: Greenfield - Toronto Star & Mississauga News

I just talked to him. Asked me what else I could tell him, I said not much at this time as discussions continue. He said what's new then? and I said construction is stopping. He said what did OPA give to get that, is there a settlement, is there an arbitration process? I said talks still underway and I don't have any more details at this time. He said ok and that he would stop pestering me and that was it. Do you have a minute when you get back? I want to run some questions and answers by you on the need for the plant before I send to ministry.

From: Colin Andersen
Sent: November 21, 2011 1:00 PM
To: Kristin Jenkins
Subject: Re: Greenfield - Toronto Star & Mississauga News

Tks. JS is here at oen.

From: Kristin Jenkins
Sent: Monday, November 21, 2011 12:15 PM
To: 'Botond, Erika (ENERGY)' <Erika.Botond@ontario.ca>; Kett, Jennifer (ENERGY) <Jennifer.Kett@ontario.ca>; 'Cayley, Daniel (MEI)' <Daniel.Cayley@ontario.ca>; Tim Butters; Patricia Phillips; Colin Andersen; Michael Lyle
Subject: Greenfield - Toronto Star & Mississauga News

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We've also had calls from the Karen Howlett, John Spears and Christian Gregoire at Radio Canada. Have left messages with them. Will send you summary after we connect.

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 Lyle
Sent: November 21, 2011 10:17 PM
To: Colin Andersen
Cc: JoAnne Butler; Michael Killeavy
Subject: Fw: Revised FRSA
Attachments: Blackline Facility Relocation and Settlement Agreement (McMillan Draft November 21 2011).pdf; Facility Relocation and Settlement Agreement (McMillan draft November 21 2011).doc

Update on where we are. Remains only one key issue in my view - focus of discussion on lost profit calculation has moved from residual value to appropriate discount rate.

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Monday, November 21, 2011 10:08 PM
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: Revised FRSA

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

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

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

Regards, Rocco

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

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

Rocco and Elliot,

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

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

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

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

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

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

Elliot

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

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

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

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

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

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

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

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

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

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

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

Would you rather do it later because of the parade?

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Sunday, November 20, 2011 08:55 AM

To: Carl De Vuono
Cc: Smith, Elliot <ESmith@osler.com>
Subject: RE: Revised FRSA

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

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

Thanks, Rocco

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

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

Carl De Vuono
McMillan LLP

direct - 416.307.4055
mobile - 416.918.1046

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

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

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

Regarding the Relocated Equipment, does Greg has a Schedule 2.1(a) that we can look at? I don't understand why he is pushing so hard on these items, as we have already listed the key large ticket items in the list. The rest of the equipment he should be able to tell the Suppliers to suspend because even if we find a replacement site, it is going to take time to

get it approved and permitted and then we'd simply be paying to have this other equipment stored in a warehouse somewhere. To suspend these other items for 60 or so days is not an unreasonable request on our part.

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

Thanks, Rocco

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

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

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

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

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

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

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

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

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

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

Elliot Smith, P.Eng.
Associate

416.862.6435

DIRECT

416.862.6666

FACSIMILE

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

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

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

Please see fully signed agreement attached.

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

Assistant: Nadia Malley | 416.865.7000 ext.2311 | nadia.malley@mcmillan.ca

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

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

Thanks, Rocco

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

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

Thanks, Rocco

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

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

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

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

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Please consider the environment before printing this e-mail.

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

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

Regards, Rocco

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

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

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

Carl De Vuono
Partner
direct 416.307.4055 | mobile 416.918.1046 carl.devuono@mcmillan.ca
Assistant: Nadia Malleye | 416.865.7000 ext.2311 | nadia.malleye@mcmillan.ca

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Please consider the environment before printing this e-mail.

