

otherwise on the next following Business Day, provided that any notice given pursuant to Section 2.2(d) shall be sent by facsimile and by courier.

ARTICLE 6 DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If any Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the affected Party or Parties describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the affected Party or Parties, a senior executive (Senior Vice-President or higher) from each affected Party shall meet, either in person or by telephone (the "Senior Conference"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute shall be settled by arbitration pursuant to Section 6.2.

6.2 Arbitration

Any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to this Section 6.2, provided, however, that the Parties have first completed a Senior Conference pursuant to Section 6.1. Any dispute to be decided in accordance with this Section 6.2 will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the reference of the dispute to arbitration, upon the application of any of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

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ARTICLE 7 MISCELLANEOUS

7.1 Default

- (a) If the OPA fails to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from Greenfield, the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield shall be determined in accordance with Section 4.2(a).
- (b) If Greenfield fails to perform any covenant or obligation set forth in Section 2.1(a), Section 2.1(c), Section 2.1(d) or Section 2.4(c) of this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from the OPA, such failure shall constitute a "Supplier Event of Default" under the ARCES Contract and shall entitle the OPA to exercise any remedies thereunder in connection with such default.

7.2 Injunctive and Other Relief

Each of Greenfield and the OPA acknowledge that a breach of this Agreement by the other Party, including, without limitation, Section 2.1, 2.2, 2.4, and Article 3 shall cause irreparable harm to the non breaching Party, and that the injury to non breaching Party shall be difficult to calculate and inadequately compensable in damages. The breaching Party agrees that the non breaching Party is entitled to obtain injunctive relief (without proving any damage sustained by it) or any other remedy against any actual or potential breach of the provisions of this Agreement by the breaching Party.

7.3 Record Retention; Audit Rights

Greenfield shall keep complete and accurate records and all other data required for the purpose of proper administration of this Agreement. All such records shall be maintained as required by laws and regulations but for no less than seven (7) years after the Effective Date. ~~[NTD: Because the ARCES Contract was signed nearly seven years ago, the OPA is concerned that retaining records for seven years from record creation may not be enough time.]~~ Greenfield, on a confidential basis as provided for in Article 3 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the OPA to (i) comply with its obligations to Governmental Authorities, (ii) verify or audit billings or to verify or audit information provided in accordance with this Agreement, and (iii) to determine any amounts owing or payable pursuant to Sections 2.2(a), 2.2(b), 2.2(c) and 2.4(b). The OPA may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 3. Alternatively, the OPA may at its own expense appoint an auditor to conduct its review.

7.4 Inspection of Site

- (a) The OPA and its authorized agents and Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after execution of this Agreement

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and during the term of this Agreement, have access to the Site and every part thereof during regular business hours and Greenfield shall, and shall cause all personnel at the Site within the control of Greenfield to furnish the OPA with all reasonable assistance in inspecting the Site for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of Greenfield.

- (b) The inspection of the Site by or on behalf of the OPA shall not relieve Greenfield of any of its obligations to comply with the terms of this Agreement. In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and laws and regulations.

7.5 Inspection Not Waiver

Failure by OPA to inspect the Site or any part thereof under Section 7.4, or to exercise its audit rights under Section 7.3, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a default by Greenfield shall not constitute or be deemed to constitute a waiver of any such default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by Greenfield with this Agreement.

7.6 No Publicity

No Party shall make any public statement or announcement regarding the existence or contents of this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing and Article 3, following execution of this Agreement, the OPA and its Representatives shall be permitted to make a public announcement, which is provided to Greenfield in advance, that an agreement has been entered into between the OPA and Greenfield which provides for (i) the permanent cessation of work on the Facility, (ii) the revocation of the permit set out in Section 2.1(c) in the circumstances described therein, and (iii) further negotiations between the OPA and Greenfield to determine the relocation of the Facility, failing which, the damages payable to Greenfield will be determined through a process set out in the Agreement. [NTD: This clause remains subject to further revision as the OPA has not yet finalized this language.]

7.7 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by any of the Parties shall be considered employees of any other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

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7.8 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

7.9 Assignment

- (a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by Greenfield, without the prior written consent of the OPA, which consent shall not be unreasonably withheld; provided that Greenfield may without the consent of the OPA assign this Agreement and all benefits and obligations hereunder to the Affiliate which will develop, construct, own and operate the Relocated Facility as contemplated by Section 2.5, provided that the assignee agrees in writing in a form satisfactory to the OPA, acting reasonably, to assume and be bound by the terms and conditions of this Agreement.
- (b) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the OPA, without the prior written consent of Greenfield, which consent shall not be unreasonably withheld; provided that the OPA shall have the right to assign this Agreement and all benefits and obligations hereunder without the consent of Greenfield to the Government of Ontario or any corporation owned or Controlled by the Government of Ontario with a credit rating that is equal to or better than the OPA's credit rating, and which assumes all of the obligations and liabilities of the Ontario Power Authority under this Agreement and agrees to be novated into this Agreement in the place and stead of the OPA, provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, whereupon, the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement.

7.10 Survival

The provisions of Section 2.1, Section 2.2, Article 3, Section 4.1(b), Section 4.2, Article 6, and Section 7.3, shall survive the expiration of the term.

7.11 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

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7.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

7.13 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

7.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

**GREENFIELD SOUTH POWER
CORPORATION**

ONTARIO POWER AUTHORITY

B
y:

By:

Name: Gregory M. Vogt
Title: President

Name: Colin Andersen
Title: Chief Executive Officer

I have authority to bind the corporation

I have authority to bind the corporation.

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EXHIBIT A
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●
APPLICANT: Ontario Power Authority
BENEFICIARY: Greenfield South Power Corporation
AMOUNT: ●
EXPIRY DATE: ●
EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario

CREDIT RATING: [Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]
TYPE: Irrevocable Standby Letter of Credit
NUMBER:

We hereby authorize you to draw on [insert name of financial institution and financial institution's address in Toronto, Ontario] in respect of irrevocable standby letter of credit No. _____ (the "Credit"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by:

1. A certificate signed by an officer of the Beneficiary stating that:

"The Ontario Power Authority is in breach of its obligation set out in Section 2.2 of the Facility Relocation and Settlement Agreement between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."; and
2. A certified true copy of a letter sent by the Beneficiary to the Applicant, by facsimile to 416-969-6071 and by courier to the attention of Michael Lyle, General Counsel, 120 Adelaide Street West, Suite 1600, Toronto ON M5H 1T1, notifying the Applicant that the Beneficiary intends to draw on this Credit, together with a copy of the facsimile confirmation and courier receipt evidencing that the letter was received by the Beneficiary no less than [ten (10)] business days prior to the date of the draw.

Drafts drawn hereunder must bear the clause "Drawn under irrevocable Standby Letter of Credit No. [insert number] issued by [the financial institution] dated [insert date]".

Partial drawings are permitted.

This Credit is issued in connection with the Facility Relocation and Settlement Agreement dated as of the ● day of November, 2011 between the Beneficiary and the Applicant.

We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, which must be located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

— END —

[Insert name of Financial Institution]

By: _____
Authorized Signatory

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EXHIBIT B
COPY OF CERTIFICATE OF APPROVAL-AIR NUMBER 2023-7HUMVW

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SCHEDULE 4.2 – TERMINATION COMPENSATION

- (a) In order to determine the amount of compensation payable pursuant to Section 4.2(a) (the “**Termination Compensation**”), Greenfield shall deliver to the OPA a notice setting out the amount claimed as compensation and details of the computation thereof (the “**Compensation Notice**”). The OPA shall be entitled, by notice given within thirty (30) days after the date of receipt of the Compensation Notice, to require Greenfield to provide such further supporting particulars as the OPA considers necessary, acting reasonably.
- (b) If the OPA does not dispute the Termination Compensation, the OPA shall pay to Greenfield the Termination Compensation within sixty (60) days after the date of receipt of the Compensation Notice. If the Termination Compensation is disputed, the OPA shall pay to Greenfield the amount of ~~compensation~~Termination Compensation as determined in accordance with paragraph (d) not later than sixty (60) days after the date on which the dispute with respect to the amount of ~~compensation~~Termination Compensation is resolved.
- (c) If the OPA wishes to dispute the Termination Compensation, the OPA shall give to Greenfield a notice (the “**OPA Compensation Notice**”) setting out an amount that the OPA proposes as the ~~compensation~~Termination Compensation payable pursuant to Section 4.2(a), together with details of the computation. If Greenfield does not give notice (the “**Greenfield Non-acceptance Notice**”) to the OPA stating that it does not accept the amount proposed in the OPA Compensation Notice within thirty (30) days after the date of receipt of the OPA Compensation Notice, Greenfield shall be deemed to have accepted the amount of ~~compensation~~Termination Compensation so proposed. If a Greenfield Non-acceptance Notice is given, the OPA and Greenfield shall attempt to determine the Termination Compensation through negotiation. If the OPA and Greenfield do not agree in writing upon the Termination Compensation within sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, the Termination Compensation shall be determined in accordance with the procedure set forth in paragraph (d) and Sections 6.1 and 6.2 shall not apply to such determination.
- (d) **Dispute Resolution**
- (i) If the negotiation described in paragraph (c), above, does not result in an agreement in writing on the amount of the Termination Compensation, either the OPA or Greenfield may, after the date of the expiry of a period of sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The OPA and Greenfield shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Termination Compensation. The valuator so appointed shall be a duly qualified business valuator, independent of each of the OPA and Greenfield, where the individual responsible for the valuation has not less than ten (10) years’ experience in

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the field of business valuation. If the OPA and Greenfield are unable to agree upon a valuator within such period, the OPA and Greenfield shall jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Termination Compensation within sixty (60) Business Days after the date of his or her appointment. ~~Pending a decision by the valuator, the OPA and Greenfield shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator.~~ The fees and expenses of the valuator shall be paid by the non-prevailing party. ~~“Prevailing party” means the Party whose determination of the Termination Compensation is most nearly equal to that of the valuator’s determination.~~ OPA, Greenfield’s and the OPA’s respective determinations of the Termination Compensation shall be based upon the Compensation Notice and the OPA Compensation Notice, as applicable.

- (ii) In order to facilitate the determination of the Termination Compensation by the valuator, each of the OPA and Greenfield shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and each of the OPA and Greenfield shall permit the valuator and the valuator’s representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
 - (iii) The Termination Compensation as determined by the valuator shall be final, conclusive and binding and not subject to any appeal.
- (e) Any amount to be paid under paragraph (b) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the ~~date of receipt of the Compensation Notice~~Effective Date to the date of payment. For the purposes of this paragraph, “**Interest Rate**” means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Canadian dollars to its commercial customers in Canada and which it designates as its “**prime rate**” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

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Document comparison done by Workshare DeltaView on November 21, 2011 9:13:14 PM

Input:	
Document 1	file://C:/Documents and Settings/homeuser/Desktop/#22077989v10_LEGAL_1_ - Facility Relocation and Settlement Agreement (Osler draft)November 20.doc
Document 2	file://C:/Documents and Settings/homeuser/Desktop/Facility Relocation and Settlement Agreement (McMillan draft November 21 2011).doc
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Style change	0	
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Total changes	47	

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

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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

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: 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.

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 not intentionally grant any encumbrances to title to the Facility, the Facility Equipment 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. **"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), (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 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 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: **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.

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.

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- (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 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, assuming no discount rate, 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. **[NTD: 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, 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]**

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- (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 otherwise on the next following Business Day, provided that any notice given pursuant to Section 2.2(d) shall be sent by facsimile and by courier.

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ARTICLE 6 DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If any Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the affected Party or Parties describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the affected Party or Parties, a senior executive (Senior Vice-President or higher) from each affected Party shall meet, either in person or by telephone (the "**Senior Conference**"), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute. If, following the Senior Conference, the dispute is not resolved, the dispute shall be settled by arbitration pursuant to Section 6.2.

6.2 Arbitration

Any matter in issue between the Parties as to their rights under this Agreement shall be decided by arbitration pursuant to this Section 6.2, provided, however, that the Parties have first completed a Senior Conference pursuant to Section 6.1. Any dispute to be decided in accordance with this Section 6.2 will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the reference of the dispute to arbitration, upon the application of any of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

ARTICLE 7 MISCELLANEOUS

7.1 Default

- (a) If the OPA fails to perform any material covenant or obligation set forth in this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from Greenfield, the ARCES Contract shall be terminated and the amount owed by the OPA to Greenfield shall be determined in accordance with Section 4.2(a).
- (b) If Greenfield fails to perform any covenant or obligation set forth in Section 2.1(a), Section 2.1(c), Section 2.1(d) or Section 2.4(c) of this Agreement and such failure is not remedied within ten (10) Business Days after written notice of such failure from the OPA, such failure shall constitute a "Supplier Event of Default" under the ARCES Contract and shall entitle the OPA to exercise any remedies thereunder in connection with such default.