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

Confidential and Without Prejudice

Carl,

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

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

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

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

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

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

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FACILITY RELOCATION AND SETTLEMENT AGREEMENT

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

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

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

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

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

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

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

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

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

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

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

“**Confidential Information**” means this Agreement, any prior drafts of this Agreement and correspondence related to this Agreement, any arbitration pursuant to this Agreement (including, without limitation, the proceedings, written materials and any decision) and all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party

and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representatives, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party.

“Contractor” means any Person engaged to perform work on the Facility.

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

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

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

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

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

“Government of Ontario” means Her Majesty the Queen in right of Ontario.

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

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

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

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

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

- (i) a professional engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
- (ii) employed by an independent engineering firm which holds a certificate of authorization issued by the Professional Engineers Ontario that is not affiliated with or directly or indirectly Controlled by Greenfield or the OPA and that does not have a vested interest in the design, engineering, procurement, construction, testing, and/or operation of the Facility. ~~[NTD: Can we identify the IE now? Can the OPA please suggest two or three names acceptable to them and Greenfield will choose one.]~~ [NTD: The OPA is running an abbreviated procurement process to select an IE and will try to complete this by Friday.]

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

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

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

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

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

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

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

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

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

“Supplier” means any Person engaged to supply Facility Equipment.

“Supplier’s Interest” means the right, title and interest of Greenfield in or to the Facility and the ARCES Contract, or any benefit or advantage of any of the foregoing.

1.2 Exhibits

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

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

1.3 Headings

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

1.4 Gender and Number

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

1.5 Currency

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

1.6 Entire Agreement

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

1.7 Waiver, Amendment

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

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1.8 Governing Law

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

1.9 Preparation of Agreement

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

1.10 Severability of Clauses

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

ARTICLE 2 COVENANTS

2.1 Cessation of Construction

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

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

- (c) Within thirty (30) days after the date that the Equity Sunk Costs have been paid, Greenfield shall apply for a review of Certificate of Approval-Air number 2023-7HUMVW (a copy of which is attached as Exhibit B) pursuant to section 20.4(1) of the *Environmental Protection Act* (Ontario) and request that such approval be revoked without the issuance of a new Certificate of Approval-Air for the Facility, and, to the extent permitted, Greenfield shall request that consideration of the application be expedited.
- (d) Greenfield shall not at any time (i) reapply for an environmental compliance approval for the Facility or for any other electricity generation facility at the Site, or (ii) recommence any construction activity in connection with the Facility at the Site.
- (e) During the Restricted Period, Greenfield shall not : (i) grant any security interests in the Facility, the Facility Equipment and the Site, and shall keep not intentionally grant any encumbrances to title to the Facility, the Facility Equipment and the Site free and clear of all encumbrances. Greenfield shall not or the Site [NTD: this is intended to deal with construction and other liens that may be registered or claimed as a result of the ceasing of construction]; or (ii) sell, transfer, dispose of, or otherwise enter into any agreement (directly or indirectly) relating to the ownership of the Facility, the Facility Equipment or the Site, without in the case of each of (i) and (ii), the OPA's prior written consent, acting reasonably. [NTD: Subject to further discussion.] "Restricted Period" means the period commencing on the Effective Date and ending on the earlier of: (x) the date the Amended ARCES is entered into; and (ii) the date of expiry of this Agreement in accordance with Section 4.1(a). [NTD: Sales should be allowed after the new ARCES is signed since the FMV will be taken into account in determining the NRR. Any sale after the Restricted Period will be reflected in the calculation of Damages under Section 4.2].

2.2 Payment of Costs

- (a) The OPA shall be responsible for and shall reimburse Greenfield for: (i) all costs (including cancellation costs required by contracts) incurred by Greenfield or for which Greenfield is or may become liable in complying with the obligations of Greenfield set out in Section 2.1(a) and Section 2.1(b), and (ii) all costs incurred by Greenfield in connection with the development and construction of the Facility prior to the Effective Date and becoming due on or after the Effective Date, and (iii) all costs in respect of legal, accounting and other professional services incurred by Greenfield in connection with the negotiation and entering into of this Agreement and the completion of the transactions contemplated hereunder, including the negotiation of the Amended ARCES as contemplated by Section by Section 2.5 and the determination of damages as provided in Section 4.2, which

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have not been advanced, drawn, or committed by the Secured Lenders to be advanced or drawn, on any Credit Facility.

- (b) Greenfield shall provide the OPA and the Independent Engineer with a detailed list of all costs incurred by Greenfield up to the Effective Date in connection with the design, development, permitting and construction of the Facility, including without limitation in respect of engineering, design, permitting, letter of credit interest and other development costs excluding any such costs which have been paid for or reimbursed by draws or advances from any Credit Facility and without duplication of those costs payable pursuant to Section 2.2(a) (the “**Equity Sunk Costs**”), along with such documentation as is reasonably required by the Independent Engineer to substantiate such Equity Sunk Costs and confirm that such costs have not been paid for or reimbursed by draws or advances from any Credit Facility. Attached hereto as Schedule 2.2(b) is Greenfield’s submission of the Equity Sunk Costs as of the Effective Date, which shall be considered by the Independent Engineer for certification in accordance with Section 2.2(e). The OPA shall reimburse Greenfield for the Equity Sunk Costs in accordance with Section 2.2(e).
- (c) The OPA shall indemnify, defend and hold harmless each of Greenfield, Greenfield Holdco and North Green Limited and each of their respective directors, officers and employees (collectively, the “**Greenfield Indemnified Parties**”) from and against any and all Losses of the Greenfield Indemnified Parties relating to, arising out of, or resulting from any claims by Contractors, Suppliers, Governmental Authorities and employees resulting from the cessation of construction of the Facility, except if and to the extent that such Losses are the result of the negligence or wilful misconduct of any Greenfield Indemnified Party.

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

- (d) The Parties acknowledge that the OPA has, upon execution of this Agreement, provided to Greenfield, security for the performance of the OPA’s indemnity and other obligations set out in Section 2.2 in an amount equal to \$150 million [NTD:

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Greenfield to provide an e-mail summary of how it arrived at this number.] in the form attached as Exhibit A (the “Costs Security”). If the OPA fails to pay any amount certified by the Independent Engineer as being properly owing under this Agreement as set out in Section 2.2(e) or fails to comply with its indemnity obligations under Section 2.2(c), Greenfield shall have the right to draw such unpaid amount from the Costs Security, provided that Greenfield provides the OPA with ten (10) Business Days’ prior notice of its intent to draw on the Costs Security and at the end of such notice period, such unpaid amount remains outstanding or such indemnity obligations under Section 2.2(c) have not been complied with.

- (e) Greenfield shall submit detailed invoices for the costs referred to in Section 2.2(a) and in connection with Equity Sunk Costs payable by the OPA to Greenfield to the Independent Engineer with a copy to the OPA. The Independent Engineer shall be instructed by the Parties to complete its review of such invoices and supporting documentation in an expeditious manner. The Independent Engineer shall, within ten (10) Business Days after receipt of such detailed invoices and any reasonably required supporting documentation, issue a certificate certifying the amounts set out in such invoices which the Independent Engineer does not dispute are payable. The OPA shall, within five (5) Business Days after receipt of such certificate from the Independent Engineer, pay Greenfield the amount certified by the Independent Engineer. Greenfield shall have the opportunity to make submissions to the Independent Engineer (with a copy to the OPA) regarding the amounts set out in such invoices disputed by the Independent Engineer and not certified and the Independent Engineer shall consider such submissions and if it agrees with such submissions, shall certify such amounts payable and if it does not agree with such submissions, shall provide its reasons to Greenfield and the OPA.
- (f) Notwithstanding any provision in this Agreement to the contrary, to the extent the OPA is liable to Greenfield for any costs charged by a Person who does not deal at Arm’s Length with Greenfield, such cost shall be deemed to exclude the amount that is in excess of the costs that would reasonably have been charged by a Person acting at Arm’s Length with Greenfield providing substantially the same material or services in respect of such costs to Greenfield.
- (g) The costs of the Independent Engineer shall be borne by the OPA.