7.2 Injunctive and Other Relief

Each of Greenfield and the OPA acknowledge that a breach of this Agreement by the other Party, including, without limitation, Section 2.1, 2.2, 2.4, and Article 3 shall cause irreparable harm to the non breaching Party, and that the injury to non breaching Party shall be difficult to calculate and inadequately compensable in damages. The breaching Party agrees that the non breaching Party is entitled to obtain injunctive relief (without proving any damage sustained by it) or any other remedy against any actual or potential breach of the provisions of this Agreement by the breaching Party.

7.3 Record Retention; Audit Rights

Greenfield shall keep complete and accurate records and all other data required for the purpose of proper administration of this Agreement. All such records shall be maintained as required by laws and regulations but for no less than seven (7) years after the Effective Date. Greenfield, on a confidential basis as provided for in Article 3 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the OPA to (i) comply with its obligations to Governmental Authorities, (ii) verify or audit billings or to verify or audit information provided in accordance with this Agreement, and (iii) to determine any amounts owing or payable pursuant to Sections 2.2(a), 2.2(b), 2.2(c) and 2.4(b). The OPA may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 3. Alternatively, the OPA may at its own expense appoint an auditor to conduct its review.

7.4 Inspection of Site

- (a) The OPA and its authorized agents and Representatives shall, at all times upon two (2) Business Days' prior notice, at any time after execution of this Agreement and during the term of this Agreement, have access to the Site and every part thereof during regular business hours and Greenfield shall, and shall cause all

personnel at the Site within the control of Greenfield to furnish the OPA with all reasonable assistance in inspecting the Site for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of Greenfield.

- (b) The inspection of the Site by or on behalf of the OPA shall not relieve Greenfield of any of its obligations to comply with the terms of this Agreement. In no event will any inspection by the OPA hereunder be a representation that there has been or will be compliance with this Agreement and laws and regulations.

7.5 Inspection Not Waiver

Failure by OPA to inspect the Site or any part thereof under Section 7.4, or to exercise its audit rights under Section 7.3, shall not constitute a waiver of any of the rights of the OPA hereunder. An inspection or audit not followed by a notice of a default by Greenfield shall not constitute or be deemed to constitute a waiver of any such default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by Greenfield with this Agreement.

7.6 No Publicity

No Party shall make any public statement or announcement regarding the existence or contents of this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing and Article 3, following execution of this Agreement, the OPA and its Representatives shall be permitted to make a public announcement, which is provided to Greenfield in advance, that an agreement has been entered into between the OPA and Greenfield which provides for (i) the permanent cessation of work on the Facility, (ii) the revocation of the permit set out in Section 2.1(c) in the circumstances described therein, and (iii) further negotiations between the OPA and Greenfield to determine the relocation of the Facility, failing which, the damages payable to Greenfield will be determined through a process set out in the Agreement. **[NTD: This clause remains subject to further revision as the OPA has not yet finalized this language.]**

7.7 Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by any of the Parties shall be considered employees of any other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

7.8 Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the

provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

7.9 Assignment

- (a) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by Greenfield, without the prior written consent of the OPA, which consent shall not be unreasonably withheld; provided that Greenfield may without the consent of the OPA assign this Agreement and all benefits and obligations hereunder to the Affiliate which will develop, construct, own and operate the Relocated Facility as contemplated by Section 2.5, provided that the assignee agrees in writing in a form satisfactory to the OPA, acting reasonably, to assume and be bound by the terms and conditions of this Agreement.
- (b) Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by the OPA, without the prior written consent of Greenfield, which consent shall not be unreasonably withheld; provided that the OPA shall have the right to assign this Agreement and all benefits and obligations hereunder without the consent of Greenfield to the Government of Ontario or any corporation owned or Controlled by the Government of Ontario with a credit rating that is equal to or better than the OPA's credit rating, and which assumes all of the obligations and liabilities of the Ontario Power Authority under this Agreement and agrees to be novated into this Agreement in the place and stead of the OPA, provided that the assignee agrees in writing to assume and be bound by the terms and conditions of this Agreement, whereupon, the OPA shall be relieved of all obligations and liability arising pursuant to this Agreement.

7.10 Survival

The provisions of Section 2.1, Section 2.2, Article 3, Section 4.1(b), Section 4.2, Article 6, and Section 7.3, shall survive the expiration of the term.

7.11 Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

7.12 Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

Draft

7.13 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

7.14 Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

GREENFIELD SOUTH POWER CORPORATION

By: _____

Name: Gregory M. Vogt

Title: President

I have authority to bind the corporation

ONTARIO POWER AUTHORITY

By: _____

Name: Colin Andersen

Title: Chief Executive Officer

I have authority to bind the corporation.

Draft

EXHIBIT A
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUE: ●
APPLICANT: Ontario Power Authority
BENEFICIARY: Greenfield South Power Corporation
AMOUNT: ●
EXPIRY DATE: ●
EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario
CREDIT RATING: [Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the Bank Act]
TYPE: Irrevocable Standby Letter of Credit
NUMBER:

We hereby authorize you to draw on [insert name of financial institution and financial institution's address in Toronto, Ontario] in respect of irrevocable standby letter of credit No. _____ (the "Credit"), for the account of the Applicant up to an aggregate amount of \$● (● Canadian dollars) available by your draft at sight, accompanied by:

1. A certificate signed by an officer of the Beneficiary stating that:

"The Ontario Power Authority is in breach of its obligation set out in Section 2.2 of the Facility Relocation and Settlement Agreement between the Beneficiary and the Applicant, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto."; and
2. A certified true copy of a letter sent by the Beneficiary to the Applicant, by facsimile to 416-969-6071 and by courier to the attention of Michael Lyle, General Counsel, 120 Adelaide Street West, Suite 1600, Toronto ON M5H 1T1, notifying the Applicant that the Beneficiary intends to draw on this Credit, together with a copy of the facsimile confirmation and courier receipt evidencing that the letter was received by the Beneficiary no less than [ten (10)] business days prior to the date of the draw.

Drafts drawn hereunder must bear the clause "Drawn under irrevocable Standby Letter of Credit No. [insert number] issued by [the financial institution] dated [insert date]".

Partial drawings are permitted.

This Credit is issued in connection with the Facility Relocation and Settlement Agreement dated as of the ● day of November, 2011 between the Beneficiary and the Applicant.

We agree with you that all drafts drawn under, and in compliance with the terms of this Credit will be duly honoured, if presented at the counters of **[insert the financial institution and financial institution's address, which must be located in Toronto, Ontario]** at or before 5:00 pm (EST) on **[insert the expiry date]**.

This irrevocable standby letter of credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce publication No. 590 and, as to matters not addressed by the ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

– END –

[Insert name of Financial Institution]

By: _____
Authorized Signatory

Draft

EXHIBIT B
COPY OF CERTIFICATE OF APPROVAL-AIR NUMBER 2023-7HUMVW

Draft

SCHEDULE 4.2 – TERMINATION COMPENSATION

- (a) In order to determine the amount of compensation payable pursuant to Section 4.2(a) (the “**Termination Compensation**”), Greenfield shall deliver to the OPA a notice setting out the amount claimed as compensation and details of the computation thereof (the “**Compensation Notice**”). The OPA shall be entitled, by notice given within thirty (30) days after the date of receipt of the Compensation Notice, to require Greenfield to provide such further supporting particulars as the OPA considers necessary, acting reasonably.
- (b) If the OPA does not dispute the Termination Compensation, the OPA shall pay to Greenfield the Termination Compensation within sixty (60) days after the date of receipt of the Compensation Notice. If the Termination Compensation is disputed, the OPA shall pay to Greenfield the amount of Termination Compensation as determined in accordance with paragraph (d) not later than sixty (60) days after the date on which the dispute with respect to the amount of Termination Compensation is resolved.
- (c) If the OPA wishes to dispute the Termination Compensation, the OPA shall give to Greenfield a notice (the “**OPA Compensation Notice**”) setting out an amount that the OPA proposes as the Termination Compensation payable pursuant to Section 4.2(a), together with details of the computation. If Greenfield does not give notice (the “**Greenfield Non-acceptance Notice**”) to the OPA stating that it does not accept the amount proposed in the OPA Compensation Notice within thirty (30) days after the date of receipt of the OPA Compensation Notice, Greenfield shall be deemed to have accepted the amount of Termination Compensation so proposed. If a Greenfield Non-acceptance Notice is given, the OPA and Greenfield shall attempt to determine the Termination Compensation through negotiation. If the OPA and Greenfield do not agree in writing upon the Termination Compensation within sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, the Termination Compensation shall be determined in accordance with the procedure set forth in paragraph (d) and Sections 6.1 and 6.2 shall not apply to such determination.
- (d) **Dispute Resolution**
- (i) If the negotiation described in paragraph (c), above, does not result in an agreement in writing on the amount of the Termination Compensation, either the OPA or Greenfield may, after the date of the expiry of a period of sixty (60) days after the date of receipt of the Greenfield Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The OPA and Greenfield shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Termination Compensation. The valuator so appointed shall be a duly qualified business valuator, independent of each of the OPA and Greenfield, where the individual responsible for the valuation has not less than ten (10) years’ experience in the field of business valuation. If the OPA and Greenfield are unable to agree upon a valuator within such period, the OPA and Greenfield shall

Draft

jointly make application (provided that if a party does not participate in such application, the other party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Termination Compensation within sixty (60) Business Days after the date of his or her appointment. The fees and expenses of the valuator shall be paid by the OPA. Greenfield's and the OPA's respective determinations of the Termination Compensation shall be based upon the Compensation Notice and the OPA Compensation Notice, as applicable.

- (ii) In order to facilitate the determination of the Termination Compensation by the valuator, each of the OPA and Greenfield shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and each of the OPA and Greenfield shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
 - (iii) The Termination Compensation as determined by the valuator shall be final, conclusive and binding and not subject to any appeal.
- (e) Any amount to be paid under paragraph (b) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the Effective Date to the date of payment. For the purposes of this paragraph, "**Interest Rate**" means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Canadian dollars to its commercial customers in Canada and which it designates as its "**prime rate**" based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

Draft

Aleksandar Kojic

From: John Zych
Sent: November 24, 2011 10:51 AM
To: Colin Andersen
Cc: Irene Mauricette; Michael Lyle; Nimi Visram; JoAnne Butler; Michael Killeavy
Subject: FW: MINUTES OF AUGUST 1, 3, AND 5, 2011
Attachments: DRAFT Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 5, 2011.doc

Colin,

Jim Hinds has endorsed the re-write of the minutes of the Board meetings of August 1, 3, and 5, 2011. I will put them on the December Board agenda.

Kathleen,

Please print and place in Colin's weekend reading folder.

From: John Zych
Sent: Wed 11/23/2011 8:48 PM
To: jim.hinds@irish-line.com
Cc: Nimi Visram; Michael Lyle
Subject: FW: MINUTES OF AUGUST 1, 3, AND 5, 2011

Jim,

On September 14, 2011 the Board reviewed the minutes of the Board meetings of July 29, 2011 and August 1, 3, 5 and 17, 2011 and approved the minutes of July 29, 2011 and August 17, 2011, but had some reservations over the wording of the minutes of the meetings of August 1, 3 and 5. You indicated that you did not feel that they were incorrect in any respect but that they dealt with the proposed arbitration of the TransCanada dispute, a fact that the OPA had agreed to keep silent. You were concerned about an inadvertent release of these minutes that would cause us not to have complied with our agreement to keep this fact confidential. The meeting approved these three minutes in principle and asked me to work with Patrick Monahan to overcome their concerns.

I redrafted them, Mike Lyle reviewed them and I sent them to Patrick. Patrick accepted and agreed with the revisions. The issue was resolved for the August 1 and 3 minutes by referring more generally to the settlement of the claim or an attempt to settle it. In the August 5 minute, we cannot do so since we passed a resolution about agreeing to participate in arbitration.

I propose to put them on the December Board agenda. Please advise if you have any concerns.

John Zych

From: John Zych
Sent: Mon 11/21/2011 4:13 PM
To: 'pjmon'
Subject: FW: MINUTES OF AUGUST 1, 3, AND 5, 2011

Patrick, Can we discuss this matter on Tuesday or Wednesday?

From: John Zych
Sent: Tue 11/8/2011 12:03 PM
To: 'pjmon'
Cc: Michael Lyle
Subject: MINUTES OF AUGUST 1, 3, AND 5, 2011

Patrick,

See the note (below). You have not responded, so I am following up.

On September 14, 2011 the Board reviewed the minutes of the Board meetings of July 29, 2011 and August 1, 3, 5 and 17, 2011 and approved the minutes of July 29, 2011 and August 17, 2011, but had some reservations over the wording of the minutes of the meetings of August 1, 3 and 5.

Jim Hinds' issue with the minutes of August 1, 3 and 5 was not that they were incorrect in any respect but that they dealt with the proposed arbitration of the TransCanada dispute, a fact that we had agreed to keep silent. He was concerned about an inadvertent release of these minutes that would cause us not to have complied with our agreement to keep this fact confidential. The meeting approved these three minutes in principle and asked me to work with you to overcome their concerns.

I have resolved the issue for the August 1 and 3 minutes by referring more generally to the settlement of the claim or an attempt to settle it. In the August 5 minute, we cannot do so since we passed a resolution about agreeing to participate in arbitration.

Do you have any comments? Are the revisions an improvement at all? Should we perhaps not make the changes indicated in the April 1 and 3 minutes and rely on solicitor and client and litigation privilege?

Please advise.

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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From: John Zych
Sent: October 11, 2011 2:05 PM
To: 'pjmon'
Cc: Michael Lyle
Subject: MINUTES OF JULY 29 AND AUGUST 1, 3, 5 AND 17, 2011

Patrick,

On September 14, 2011 the Board reviewed the minutes of the Board meetings of July 29, 2011 and August 1, 3, 5 and 17, 2011 and approved the minutes of July 29, 2011 and August 17, 2011, but had some reservations over the wording of the minutes of the meetings of August 1, 3 and 5.

Jim Hinds' issue with the minutes of August 1, 3 and 5 was not that they were incorrect in any respect but that they dealt with the proposed arbitration of the TransCanada dispute, a fact that we have agreed to keep silent. He was concerned about an inadvertent release of these minutes that would cause us not to have complied with our agreement to keep this fact confidential. The meeting approved these latter three minutes in principle and asked me to work with you to overcome their concerns.

I have resolved the issue for the August 1 and 3 minutes by referring more generally to the "settlement" of the claim. In the August 5 minute, we cannot do so since we passed a resolution about agreeing to participate in arbitration. In the result, we specifically mention arbitration in only one minute, that of August 5.

In addition, I have taken special security measures to keep the minutes secure from any unauthorized or inadvertent release. Also, in an FOI request, we believe that we can keep the relevant portions confidential by reason of the exemption for confidential information, solicitor and client privilege and for matters in litigation.

Accordingly, I propose to minute the September 14, 2011 discussion as follows:

The Board reviewed the minutes of the Board of July 29, 2011 and August 17, 2011, and, on motion duly made, seconded and unanimously carried, it was RESOLVED THAT they be approved.

The Board members requested that the minutes of the meetings of August 1, 3 and 5, 2011 be reviewed and brought back to the Board for its review and approval.

Do you agree with the foregoing? If you do, I will run this by Jim next.

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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MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

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

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

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

2. Korean Consortium Power Purchase Agreements

Mr. Hinds reported on the OPA's weekend work in relation to the Korean Consortium (Samsung) Power Purchase Agreements. The negotiations had gone well and the agreements had undergone only minimal changes since the Board's meeting of July 29, 2011. Thus, under the delegation given to him by the Board of Directors on July 29, 2011, he had authorized members of management to sign the necessary agreements. The Board members noted that these developments would be announced later this week and stated their preference that the greatest possible transparency be shown in the disclosure of these arrangements by the Government of Ontario, the OPA and Samsung.

3. TransCanada Energy Inc. Negotiations

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

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

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

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

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

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

4. Other Business

There was no other business.

5. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting



MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

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

2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

Mr. Rocco Sebastiano, of the Osler, Harcourt and Hoskin LLP, the OPA's outside counsel in this matter, joined the Board meeting. Mr. Sebastiano discussed his concerns over certain issues that arose out of the agreement to attempt to settle the dispute as presently drafted, including the waiver of some of the OPA's defenses.

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

Mr. Amir Shalaby pointed out that from a planning perspective, the Ontario Electricity System needed flexible generation sources over the next ten years. Thus, a plant in the

Kitchener-Waterloo area would be more suitable. A refurbished Lennox plant would be suitable if it was built later as opposed to earlier in the ten-year period.

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

The Board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario rate payer. Management was asked to advise Mr. Livingston of this view.

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

3. Other Business

There was no other business.

4. In Camera Session

The directors met in the absence of management.

5. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting



MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

The Chair declared that, although less notice had been provided of this meeting than the by-laws of the OPA required (24 hours' notice had actually been given instead of the 48 hours' notice that was required), if no Board member present objected to the lack of sufficient notice, the meeting would be properly called. No Board member objected. Mr. Zych advised that Ms. McLeod had indicated that she could not attend the meeting but would waive notice of the meeting. Mr. Hinds noted that a quorum of members was present and declared that the meeting was duly constituted for the transaction of business.

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

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

2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

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

deeds and instruments and to do all such further acts as may be necessary or desirable to implement the Agreements, to perform its obligations thereunder and to obtain the benefits thereof; and,

4. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver such subsequent documents as shall be necessary or desirable to make non-material amendments to the above-noted Agreements, documents, deeds and instruments, as such officer shall determine and as shall be evidenced by such officer's signature thereto.

3. Other Business

There was no other business.

4. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting

Aleksandar Kojic

From: Amir Shalaby
Sent: November 25, 2011 4:20 PM
To: Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler
Subject: Progress discussion on TCE arbitartaion

Follow Up Flag: Follow up
Flag Status: Completed

just finished a Conference call with Government/lo folks:

- They are asking JoAnne or Michael K to send the shorter list of parameters that matter
- They met with legal counsel for TCE and agreed to amend the terms of arbitration (to expedite settlement). They will pass the amendments by Michael L when they are ready. The amendments have to do with: compressing the process, document exchange, steps following document exchange
- They developed a list of Arbitrators to select from (I asked that Michael L be party to the selection)
- They got an estimate of Turbine costs : \$ 191 M
- There is optimism that TCE can share the model in a closed session, and I asked that they arrange for this to happen.
- They may skip the step of a mock arbitration if the TCE model is shared early.

This is moving faster than I expected, so wanted to share with you right away

Cheers

amir

Aleksandar Kojic

From: Michael Killeavy
Sent: September 14, 2010 12:51 PM
To: Derek Leung
Cc: Susan Kennedy
Subject: FW: SWGTA Costs

Derek,

Please see below.

Here is what I'd suggest:

Proposal Preparation -	\$1,000,000
Legal Costs -	\$500,000
Other Consultants	\$500,000
Land and Other costs	\$250,000
TOTAL	\$2,250,000

Damages are close to \$1 billion

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

From: Susan Kennedy
Sent: September 14, 2010 12:44 PM
To: Michael Killeavy
Subject: SWGTA Costs

Mike Lyle called to tell me that Craig MacClennan (416-327-3550) wants an estimate of TransCanada's SWGTA costs by end of day.

I appreciate that this is a total guessing exercise on your part as we can't know unless we ask.

I'd suggest breaking costs out in terms of bid costs versus post bid costs (to the extent you can). If I we were playing "let's make a deal", I'm not sure I'd offer [at least not to start] bid costs as this is arguably a project development issue not a bid issue.

Call me if I can help. Mike says to call Craig directly.

Sorry to be the bearer of bad [or at least potentially inconvenient] news.

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

Aleksandar Kojic

From: Michael Killeavy
Sent: September 14, 2010 1:59 PM
To: Derek Leung
Cc: Susan Kennedy
Subject: RE: SWGTA Costs

Importance: High

How about we just say approximate costs to date are \$10M?

Potential lost profits (damages) are about \$1 billion, or so.?

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

From: Derek Leung
Sent: September 14, 2010 1:55 PM
To: Michael Killeavy
Cc: Susan Kennedy
Subject: RE: SWGTA Costs

Attached please find my guestimate.

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

From: Michael Killeavy
Sent: 14 September 2010 13:28
To: Derek Leung
Cc: Susan Kennedy
Subject: RE: SWGTA Costs

OK. I forgot about the EA and equipment purchase.

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

120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
416-969-6288 (voice)
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416-520-9788 (cell)
michael.killeavy@powerauthority.on.ca

From: Derek Leung
Sent: September 14, 2010 1:27 PM
To: Michael Killeavy
Cc: Susan Kennedy
Subject: RE: SWGTA Costs

It looks a little low I will have something done within the next hour or so.

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

From: Michael Killeavy
Sent: 14 September 2010 12:51
To: Derek Leung
Cc: Susan Kennedy
Subject: FW: SWGTA Costs

Derek,

Please see below.

Here is what I'd suggest:

Proposal Preparation -	\$1,000,000
Legal Costs -	\$500,000
Other Consultants	\$500,000
Land and Other costs	\$250,000

TOTAL	\$2,250,000
-------	-------------

Damages are close to \$1 billion

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

From: Susan Kennedy
Sent: September 14, 2010 12:44 PM
To: Michael Killeavy
Subject: SWGTA Costs

Mike Lyle called to tell me that Craig MacClennan (416-327-3550) wants an estimate of TransCanada's SWGTA costs by end of day.

I appreciate that this is a total guessing exercise on your part as we can't know unless we ask.

I'd suggest breaking costs out in terms of bid costs versus post bid costs (to the extent you can). If I we were playing "let's make a deal", I'm not sure I'd offer [at least not to start] bid costs as this is arguably a project development issue not a bid issue.

Call me if I can help. Mike says to call Craig directly.

Sorry to be the bearer of bad [or at least potentially inconvenient] news.

Susan H. Kennedy
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E: susan.kennedy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: October 27, 2010 8:01 AM
To: John Zych; Michael Lyle; Susan Kennedy
Cc: Derek Leung; Deborah Langelaan
Subject: RE: Freedom of Information and Protection of Privacy Act Requests 2010-020 (Ontario NDP - Two SWGTA Topics)
Attachments: Memo re_ Termination of SWGTA Contract.DOCX; Briefing - SWGTA Options v8.ppt
Importance: High

Attached are the only two documents that I'm aware of. The first one is privileged. The second one was ministerial briefing material that Derek and I worked on with PSP.

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

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

From: John Zych
Sent: October 26, 2010 6:30 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Subject: FW: Freedom of Information and Protection of Privacy Act Requests 2010-020 (Ontario NDP - Two SWGTA Topics)

Michael Killeavy,

With whom on your staff do I deal on this matter?

This is, I think, a relatively simple request.

We have already provided parts of the agreement with TransCanada to C4CA and Kevin Flynn in response to their Freedom of Information and Protection of Privacy Act requests. TransCanada agreed. I will deal with TransCanada on that matter. I will let you know what they say.

I need your assistance -- and Mike Lyle's and Susan Kennedy's -- on documents that describe TransCanada's recourse should the Oakville project be cancelled. These are likely covered by an exemption for records created under the solicitor-client privilege (section 19 of the Act). There are other grounds of exemption, too. I will still need to see them.

All,

Should I also contact JoAnne and Colin for records, or will you have whatever they may have?

John Zych

Corporate Secretary
Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto, ON M5H 1T1
416-969-6055
416-967-7474 Main telephone
416-967-1947 OPA Fax
416-969-6383 Personal Fax
John.Zych@powerauthority.on.ca

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

From: John Zych
Sent: October 26, 2010 6:14 PM
To: 'rosenstockm@ndp.on.ca'
Subject: Freedom of Information and Protection of Privacy Act Requests 2010-020 (Ontario NDP - Two SWGTA Topics)

Michael,

The OPA is in receipt of your letter of October 14, 2010 (attached).

I know that the OPA has the first record that you mention. Based on previous Southwest GTA Gas-fired Generation Procurement Freedom of Information and Protection of Privacy Act requests, I know that TransCanada will object to certain portions of the agreement on the basis of confidentiality (section 17 of the Act).

I will look for documents that describe TransCanada's "recourse should the Oakville project be cancelled". You will undoubtedly realize that these are likely covered by an exemption for records created under the solicitor-client privilege (section 19 of the Act).

May I assume that I may deal with you by e-mail for the purposes of this request?