2.3 ARCES Contract

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

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2.4 Credit Facilities

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

2.5 Good Faith Negotiations

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

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because an alternate site than the Site will be used, (due to such alternate site being a further distance from the offices of Greenfield and due to other factors relating to the alternate site, such as, reduced performance of the Relocated Equipment, costlier consumables, services, equipment or material, such as insurance, costs of delivery of goods or equipment, increased costs in respect of environmental compliance, compliance with federal, provincial and municipal requirements, higher costs to procure financing and higher costs for interconnection).

2.6 Power and Authority

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

ARTICLE 3

CONFIDENTIALITY, FIPPA AND PRIVILEGED COMMUNICATIONS

3.1 Confidential Information

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

- (a) The Receiving Party may disclose Confidential Information to its Representatives for the purpose of assisting the Receiving Party in complying with its obligations

under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 3 by any of its Representatives.

- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 3.2.
- (c) Where Greenfield is the Receiving Party, Greenfield may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Relocated Facility, provided that any such prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such prospective lender or investor has covenanted in favour of the OPA to hold such Confidential Information confidential and entered into a Confidentiality Undertaking in substantially the form set out in Exhibit W to the ARCES Contract or in a similar form prepared by Greenfield and approved by the OPA.

3.2 Notice Preceding Compelled Disclosure

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

3.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives'

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

3.4 FIPPA Records and Compliance

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

3.5 Privileged Communications

- (a) The Parties agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this Agreement, whether oral or written, and whether Confidential Information or not, in connection with the termination of the ARCES Contract or otherwise relating to any differences between the Parties respecting the ARCES Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged.
- (b) Notwithstanding Section 3.5(a), nothing in this Agreement shall prevent Greenfield and the OPA from communicating with one another on a without prejudice basis at any point in time by designating its communication, whether oral or written, as a "without prejudice" communication, provided that such "without prejudice" communication does not include or refer, either directly or indirectly, to any without prejudice and privileged discussions, communications and correspondence.

ARTICLE 4 TERM AND EXPIRY

4.1 Term and Expiry

- (a) The term of this Agreement shall be effective from the Effective Date for a period of 60 days and shall automatically expire at the end of such 60 day period, provided that the term may be extended once by an additional period of 60 days

by either the OPA or Greenfield providing the other Party with written notice no less than five (5) Business Days prior to the expiry of the original term and may be further extended for an agreed upon period of time with the mutual agreement in writing of the OPA and Greenfield.

- (b) Upon expiry of the term of this Agreement, following any extension exercised in accordance with Section 4.1(a):
 - (i) the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield in addition to those amounts payable pursuant to Section 2.2 shall be determined in accordance with Section 4.2(a);
 - (ii) Greenfield shall return to the OPA any remaining portion of the Costs Security which the Independent Engineer, acting reasonably, determines will not be required to cover any further obligations of Greenfield for costs or other liabilities in respect of the cessation of construction of the Facility as contemplated by Section 2.2, or for which the OPA may be liable to indemnify any of the Greenfield Indemnified Parties under Section 2.2(c); and
 - (iii) subject to Section 7.10, no Party shall have any further obligations hereunder.

4.2 Damages

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

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provided no discount rate is applied to the NPV calculation. Given current rates, there are arguments that the rate should be nominal in any event

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

ARTICLE 5 NOTICES

5.1 Notices

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

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

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

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

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

If to the OPA: Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

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

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

- (b) Notices shall be delivered or transmitted by facsimile, by hand, or by courier, and shall be considered to have been received by the other Party on the date of delivery if delivered prior to 5:00 p.m. (Toronto time) on a Business Day and

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