John Zych
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MEMORANDUM

STRICTLY PRIVILEGED AND CONFIDENTIAL

TO: Ontario Power Authority (the "OPA")

FROM: Aird & Berlis LLP

DATE: February 17, 2010

RE: Southwest GTA Clean Energy Supply Agreement dated as of October 9, 2009 between TransCanada Energy Ltd. (the "Supplier") and the OPA (the "SW GTA Contract") in respect of Oakville Generating Station (the "Facility"): Consequences of Termination by OPA

File #: 103661 – SWGTA **Client #:** 33770 – Ontario Power Authority

I. Introduction

The Supplier won the right to enter into the SW GTA Contract with the OPA following a competitive request-for-proposals ("RFP") procurement process carried on by the OPA. As part of that process, the winner of the RFP was required to enter into the form of SW GTA Contract without the possibility of amending or modifying any of the terms of that contract (other than those specific to the Facility, such as specifications and connection).

Since the date of execution of the SW GTA Contract, the development of the Facility by the Supplier has faced significant local opposition. Furthermore, an explosion at a natural gas-fired plant located in Middletown, Connecticut on February 7, 2010, although in no way related to the Facility, has heightened concerns in Oakville.

The OPA is currently exploring various options with respect to the SW GTA Contract. This memorandum addresses issues related to potential termination of the SW GTA Contract by the OPA.

All capitalized terms herein have the same defined meanings as in the SW GTA Contract.

II. Executive Summary

The OPA can itself terminate the SW GTA Contract or rely on others to take certain steps that may result in its termination.

The first option is for the OPA to terminate the SW GTA Contract of its own volition. This would likely constitute a Buyer (i.e. OPA) Event of Default under the SW GTA Contract or a repudiation under general contract law. Express remedies in the case of a Buyer Event of Default are available to the Supplier, but those enumerated in the SW GTA Contract are not particularly helpful to the Supplier.

Remedies under general contract law would provide a more useful avenue for the Supplier. Under this route, the Supplier would be entitled to bring an action against the OPA for damages, including sunk

costs and expected future profits. These amounts could be estimated at between \$1 and \$2 billion, assuming discount rates of 7% to 10%.

However, any such remedies would be subject to an exclusionary clause contained in the SW GTA Contract. Section 14.1 provides that, notwithstanding any provision of the SW GTA Contract, neither Party will be liable for any "special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits ..., loss of use of property or claims of customers or contractors of the Parties for any such damages."

If enforceable, this provision would severely limit the amounts for which OPA would be liable. However, recent case law raises serious issues about whether the OPA could rely on a court to apply Section 14.1. In a situation where (a) the OPA may have difficulty justifying termination of the contract, and (b) the contract was not subject to negotiation due to the nature of the procurement process, the court may be less likely to uphold such a blanket exclusion.

The OPA could terminate the SW GTA Contract if a delay of 24 months was occasioned by a Force Majeure, such as an act of the Ontario Government or the municipality of Oakville. Following such 24-month period, the OPA would have the option of terminating the SW GTA Contract without liability.

Force Majeure is defined as an act, etc. that prevents a Party from performing its obligations and that is beyond a Party's reasonable control. This includes an "order, judgment, legislation, ruling or direction" by a Governmental Authority, not caused by the OPA's fault or negligence, and with respect to which the OPA must have used Commercially Reasonable Efforts to oppose.

Formally, acts of the Ontario Government are beyond the control of the OPA. An issue is whether a court, in this situation, would distinguish between the OPA and the Ontario Government. If it did, the OPA would still have to show that it made Commercially Reasonable Efforts to prevent or remedy the Force Majeure.

Even if such an act of the Ontario Government constituted Force Majeure, the question would arise whether the government's action constituted Discriminatory Action. Discriminatory Action is defined as a law, order-in-council or regulation, or direct or indirect amendment of the contract, without the agreement of the Supplier, by the Provincial Government or Legislature. If Discriminatory Action applied, the Supplier would be entitled to receive damages potentially amounting to sums similar to those available under the breach of contract scenario described above.

If Oakville, rather than the Ontario Government, caused the Force Majeure, this would mean that such acts would not constitute Discriminatory Action and the Discriminatory Action remedy set out above would not be available to the Supplier.

III. Discussion

a. Supplier's contractual remedies for breach by OPA

This analysis is based on the assumption that OPA simply tells the Supplier that the project is cancelled. For the purposes of this portion of the analysis, we have assumed that no event of force majeure is alleged and that there is nothing that might come within the definition of "Discriminatory Action" within the meaning of section 13.1 of the SW GTA Contract.

If the OPA to terminate the SW GTA Contract of its own volition this would likely constitute a Buyer (i.e. OPA) Event of Default under section 10.3 of the SW GTA Contract and a repudiation of the contract under general contract law. Express remedies in the case of a Buyer Event of Default are available to the Supplier under section 10.4. However, such enumerated remedies provide that the Supplier may

set off payment due to the Buyer (of which there are none) against amounts payable by the Buyer to the Supplier. Thus, such remedies are not particularly helpful to the Supplier.

Remedies under general contract law would provide a more useful avenue for the Supplier. Under this route, the Supplier would be entitled to bring an action against the OPA for damages, including sunk costs and expected future profits.

Article 14, Liability and Indemnification, provides:

14.1 Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages

On the assumption that the damages suffered by the Supplier by OPA's repudiation will consist of two principal claims, viz., a claim to recover the sunk costs of the project up to the date of the repudiation and the present value of the net profits that would have been earned over the term of the SW GTA Contract—the question then is how those claims would be dealt with in the light of the exclusion in section 14.1

The OPA could argue that the language of section 14.1 is effective to deny the Supplier any claim for breach of contract. The exclusion with respect to "loss of profits" would prevent a claim for the present value of the Supplier's future profits and the exclusion with respect to "special damages" could prevent a claim for the Supplier's sunk costs.

The phrase "special damages" is not commonly used in cases of a breach of contract. It is more common to find the term "direct damages" used to describe the most easily established damages. In a case where, for example, a seller failed to deliver goods, the buyer's direct damages would be the difference between the contract price and the market price when the buyer went into the market to buy replacement goods. The term "special damages" is often encountered in torts cases and is there distinguished from general damages, e.g. damages for pain and suffering. A convenient way to distinguish special from general is that the former will generally be supported by receipts.

Since a plain reading of section 14.1 could lead to the conclusion that, on OPA's repudiation of the Agreement, the Supplier gets nothing, it can be assumed that a judge might seek to find a basis for avoiding this result. This was arguably the outcome in a recent Supreme Court of Canada case.

b. The Supreme Court's Decision in *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4 ("*Tercon*") [Feb 12, 2010].

The question in *Tercon* was the enforceability of a clause in a tender document purporting to limit the liability of the defendant province, in the circumstances.

The facts of *Tercon* were that the B.C. Government, through the Minister of Transportation and Highways, sought, through a "Request for Expressions of Interest" (RFEI), to get expressions of interest for the design and construction of a highway in a remote area of the province. Six teams responded, including Tercon Contractors and one other, Brentwood. The province then changed its mind, undertook the design function itself and then issued an RFP. Only those contractors who had responded to the RFEI were entitled to bid under the RFP. In the result, the province awarded the contract to Brentwood, which company, by the date when the tender was submitted, had, by entering

into a joint venture with an unqualified company, become an unqualified bidder. Tercon Contractors immediately sued the province for breach of an undertaking to use only qualified bidders.

In defending the action, the province relied on section 2.10 of the RFP which stated:

2.10 ... Except as expressly and specifically permitted in the Instructions to Proponents, no Proponent shall have any claim for compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.

The trial judge upheld that the breach by the plaintiff was so egregious that the limitation of liability clause did not operate to protect the province. The British Columbia Court of Appeal allowed the province's appeal and held that the clause protected the province in the circumstances.

On further appeal to the Supreme Court, the full court agreed that the doctrine of fundamental breach should be discarded. The court, both majority and minority, further agreed with Binnie J. who said: (paras 122, 123):

[122] The first issue, of course, is whether as a matter of interpretation the exclusion clause even applies to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (Hunter, at p. 462). This second issue has to do with contract formation, not breach.

[123] If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts.

The disagreement between the majority and minority centered on the meaning of the phrase, "as a result of participating in this RFP" in section 2.10. In Cromwell J.'s view, what the province did (in accepting a bid from a non-compliant bidder) took the process outside the scope of the clause. Cromwell J. said: (para. 74)

[74] I turn to the text of the clause which the Province inserted in its RFP. It addresses claims that result from "participating in this RFP". As noted, the limitation on who could participate in this RFP was one of its premises. These words must, therefore, be read in light of the limit on who was eligible to participate in this RFP. As noted earlier, both the ministerial approval and the text of the RFP itself were unequivocal: only the six proponents qualified through the earlier RFEI process were eligible and proposals received from any other party would not be considered. Thus, central to "participating in this RFP" was participating in a contest among those eligible to participate. A process involving other bidders, as the trial judge found the process followed by the Province to be, is not the process called for by "this RFP" and being part of that other process is not in any meaningful sense "participating in this RFP".

Cromwell J. emphasized throughout his reasons that the province had behaved badly. He adopted the view of the trial judge that the breach had been egregious (para. 6) and that the conduct (para. 78) "... of the Province in this case strikes at the heart of the integrity and business efficacy of the tendering process".

The minority adopted the point of view of the British Columbia Court of Appeal and held that the limitation of liability clause applied in the circumstances. Nevertheless, with respect to the third inquiry that Binnie J. outlined, he said, (para. 82):

... Rather, the principle is that a court has no discretion to refuse to enforce a valid and applicable contractual exclusion clause unless the plaintiff (here the appellant Tercon Contractors) can point to some paramount consideration of public policy sufficient to override the public interest in freedom of contract and defeat what would otherwise be the contractual rights of the parties....

c. Application of Decision in *Tercon* to SW GTA Contract

Tercon can be read as standing for the proposition that a court, faced with a limitation of liability clause that purports to limit the liability of a potential defendant too much, will find a way to limit its scope. The Supplier under the SW GTA Contract can make a very strong claim to be paid its costs that are now to be thrown away. If the clause were interpreted to deny the Supplier the recovery of those costs, a court might be moved to hold that it should not be carried so far. Various arguments can be made to support the Supplier's claim to its costs thrown away: a claim for such costs would be a claim for its "direct costs", i.e., the head of damages that would be normal in a case of breach of contract, not, as has been mentioned, a claim for special damages in tort. In other words, the language of section 14.1 of the SW GTA Contract may not limit the Supplier's claim for its costs, i.e., its direct costs, thrown away.

The second concern over the decision in *Tercon* arises from the admission by both the majority and the minority that egregious conduct or public policy might limit the scope of a limitation of liability clause. Until this case, there were very few examples of decisions cutting back or limiting a clause like section 14.1 on the ground that the defendant's conduct was very bad. It had been assumed in Canada that a party guilty of fraud might be unable to rely on an exemption clause. This position had been taken in a Delaware case, *ABRY Partners v. F&W Acquisition, LLC*, 891 A.2d 1032 (Del. Ch. 2006), and it would not be surprising if a Canadian court had followed it.

While there is no suggestion that either OPA or the government would engage in fraud or any bad conduct with respect to the termination of the SW GTA Contract, it is not obvious that bad conduct by a defendant necessarily means that a limitation of liability clause is ineffective.

The "public policy" exception to the general enforceability of a limitation of liability clause, is even more worrying as the court does not explain just what public policy is or might be engaged in *Tercon*.

Without engaging in an exhaustive analysis of the cases on construction tendering, it can be said that it is not obvious that what the province did in *Tercon* was contrary to public policy—or at least so contrary to public policy that the protection the province reasonably thought that it had should be stripped away.

In the case facing OPA or the Ontario government, the question would be whether a deliberate breach of a contract would be regarded by the courts as so egregious as to justify stripping away the protection of section 14.1.

A factor present in both *Tercon* and this case is that the parties are experienced entities, able, one would have thought, to be held to the terms of the contracts they make, whether or not they were offered the agreements on a take-it-or-leave-it basis.

d. Conclusions re: Potential Liability

With two important qualifications, the plain words of section 14.1 support an argument that, on a breach by OPA, the Supplier has no claim to compensation; all its claims being excluded by the plain language of the section.

The first qualification is that the Supplier will be seen by the court to have a very good claim to some compensation, if only to reimbursement for the costs it will have been forced to throw away. A court which considers that one party has been hard done by will often be moved to provide it with some relief and section 14.1 might not be effective in this situation.

The second qualification is the scope given to public policy in *Tercon*. A court moved, like the trial judge and the majority in the Supreme Court, by the enormity of what a defendant has done may simply say that it would violate public policy to enforce such a clause.

e. Discriminatory Action

A Discriminatory Action is defined in Section 13.1(a) of the SW GTA Contract to occur if:

(i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal in response to the RFP: or

(ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier.

A Discriminatory Action will not occur if Laws and Regulations of general application are enacted. However, please note the memorandum dated July 7, 2009, provided to the OPA, a copy of which is attached, that shows that in certain circumstances a law of general application can be interpreted as being a law of specific application.

The strict wording of the SW GTA Contract requires for Discriminatory Action that the Legislative Assembly of Ontario enacts a statute or the government of Ontario enacts an order-in-council or regulation. As such, a Ministerial Direction to simply repudiate the SW GTA Contract would not likely qualify under that definition. Also according to the strict wording of the provisions, a repudiation of the SW GTA Contract would not be an amendment of it, as none of the provisions would be altered.

However, there remains some risk that a court may find that the Ontario government indirectly "amended" the SW GTA contract by way of Ministerial Direction by causing the OPA to repudiate it, in particular in light of the exception in the exclusion clause of Section 14.1

While it may be that the strict wording of the agreement may govern, courts are inclined to provide remedies to parties who have suffered damages. In the event that the courts were to find that a Discriminatory Action occurred, then Section 13.2 of the SW GTA Contract would apply. This section states:

13.2 If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the "Discriminatory Action Compensation") from the Buyer for:

(a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first Calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion

of any costs charged by a Person who does not deal at Arm's Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm's Length with the Supplier; and

(b) the amount by which (i) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the discriminatory Action and ending at the expiry of the Term, exceeds (ii) the net present value of the net revenues from the Electricity and Related Products in respect of Contracted Facility Operation that are forecast to be earned by the Supplier during the period of time commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending on the expiry of the Term, taking into account the occurrence of the Discriminatory Action and any actions that the Supplier should reasonably be expected to take to mitigate the effect of the Discriminatory Action, such as by mitigating operating expenses and normal capital expenditures of the business of the generation and delivery of the Electricity and Related Products in respect of Contracted Facility Operation.

In essence, if it is found that there is a Discriminatory Action then the SW GTA Contract provides that the Supplier can recover its lost profits and any increase in costs that it will suffer as a result of the Discriminatory Action. This would be very similar to the damages available in contract for a repudiation.

f. Force Majeure Effects and Definitions – OPA may terminate due to Force Majeure after 24 Months if OPA uses Commercially Reasonable Efforts to oppose the Ministerial Directive.

Section 11.1 of the SW GTA Contract sets out the effects of invoking Force Majeure:

11.1(h) If, by reason of Force Majeure, the COD is delayed by more than twenty-four (24) months after the original Milestone Date for attaining Commercial Operation of the Facility (prior to any extension pursuant to Section 11.1(f)), then notwithstanding anything in this Agreement to the contrary, either Party may terminate this Agreement upon notice to the other Party without any costs or payments of any kind to either Party, and all security shall be returned forthwith.

Force Majeure is defined in Section 11.3 as:

"any act, event cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party's reasonable control".

Sections 11.3(g) and 11.3(h) further stipulate that Force Majeure includes:

(g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction.

11.3(h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority or Transmitter required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;

Commercially Reasonable Efforts are defined as meaning:

"efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement."

g. Exclusions to Force Majeure

The OPA may not invoke Force Majeure under the SW GTA Contract in the following circumstances:

- 1) if the OPA has caused the Force Majeure by its own fault or negligence (s. 11.2(a)); and
- 2) if and to the extent the OPA has not used Commercially Reasonable Efforts to remedy or remove the Force Majeure.

h. OPA may only rely on Force Majeure to terminate SW GTA Contract if it actively opposes cancellation of contract by Ministerial Directive.

Given the exclusions to the Force Majeure definition, it would be necessary for the OPA to actively oppose any Ministerial Directive if the OPA were seeking to cancel the SW GTA Contract as a result of Force Majeure. The OPA must not have applied for or assisted in the application for the Ministerial Directive. The OPA further is required by the SW GTA Contract to actively oppose the Ministerial Directive, using Commercially Reasonable Efforts. While Commercially Reasonable Efforts require some effort, they do not require that the OPA expend funds or assume liabilities in order to oppose the Ministerial Directive.

The SW GTA Contract is silent as to whether the opposition to any Ministerial Directive would need to be public, however, although it would be necessary to provide to the Supplier a copy of any active opposition to avoid litigation on the Force Majeure point.

i. OPA may rely on Force Majeure to terminate SW GTA Contract if a Third Party denies it relevant permits without actively opposing such denial of permits (but it cannot consent thereto).

It is an open question whether the OPA would be considered equivalent to the Ministry if a Provincial permit were denied. The Supplier may raise arguments that the OPA and the Ontario Ministry are so closely related that they should be treated as a single entity for the purposes of relying on Force Majeure to cancel the contract. There may be other administrative law issues that are raised if an Ontario Ministry were to deny a permit, rather than the arms-length actions of a third party. Our advice is to assume that it is necessary that a third party block the issuance of a permit to ensure that section 11.3(h) is available to the OPA.

If a third party were to deny issuance of a permit necessary for the Facility to reach COD, there are no requirements that the OPA actively oppose such denial. The only requirement under the SW GTA Contract is that the OPA not consent to such denial of the permit.

j. Quantum of Potential Damages

In the case that s. 14.1 is not effective, and a Force Majeure claim is not available, the OPA would be liable to the Supplier for all of its damages, including its sunk costs to date and loss of future profits.

An estimate of the magnitude of the damages can be made by calculating the net present value of the Net Revenue Requirement of the SW GTA Contract, which is equal to \$17,277/MW/Month, times 900 MW (equal roughly to \$15.5 million per month). Assuming a reasonable discount rate (7%-10%), the

net present value of this amount is roughly equal to \$1-\$2 billion, and accounts for the potential lost revenue for Electricity and Related Products. This amount should also approximate the capital costs of the project with an internal rate of return.

The Supplier will be required to mitigate their damages, but it is difficult to see how in the current climate for gas-fired generation that they would be able to obtain a similar investment.

The precise figures for lost profit and damages are difficult to calculate precisely, but the numbers above should give an indication of the magnitude of the potential claim. In particular, the figure cited above does not take into consideration actual sunk costs, any extra revenues over the revenue floor provided by the Net Revenue Requirements, or any value for the lost capital asset that would remain at the end of the Term of the SW GTA Contract, all of which would increase the potential liability. It likewise does not estimate the Supplier's rate of return on its lost revenue stream, which could lower the potential liability, or any form of mitigation of damages in the form of alternate investments. If a more detailed estimate of damages is required, it will be necessary to retain an expert in damages quantification and valuation.

6374668.4

ONTARIO POWER AUTHORITY

March 2010

**Briefing:
SWGTA Options**

SWGTA Options - Summary

Implications of contract repudiation:

- Takes a long time if we try to minimize our costs. Conversely, a quick exit exposes ratepayers to over a billion dollars in potential damages.
- Any resulting site change transfers problems to other municipalities -- Mississauga will mobilize just as much opposition, transmission could stir up opposition in several communities.
- Could lead to litigation by the three unsuccessful proponents, leading to potential long public legal battles, millions of dollars in damages and reputational risk to Government.
- Could cause a chill among developers, lenders, manufacturers and contractors and adversely affect future investment in Ontario.
- Emboldens opponents of electricity and other infrastructure (particularly in Northern York Region).
- Could have repercussions for Bruce negotiations, in which Trans Canada is a party.
- Re-powering Lakeview GS means reneging on a public commitment made in July 2008 not to do so.
- Any move to a site outside of the SWGTA would require new transmission at a cost of \$200 million, as well as \$20-30 million to transmit the electricity longer distances.

Termination of the SWGTA Contract

- There is no provision in the contract for the OPA to terminate for convenience, i.e., the OPA cannot terminate the contract without having a reason to terminate.
- The OPA can terminate the contract if there is a Supplier Event of Default (s. 10.1). This has not happened.
- The inability to secure permits and approvals would likely be a Force Majeure under s. 11.3(h) of the contract. Force Majeure is an event that prevents a party from performing its obligations under the contract and that is beyond its control.
- If there is an event of Force Majeure pertaining to the Supplier's inability to get a permit or approval that delays the Milestone Date for Commercial Operation for more than 365 days, the Supplier can terminate the Contract and the OPA will return the performance security (s. 11.1(g)). There is no payment to the Supplier for its costs by the OPA.

Termination of the SWGTA Contract

- If there is an event of Force Majeure that delays the Milestone Date for Commercial Operation for more than 24 months, either party can terminate the Contract and the OPA will return the performance security (s. 11.1(h)). There is no payment to the Supplier for its costs by the OPA.
- If a Force Majeure prevents the Supplier from performing its obligations under the contract for an aggregate of more than 36 months in any 60 month period, then either party can terminate the Contract and the OPA will return the performance security (s. 11.1(i)). There is no payment to the Supplier for its costs by the OPA, other than for amounts already owed to it under the contract.

Termination of the SWGTA Contract

- The parties can mutually agree to an amendment to the contract (s. 1.12). Conceivably, the parties could agree on an amendment to terminate the contract (“mutually agreeable termination”). This has been done on one RES I project because of the delay involved in obtaining permits.
- The terms of the amendment to terminate, including any payment of costs, would be subject to negotiation.
- Presumably, the OPA would have to pay the costs that the Supplier has reasonably incurred up to the point in time of the mutually agreeable termination.
- The costs the Supplier has incurred to date might be as much as \$100 million dollars. The Supplier has already ordered and paid for gas turbines. These costs would be passed onto the ratepayer via the Global Adjustment.

Termination of the SWGTA Contract

- Termination by any means not expressly provided for under the contract would likely be a breach of the contract by the OPA.
- The Supplier could sue the OPA for its damages caused by the breach of the contract.
- The measure of damages that OPA would likely be liable for would be the Supplier's lost profits over the term of the contract, which would be a significant amount of money. With over \$1 billion invested at a return of 8% or 9% over 20 years, damages would be in the neighbourhood of \$1 billion plus costs for the already purchased gas turbines. These costs will be passed on to the ratepayer via the Global Adjustment.
- Significant air quality improvements and associated community investments by the proponent will be lost if the project does not proceed (\$50 million).
- In addition to liability for damages, there would be considerable reputational risk for the Government & OPA to do this.

Brokering a “Marriage” With Other Proponents

- It has been suggested that the OPA broker a “marriage” between the Supplier and an unsuccessful Proponent to the RFP
- All the other sites are in Mississauga, which would just result in transferring the problem from Oakville to Mississauga.
- Mississauga has already voiced concerns about additional gas-fired generation. There has been considerable attention paid to the SWGTA procurement because of the Clarkson Airshed Study. Opposition to gas-fired generation in Mississauga is vehement and enjoys the political support of the Mayor and Council.
- Each Proponent had its own site with unique characteristics and technology suited for those conditions.
- One unsuccessful Proponent has a permitted site.

Brokering a “Marriage” With Other Proponents

- In order to take advantage of existing permits for the site, our Supplier would have to replicate exactly the unsuccessful Proponent’s design.
- In order to use the site our Supplier would have to buy both the site and the design, and operate it in accordance with the issued permits.
- The cost of the site and intellectual property associated with the design would be prohibitive.
- Such a “marriage” is also a tacit admission that the procurement process failed.
- Other unsuccessful proponents are likely to sue for breach of procurement process which could lead to long, public, and expensive legal battles.
- In summary, there is little benefit in doing this and a large number of substantial attendant risks.

Bilateral Negotiation with A Proponent

- The Pros and Cons of bilateral negotiation with one of the unsuccessful proponents

PROS	CONS
Projects have already reached certain stage of development	Price would be higher than the original bid, which will be passed on to the ratepayer.
Projects might already have received environmental approval and permitting	Significant negative impact on the OPA competitive procurement process
Proponents are qualified and are willing to enter into an agreement for the project	No guarantee that the negotiated contract could be successfully implemented
Delay would be manageable and would not have significant system impact if negotiation is going to start soon	Project would face similar opposition on permitting
	Reputational risk from legal challenges by unsuccessful proponents

Lakeview Site

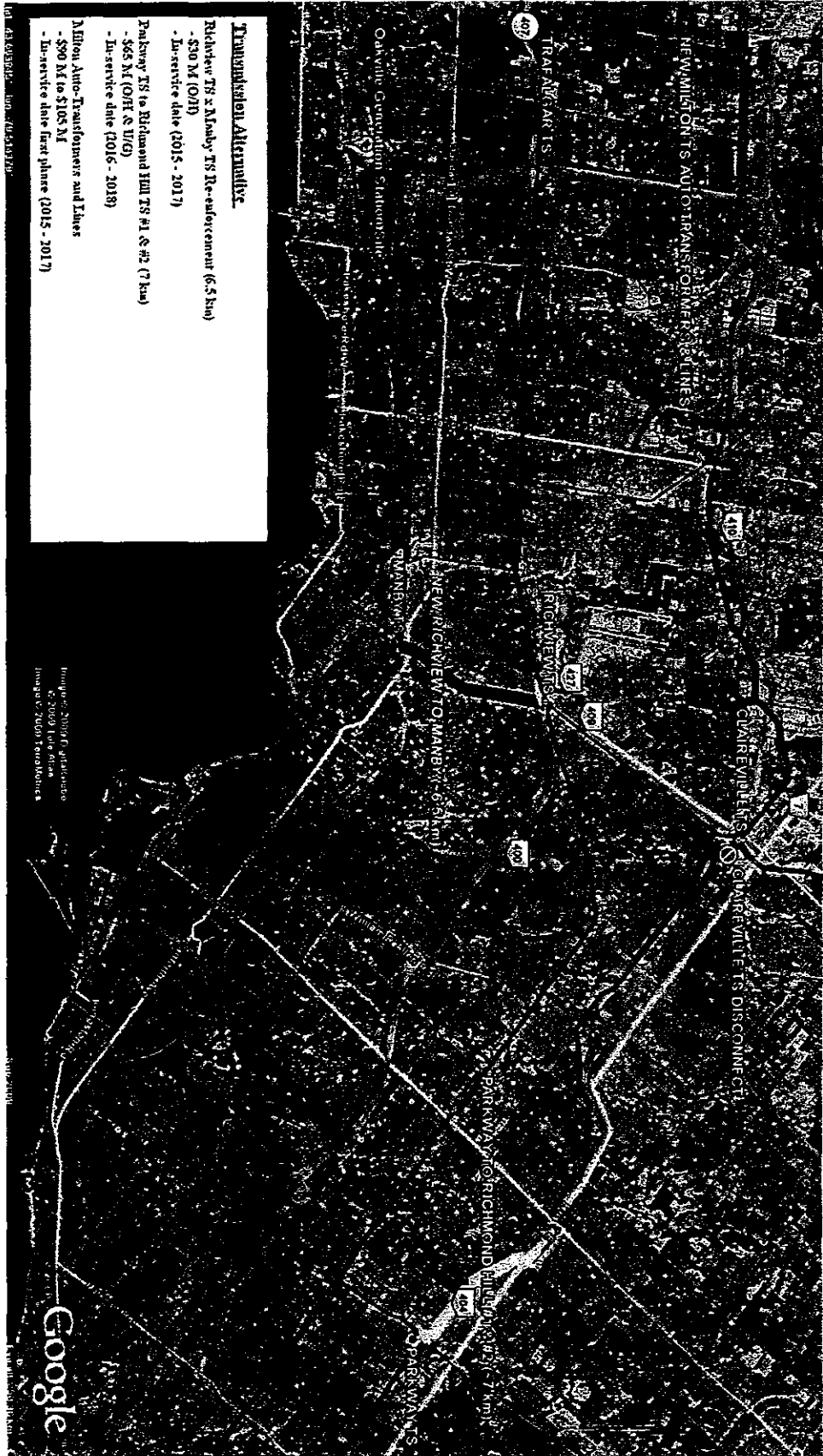
- The Pros and Cons of Lakeview site are

PROS	CONS
<p>Transmission capacity is still available</p> <p>Transmission circuits and structures are still standing</p> <p>No other or minimal transmission upgrading work needed</p> <p>Site is still available</p>	<p>Facility would be <u>500 metres to 800 metres from residential area</u></p> <p>We were directed not to re-power Lakeview. This was publicly announced in the summer of 2008.</p> <p>Require significant natural gas connection and reinforcement (~\$50 million)</p> <p>Need to go through environmental and municipal permitting for both generating facility and gas connection</p> <p>Significant delay in commercial operation date; might have impact on system reliability</p> <p>Significant public push back because of the work done so far on the heritage project planned for the site.</p>

Transmission Alternatives for SW GTA

- If the generation alternative was significantly delayed or eventually terminated by sole discretion of TransCanada, both transmission alternatives in the GTA and a new generation in a different location are needed to ensure reliability supply to the GTA
- Transmission alternatives that will maintain system reliability in the short-term comprise of the following:
 - 6.5 km overhead line between Richview TS and Manby TS (blue highlight shown on the following map); in service by 2015 - 2017; estimated cost ≈ \$30 million
 - 7 km overhead line and underground cable combo between Parkway TS and Richmond Hill TS (yellow highlight); in service by 2016 - 2018; estimated cost ≈ \$65 million
 - Milton Auto-transformers and overhead lines (red square at upper left corner of the map); in service by 2015 - 2017; estimated cost ≈ \$90 to 105 million

Transmission Alternatives for SW GTA (cont.)



Brantford, Nanticoke or Lambton – Local Gas

- An 800 MW natural gas-fired facility was suggested for the Brantford area by the Six Nations. Alternatives explored in the IPSP were Nanticoke gas conversion or a new gas plant in Sarnia area.
- The cost of the Brantford plant would be close to the one that is located at SW GTA. Any conversion of coal plant at Nanticoke would include large costs for developing gas infrastructure. A new gas plant in the Sarnia area would require significant transmission investments.
- There's an additional requirement for \$200 million transmission system work at the GTA to ensure near-term reliability, as well as \$20-30 million to transmit electricity over longer distances.
- Brantford option is in the pre-concept stage; uncertainties during development and permitting phase would add significant cost and time to the project
- Bottom line is any of the options would end up costing at least \$200 million more than the SWGTA option in capital costs together with uncertainties on project execution and in service date.
- Conversion of Nanticoke or the construction of a new plant in the Sarnia or Brantford areas is not a better alternative to a plant in Oakville.

14-0000

Aleksandar Kojic

From: Michael Killeavy
Sent: October 29, 2010 10:11 AM
To: Susan Kennedy
Cc: Deborah Langelaan; Derek Leung
Subject: FW: Draft Engagement Letter for SWGTA TEC Matter
Attachments: Engagement Letter - OPA.pdf; OslerClientServiceTerms.pdf; 4882838_4.pdf

Importance: High

Susan,

Could you please review the attached draft retainer letter from Osler for the TCE matter? The rates in the table match what was in the response we received from them (attached).

Michael

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: October 29, 2010 9:32 AM
To: Michael Killeavy
Subject: Draft Engagement Letter for SWGTA TEC Matter

Michael,

As requested, please find enclosed a draft engagement letter for the SWGTA TCE matter. Please let me know if you have any comments on it.

Thanks, Rocco

OSLER

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

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

October 29, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com
Our Matter Number: ●

SENT BY COURIER

Mr. Michael Killeavy
Director, Contract Management
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, ON M5H 1T1

Dear Mr. Killeavy:

Thank you for retaining Osler, Hoskin & Harcourt LLP ("Osler") to provide legal services to you in connection with the Request for Submissions regarding litigation counsel in defending potential actions against the OPA by TransCanada Energy Ltd. I will have primary responsibility for seeing that your legal needs are met, will supervise all legal work in connection with this retainer and determine appropriate additional staffing. For your record keeping purposes, the file name we have assigned to this matter is **[Cancellation of Southwest GTA CES Contract with TransCanada Energy Ltd.]** and the file number is ●.

We are pleased you have retained us to assist with this matter, and would like to take this opportunity to confirm further details of the engagement. Please refer to our Client Service Terms for additional standard information about our role, how we staff engagements, fees and disbursements and other terms that will apply to this and any matter in which you engage us. We have agreed to the following amendments to the Client Service Terms:

- (1) In the second paragraph of Section 2 – Scope of Our Role, the first sentence shall be amended to read: "Our role is to provide legal advice and legal services to you commensurate with the highest standards of professional practice and at all times, in accordance with the requirements of the Law Society of Upper Canada."
- (2) In the second paragraph of Section 4 – Fees and Disbursements, with respect to factors 1 through 5, we agree that our final fee shall not be increased above our hourly rates on account of these factors without the OPA's prior consent.

A copy of our standard Client Service Terms is attached. The terms of this letter take precedence over the Client Service Terms to the extent of any inconsistency.

1. Conflicts

We have conducted a review of our records to confirm that representing you in this matter will not create a legal conflict with the interests of any of our other existing clients.

2. Fees

Our fees are generally based upon the time spent by lawyers and other legal professionals on your behalf and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals, as well as general economic factors. The names and current billing rates for some of the legal professionals expected to work on this matter are set forth in a list attached to this letter.

3. Term

We agree with you that the term of the retainer will be for a period of 12 months (which may be extended, as needed, upon written notice by you), unless terminated in accordance with Section 9 of the Client Service Terms.

If you have any concerns regarding our representation of you or the terms of our engagement, please contact me.

Yours very truly,

Rocco Sebastiano
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

PRINCIPLE LAWYERS AND HOURLY RATES

<u>Lawyer</u>	<u>Hourly Rate (2010)</u>
Rocco Sebastiano	\$750.00
Richard Wong	\$600.00
Elliot Smith	\$365.00
Brett Ledger	\$900.00
Paul Ivanoff	\$650.00
Evan Thomas	\$405.00
Riyaz Dattu	\$775.00

Client Service Terms

OSLER

Thank you for choosing Osler, Hoskin & Harcourt LLP to act as your counsel.

These standard client service terms will apply to any matter in which you engage us. These standard terms are subject to any other terms that may be agreed upon between you and Osler, Hoskin & Harcourt LLP.

We look forward to working with you.

1. Your Service Team

An Osler partner will be assigned to take primary responsibility for seeing that your legal needs are met and for supervising all legal work we undertake on your behalf. The responsible partner will also determine the appropriate additional staffing for each matter you entrust to us. Lawyers and other legal professionals will be assigned to assist with each matter on the basis of their experience and expertise, the nature and scope of the issues and the time constraints imposed by the situation.

In Canada, Osler has offices in Calgary, Toronto, Ottawa and Montreal. In the United States, Osler has an office in New York. The Canadian and US offices are operated by closely affiliated partnerships that share information, expertise and database systems to enhance client service. From time to time, legal professionals located in offices other than the office primarily working with you may be assigned to assist. When we refer to "Osler" we are referring to both of these partnerships and all of these offices, and when we refer to an "Osler partner" or "Osler lawyers" we are referring to lawyers in any of these offices. All Osler lawyers are bound by obligations to protect client confidentiality and solicitor-client or attorney-client privilege under applicable law.

In addition, please note that certain specialized areas of law, such as tax law, are complex and constantly changing, and often involve sub-specialty areas in which Osler lawyers have worked to develop in-depth expertise. As a result, the individuals engaged in resolving a specific legal matter may find it useful to consult with other Osler lawyers and other legal professionals regarding particular issues. We have found that drawing upon the expertise of colleagues, when appropriate, enables us to provide a higher quality of advice at a lower cost to you than strictly limiting the number of individuals involved in a particular matter.

We are always pleased to discuss the staffing of a particular transaction or other matter with you.

2. Scope of Our Role

The scope of our role for each specific matter you entrust to us will be confirmed in continued communications between us as work progresses. We will not expand the scope of our engagement without instructions from you. In particular, we will not advise you in respect of the tax aspects of a matter unless it is specifically agreed that tax services will be included in the engagement.

Our role is to provide legal advice and legal services to you. Although we will use every effort to help you achieve your financial and business objectives for any transaction or other matter, you should rely on your internal experts or other external advisors for financial and business advice.

We will accept instructions from anyone within your organization who has apparent authority in connection with the matter at hand, unless you instruct us otherwise.

3. How We Manage Conflicts

We have clients who rely upon us for general representation and clients to whom we provide representation regarding discrete matters. It is possible that an adverse relationship may exist or may develop in the future between you and another of our clients.

In retaining us, you consent and agree that we may represent other clients (some of whom may be engaged in business activities competitive to yours) on matters that may be considered adverse to you or your interests, so long as we have not been engaged by you on the specific matter for which the other client seeks representation. Furthermore, you agree that you will not assert that our representation of you constitutes a basis for disqualifying us from representing another client in any such matter.

However, be assured that we have comprehensive policies and procedures in place for the creation and maintenance of "ethical walls", when required, between Osler lawyers representing clients whose matters may be adverse in interest. In common with our treatment of the confidential information of all of our clients, at no time will any of your confidential information be disclosed to or used for the benefit of any other client.

You may wish to obtain independent legal advice as to the implications of your agreement to these terms.

4. Fees and Disbursements

Our fees are generally based on the time spent by lawyers and others on your behalf, and are charged at hourly rates. Our hourly rates are adjusted periodically to reflect experience, capability and seniority of our professionals and staff, as well as general economic factors. At your request, the responsible partner may provide you with more specific details on our rates.

Although time expended is a significant factor in determining our fees, there may be circumstances in which our final fee takes into account other factors, including:

1. The experience, reputation and abilities of those rendering our services;
2. The amount at issue;
3. Particularly favourable results obtained;
4. Time limitations imposed by you or by the circumstances of the matter; and
5. Whether working on the matter will preclude or limit us from rendering services to other clients.

Our fees will not be affected by the failure of a transaction to be completed.

Generally our accounts are issued monthly. All of our accounts are due and payable on receipt. If an account is not paid within 30 days, we may charge interest at an annual rate in accordance with the rules that

govern the professional conduct of lawyers, from the date the account is issued until the date paid.

In addition to our professional fees, our accounts will include disbursements incurred by us on your behalf, such as long-distance telephone charges, photocopying and facsimile charges; charges for courier, messenger and other communication services; computer database access; charges for legal research; travel expenses; necessary non-legal staff overtime incurred on your behalf; postage; filing fees paid to government agencies; and other out-of-pocket costs incurred on your behalf. For larger disbursements, we may seek funds from you in advance or forward invoices to you for direct payment.

You will be responsible for payment of the fees and disbursements of other law firms retained by us on your behalf to provide advice on the laws of other jurisdictions. Also, the fees and disbursements of experts or other third-party service providers retained by us on your behalf will be your responsibility. These experts' or other service providers' fees and disbursements may be billed to you directly, or we may forward their invoices to you for direct payment by you to them.

5. Limited Liability Partnership

Osler is a registered limited liability partnership (LLP) (in Ontario and New York, respectively). A partner in an LLP is not personally liable for any debts, obligations or liabilities of the LLP that arise from any negligent act or omission by another partner or by any person under that other partner's direct supervision or control. Partners of an LLP are personally liable only for their own actions and omissions, and for the actions and omissions of those they directly supervise or control.

6. Privacy

In the course of acting for you, you may disclose to us (and we may collect, use and disclose) personal information that is subject to applicable privacy protection laws. We will collect, use or disclose that personal information for the sole purpose of providing our services to you. You can review a copy of our Privacy Statement on osler.com, or contact a member of your legal service team.

7. Our Client and Our Reporting Obligations

When we are engaged to act on behalf of an organization, our obligations are to that organization and not the directors, officers, employees or other agents who retain us and provide us with instructions or to whom we may provide advice. In accordance with the rules that govern the professional conduct of lawyers, if we have any evidence of wrong-doing by or on behalf of the organization, or any officer, director, employee or agent of the organization, we may be obligated to report the wrong-doing to appropriate senior officers or directors of the organization.

8. Electronic Communications

We will communicate with you and provide documents to you through various forms of electronic communications, including email through the public Internet. You may also correspond or provide documents to us through electronic means. Those electronic communications may contain information or documents that are confidential or privileged, unless you instruct us not to send such information or documents electronically.

There is a risk that any such electronic communications may be intercepted or interfered with by third parties or may contain computer viruses. In addition, we employ filtering techniques (e.g.,

anti-spam software) which might interfere with the timely delivery of electronic communications you send to us. Neither of us will be responsible to the other, or have any liability for any actions of any third parties, with respect to electronic communications either of us might send the other, or for any delay or non-delivery, or other damage caused in connection with an electronic communication.

If you would prefer that any correspondence or documents sent to you be transmitted with a greater degree of certainty or protection (e.g., encryption), please let us know. In addition, if you have any concerns or doubts about the authenticity or timing of any electronic communication purportedly sent by us, please contact us immediately.

9. Termination

You may terminate your engagement of us for any reason by giving us written notice to that effect. On such termination, all unpaid legal fees and disbursements become immediately due and payable, whether or not an account for them has yet been issued.

We may stop performing legal services and terminate our legal representation of you for any reason in accordance with the rules that govern the professional conduct of lawyers, including for unanticipated conflicts of interest or unpaid legal fees and disbursements.

Unless our engagement has been previously terminated, our representation of you will cease upon the issuance by us of our final account for services to you. If, upon termination or completion of a matter, you wish to have any documentation returned to you, please advise us. Otherwise, any documentation that you have provided to us and the work product completed for you will be dealt with in accordance with our records retention program. Please note that for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or dispose of this documentation.

After completing any particular matter, changes may occur in the applicable laws or regulations, or their interpretation, that could affect your current or future rights, obligations and liabilities. We have no continuing obligation to advise you with respect to future legal developments, unless we are specifically engaged to do so after the completion of the matter at hand.

10. Governing Law and Arbitration

The terms of our engagement by you will be governed by the laws applicable in the jurisdiction in which the partner responsible for your matter works.

To the extent that any services are provided to you from the Osler New York office, and a dispute arises relating to our fees, you may have the right to arbitration to resolve the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of New York, a copy of which will be provided to you upon request.

11. For More Information

The foregoing will be the agreed terms of service between us as we continue to work together unless, as mentioned above, they become subject to any other terms that we may agree upon.

If you have any questions or concerns regarding our work on your behalf or the terms of our engagement, please feel free, at any time, to contact the partner responsible for our relationship with you.

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

OSLER

October 25, 2010

Rocco Sebastiano
Direct Dial: 416.862.5859
rsebastiano@osler.com

Toronto

Montréal

Ottawa

Calgary

New York

Confidential

Delivered by Email

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

Attention: Michael Killeavy

Dear Mr. Killeavy:

Legal Services – Litigation Counsel (TransCanada Energy Ltd.)

On behalf of Osler, Hoskin & Harcourt LLP (Osler), thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to provide advice to the OPA on managing the dispute with TransCanada Energy Ltd. to avoid litigation, and if necessary to defend any actions against the OPA to protect the interests of the ratepayer.

We would welcome the opportunity to continue to build on our current relationship with the OPA by working with you on this matter. We look forward to discussing this mandate further with you, and invite you to call me at (416) 862-5859 if you require any additional information.

Yours very truly,

Rocco Sebastiano
RMS:es

Attachments

**PROPOSAL FOR
LEGAL SERVICES TO
THE ONTARIO POWER AUTHORITY
TO ADVISE THE OPA ON POTENTIAL CLAIMS BY
TRANSCANADA ENERGY LTD.**

OCTOBER 25, 2010

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Executive Summary

Thank you for inviting us to respond to the Request for Submissions from the Ontario Power Authority (OPA) for legal services to advise the OPA on potential claims by TransCanada Energy Ltd. (TCE) as a result of the Government of Ontario's announcement of the intended cancellation of the Southwest GTA CES Contract between TCE and the OPA. We would welcome the opportunity to advise you on this matter and build on our current relationship with the OPA.

Osler would be ideally suited to advise you on the potential claim by TCE for several reasons:

- Osler's Litigation Department is one of the largest and most accomplished dispute resolution teams in Canada. Years of careful recruiting and rigorous training has allowed us to develop deep expertise in complex commercial and government litigation. We have provided litigation advice to numerous clients on extremely complex, high-stakes disputes, and have advised several government corporations and agencies on the cancellation of major power and infrastructure projects, including the OPA in the termination of the Eastern Power contracts for Greenfield North and Greenfield South power projects. We also successfully avoided potential claims by Enbridge against the OPA in the termination of its participation in the Goreway Station project and the OPA's contract with Sithe Goreway. We are currently advising the OPA on potential claims by several Suppliers, including TCE, on recent changes to the IESO market rules and Section 1.6 of the Clean Energy Supply (CES) contract. The underlying contract in each such case is similar in form to the Southwest GTA CES Contract. We have also advised other government corporations and agencies, such as Atomic Energy of Canada and the Toronto Transit Commission, in the cancellation of major infrastructure projects by governments. In addition, we also have extensive litigation experience with issues of Crown and Crown agency liability as it relates to the cancellation of government contracts, and the potential for claims made under trade agreements such as under the Agreement on Internal Trade and the North American Free Trade Agreement (NAFTA) as a result of government action.
- We have a strong understanding of the electricity sector in Ontario. We have acted for the OPA in numerous procurements as well as sole-source negotiations, and have a strong understanding of the need to take into consideration the costs being passed on to the ratepayer while implementing the OPA's mandate. Additionally, we have also liaised between the OPA and the Ministry of Energy on a number of initiatives, including the original 2500 MW RFP, which was initiated by the Ministry and transferred to the OPA, as well as through the Renewable Energy Supply Integration Team (RESIT), where we worked with Ministry officials to ensure our direction was consistent with the Province's objectives. We also understand the economics of Suppliers as we have acted for successful proponents on the development and operation of multiple generating facilities in the Province. We understand the sequencing, scheduling and cost expenditure curves of a developer in building a combined cycle generating facility; we are also very aware of the implications of delays to projects (such as municipal law issues), which enables us to assist with claims analysis and any discounting of potential claims to account for the likelihood that the project would have faced insurmountable delays.

- We would expect that at some stage, whether through negotiations or litigation, independent experts in damage quantification may be involved in the resolution of TCE's potential claim. Through our experience in complex commercial litigation, we have extensive expertise in working with independent consultants on loss quantification issues.
- We have an unsurpassed understanding of the OPA's forms of electricity generating contracts, both CES-style and power purchase agreements. We developed the original CES-style contract with the Exhibit J calculations of Contingent Support Payments and Revenue Sharing Payments while acting as counsel to the Ministry of Energy (Ontario) on the 2500 MW RFP. We have been responsible for all significant evolutions of the Exhibit J payment mechanism for subsequent OPA procurements, including the development of the form of Peaking Generation Contract, the multi-staged imputed production model in the TransAlta New Early Mover Clean Energy Supply (EMCES) contract, and we are presently developing a simplified payment mechanism based on a "Virtual Power Plant" in connection with our work on the Combined Heat and Power Standard Offer Program. We also developed the OPA's standard form of power purchase agreement for the Renewable Energy Supply (RES) I and RES II initiatives and acted for the OPA in the most significant evaluation to that form of contract in our role developing the legal documents for the Feed-in Tariff Program.
- We acted for the OPA on the procurement in Southwest GTA which led to the awarding of the Southwest GTA Contract to TCE. As a result, we are intimately familiar with the contract itself, as well as the dynamics between the parties. If retained by the OPA, we would be in a position to immediately begin advising the OPA on this matter, and would not require the OPA to incur the time and associated expense with us coming up to speed on the underlying agreement. On the basis of the information provided to us to date, we believe that TCE may attempt to argue that the cancellation of the Southwest GTA Contract constitutes a "Discriminatory Action" and that the exclusion of consequential damages (including loss of profits) set out in Section 14.1 of the contract does not apply in such a case.
- In addition to the above experience, there would also be significant synergies if we are retained for this matter as we are currently counsel to the OPA on other potential claims made by TCE under Section 1.6 of the Southwest GTA Contract (as well as the Halton Hills and the Portlands Energy Centre agreements) in respect of recent changes to the IESO market rules. By retaining us on this matter, we may be able to obtain a more advantageous result for the OPA by providing a comprehensive approach to addressing outstanding disputes with TCE rather than resolving each dispute individually.

Overall, our extensive involvement in advising the OPA and private-sector developers, and our extensive background as described in this Proposal, will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner. The OPA's legal requirements will be best served by a client team comprising partners with the requisite industry expertise, supported by experienced associates who can function efficiently and at a lower cost.

In advance of further discussions with you under this external counsel process, we would like to clarify that, as is customary for such proposals, we are participating in this process on the understanding that: (i) our discussions will not constitute a solicitor/client relationship on this project unless and until we are formally retained; and (iii) in the event that you do not retain us, you will not allege that our participation in this process constitutes a conflict in our acting for another third party in relation to this project.

A. Description of Background and Qualifications

1. Proposed Team

We propose that the core group of the client team for the project comprise Rocco Sebastiano, Richard Wong, and Elliot Smith as solicitors, and Brett Ledger, Paul Ivanoff and Evan Thomas, as litigators. We also propose to involve Riyaz Dattu, an expert in Crown liability, government procurement and international trade agreements, to the extent any issues on these subjects arise.

We propose that Rocco Sebastiano will be the partner in charge of this matter. An integrated team of both the solicitors and the litigators would work together to provide the OPA with advice on this matter. In the early stages, we would expect the solicitors would take on a greater role, working closely with the litigators, and if the matter proceeded to formal dispute resolution, we would expect an increasing role for the litigators on the team.

Rocco has extensive experience working with the CES-style contract as he was responsible for developing the form of contract for the Ministry of Energy in the 2500 MW CES RFP, and for leading and co-ordinating the legal services to the OPA in the negotiations and procurements for the GTA West Trafalgar procurement and the ACES Contract for Portlands Energy Centre. Richard was lead counsel on the Southwest GTA procurement, and Elliot assisted Richard in the procurement and has used the Southwest GTA form of contract as a precedent for other OPA matters, and therefore all three are extremely familiar with the contract at issue.

Paul has experience with the CES-style form of contract as he is presently advising the OPA on the potential claims related to certain IESO market rule changes. In addition, Paul advised the OPA in successfully avoiding potential claims by Enbridge in the termination of its participation in the Goreway Station project, and he has many years of experience with litigation related to construction and infrastructure projects. Brett is the former chair of our litigation department and is an experienced litigator who has advised on commercial disputes, including several which have gone to the Supreme Court of Canada. In particular, Brett has extensive litigation experience in the energy sector, having provided advice to clients such as Atomic Energy of Canada Limited, Irving Oil, and Imperial Oil on disputes and litigation relating to many major commercial matters and on the cancellation of certain major projects. Evan formerly worked at the IESO and has published a number of papers on deregulated electricity marketplaces.

2. Relevant Experience and Notable Litigation and Transactions

As summarized above, our experience in the following matters will be of particular advantage in advising the OPA on the potential claims by TCE resulting from the Government of Ontario's announced intention to cancel the Southwest GTA CES Contract:

Extensive Litigation Experience

- ***Litigation Experience on Behalf of the OPA.*** We have advised the OPA on a number of disputes that had the potential to result in litigation, and have successfully avoided litigation in each case. We provided advice to the OPA and the Ministry of Energy on the cancellation of the Eastern Power contracts for Greenfield North GS and Greenfield South GS, which were very similar in form to the Southwest GTA Contract, as well as in threatened litigation by Enbridge in relation to the termination of its participation in the Goreway Station project.

We are presently advising the OPA on potential claims being made by multiple Suppliers (including TCE) regarding the implications of certain IESO market rule changes and Section 1.6 of their respective CES agreements with the OPA. We believe this most recent work is closely related to the potential claims by TCE as both relate to the Supplier's economics under the contract, which is a concept we have undertaken considerable efforts to understand and explore in connection with the CES-style contracts.

- ***Experience with Notable Litigation Matters.*** We have advised on numerous significant litigation matters that demonstrate the nature and extent of our expertise in advising the OPA in any potential claim by TCE. In particular, we have advised clients on legal issues and claims relating to the cancellation of major energy and infrastructure projects. A few examples of this experience include acting for:
 - **Atomic Energy of Canada (AECL)** in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **AECL** in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
 - **Bruce Power** in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
 - **The Toronto Transit Commission (TTC)** on claims by contractors and suppliers relating to the cancellation of the Eglinton Subway by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and equipment supply contracts and defend potential claims relating thereto.
 - **Veco Corporation** in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- ***Experience with Crown Liability and Trade Agreements.*** A government-initiated cancellation of a contract of this nature has the potential to trigger the application of Crown liability, and if TCE has any major US shareholders, a claim may also be initiated under the North American Free Trade Agreement (NAFTA). Osler lawyers have acted in more international trade litigation matters than any other Canadian firm, and have extensive experience with dispute resolution panels including under NAFTA. We also have extensive experience advising both the Crown and private parties on issues of Crown liability.
- ***Other Commercial Litigation Experience.*** We have provided advice to clients on a number of complex litigation matters, including the Greater Toronto Airports Authority, on a number of commercial and construction disputes arising out of the New Terminal Development Project and the redevelopment of Terminal 3 at Pearson International Airport. We advised the TTC on several claims arising from the development and construction of the Sheppard

Subway, including a claim for \$43 million on the Don Mills Station. Other significant litigation retainers include advising Inco/Voisey's Bay Nickel Company on the termination of a supply contract for business-critical equipment, and the recovery of the equipment, in the context of significant delay costs, and also on deficiencies in the design of a conveyor system; and advising Stone & Webster Canada L.P. on disputes relating to construction at the Lambton and Nanticoke Power Generating Stations.

Strong Understanding of the Electricity Sector in Ontario

- Having advised the OPA on the EMCES Contracts, the GTA West Trafalgar Contract, the Hydroelectric Energy Supply Agreement, Portlands, Goreway, RESOP, the Feed-in Tariff Program, CHP III, the Southwest GTA Contract, the Peaking Generation Contract and the Government of Ontario on the RES I and II RFPs and the 2,500 MW RFP, as well as our work for generators including Pristine Power who submitted a successful proposal for a combined heat and power contract under the OPA's CHP I procurement process and a simple cycle peaking generating facility under the OPA's Northern York Region procurement process, we will bring to bear our considerable understanding of the current electricity marketplace and our in-depth knowledge of the various forms of contracts currently in use in the Ontario electricity market.

Not only do we understand the commercial and legal risk allocations between the Buyer and Supplier under these contracts (including such issues as the payment mechanisms and formulas in Exhibit J of the CES, EMCES, ACES, and other related contracts, the development and operational covenants, as well as the force majeure, damages and discriminatory action provisions), but we also understand the policy framework and rationales underlying the formulation of such provisions and have a practical sense of the appropriateness of such provisions in light of the state of the generation development industry and the OPA's role under the contracts for such developments.

Unsurpassed Knowledge of the OPA's Electricity Generating Contracts

- ***Development of the CES Contract.*** In our role as counsel to the Ministry of Energy (Ontario), we developed the original Clean Energy Supply (CES)-style contract for the 2,500 MW RFP. As counsel to the OPA on the Goreway and Portlands Projects, we enhanced the CES Contract through the development of the Accelerated Clean Energy Supply Contract (ACES Contract), which incorporated the requirement to implement a simple cycle mode of operation prior to achieving the combined cycle mode of operation. We subsequently developed the GTA West Trafalgar form of CES-style contract, which we were then retained to adapt into a Peaking Generation Contract, which was used by the OPA for the Northern York Region procurement. We adapted this contract for the Southwest GTA procurement, and have subsequently made further revisions to this form of contract to develop the new EMCES contracts and the pending Combined Heat and Power Standard Offer Program (CHPSOP) form of contract. As a result of this extensive experience with the CES-style contract, we thoroughly understand the entire contract, and in particular, the economics contemplated by Exhibit J, and can leverage this understanding in any negotiations we undertake with TCE.

General Electricity Industry Expertise

A summary of our representative matters and project work most relevant to the work that will likely be required in connection with the defense of any possible claims by TCE is set out below. As well, we encourage you to contact Kevin Dick, Richard Duffy and Barbara Ellard who are very familiar with our experience and the quality of our legal services.

Representative Litigation and Project Matters

Relevant litigation and project related matters in which our lawyers have advised clients on major power and infrastructure projects, include:

- **Atomic Energy of Canada (AECL).** Our lawyers have advised AECL on numerous matters, including:
 - **Claims relating to the Cancellation of MAPLE Reactors** – We advised AECL in a mediation with MDS Inc. and its subsidiary MDS Nordion (MDS) on issues related to the construction, commissioning and operation of the cancelled MAPLE reactors and associated New Processing Facility (NPF) in Chalk River, Ontario. MDS is seeking to recover an amount in excess of \$300 million relating to such claims.
 - **Pickering A Restart Project** – We advised AECL in the claims arising from Ontario Power Generation (OPG) the cost-overruns and partial cancellation of the Pickering A Return to Service project.
- **Bruce Power Limited Partnership** – We are acting for Bruce Power in a mediation with British Energy for a breach of warranty claim related to the condition of the Unit 8 steam generators. The amount in dispute is approximately \$100 million.
- **Toronto Transit Commission** – We advised the Toronto Transit Commission (TTC) on claims by contractors, equipment and material suppliers relating to the cancellation of the **Eglinton Subway** by the Province of Ontario. The TTC was required to negotiate the termination of several of the key construction and supply contracts and defend potential claims relating thereto.
- **Veco Corporation** – We advised Veco Corporation (Veco) in a \$500 million action by Nelson Barbados against Veco, the Country of Barbados, the Attorney General of Barbados and others involving allegations of improper denial and altering of government approvals on a major infrastructure development.
- **Pristine Power Inc.** We have advised Pristine on the development, financing, construction and operation of the East Windsor Cogeneration Centre and the York Energy Centre.
- **Ontario Power Authority.** Our lawyers have advised the OPA on numerous matters, including:
 - **Potential Claims in connection with IESO Market Rule Changes** – We are currently advising the OPA on potential claims in connection with a recent change to the IESO

Market Rules relating to generator cost guarantees, including claims by TCE for both the Southwest GTA Facility and the Halton Hills Facility, and an indirect claim by TCE through its 50% ownership interest in Portlands Energy Centre LP.

- **Southwest GTA RFP** – We advised the OPA on the Southwest GTA RFP, in which TCE was chosen as the selected proponent. Contract issues included modifying the form of CES Contract to reflect an all-in gas management approach, and incorporating applicable improvements from the Peaking Generation Contract and the Northern York Region contract.
- **GTA West Trafalgar RFP** – We advised on all aspects of this procurement, including the development of specific rated criteria used in the evaluation of proposals. We implemented further revisions to the CES Contract for use on the GTA West Trafalgar CES Contract to deal with specific issues such as revenues from and ownership of future contract related products.
- **Portlands Energy Centre** - We negotiated a further modified form of ACES Contract for this project to permit either an initial simple-cycle mode of operation or in the event of certain delays in achieving this milestone, providing temporary generation through the use of 12 rental mobile gas turbine generators. We also negotiated further amendments to this ACES Contract in order to implement a gas management plan which results in a sharing of gas supply and transportation risks between the Buyer and the Supplier in exchange for a reduction in the Supplier's over-all net revenue requirement.
- **Goreway Station** - We negotiated a modified form of CES Contract in order to permit this facility to initially operate in simple-cycle mode while the combined-cycle aspect of the facility was still under construction. This resulted in the development of the Accelerated Clean Energy Supply (ACES) Contract. We also provided advice to the OPA in connection with threatened claims by Enbridge resulting from the termination of its participation in this project, and successfully avoided any litigation.
- **Early Movers** – We developed and negotiated a modified form of CES Contract for use on a number of early mover projects (including Coral's Brighton Beach Project, TransAlta's Sarnia Regional Cogeneration Centre and three Toromont combined heat and power projects). The EMCES Contract introduced the directed dispatch concept in order to meet the Ministry of Energy's directive to the OPA to displace coal.
- **Standard Form Peaking Generation Contract** - We advised the OPA in the development of a new form of contract structure for the OPA, starting from the GTA West Trafalgar CES Contract, which would be appropriate for a natural gas-fired peaking generation facility. We incorporated the unique requirements of a peaking facility, such as gas risk, gas management, and must-offer obligations, and incorporated extensive stakeholder feedback.
- **TransAlta Ottawa Initiative** - We advised the OPA on an innovative financial structure as an ancillary contract to the NUG Contract for this facility in order to provide financial incentives to the Supplier to shift production to peak hours.
- **Hydroelectric Energy Supply Agreement** - We are currently advising the OPA on the development and negotiation of long-term hydroelectric energy supply agreements for

nine hydroelectric generating stations in northern Ontario, totalling over 1,000 MW owned and to be operated by Ontario Power Generation Inc. pursuant to the directive issued by the Ministry of Energy (Ontario) on December 20, 2007.

- **Ministry of Energy (Ontario).** We have advised the Ministry of Energy on four major Requests for Proposals (RFPs) relating to electricity generation, being the RFP for 300 MW of renewable electricity generation (RES I RFP), the RFP for 2,500 MW of clean generating capacity or demand-side projects (2,500 MW RFP) to address Ontario's growing electricity capacity needs, the RFP for up to 1,000 MW of renewable electricity generation for facilities between 20 MW and 200 MW (RES II RFP) and the draft RFP for up to 200 MW of renewable electricity generation for facilities between 0.25 MW and 19.99 MW (the original RES III RFP). On the 2,500 MW RFP, we developed and drafted the CES Contract, including the development of the innovative contract for differences model based on imputed production as set out in Exhibit J of the CES Contract. We also provided advice to the Ministry and the OPA relating to the negotiated cancellation of the **Eastern Power** contracts for **Greenfield North GS** and **Greenfield South GS**.

Please refer to the resumes attached to this submission for a description of other relevant transactions, project work and claims that our core team of lawyers have advised on.

3. Potential Conflicts

We do not expect that we would have any conflicts of interest in providing legal services to the OPA in relation to this matter. On the contrary, we believe our work regarding the potential claims in connection with recent IESO Market Rule changes provides synergistic benefits to the OPA.

B. Cost

Osler's service team for the OPA would follow our core service philosophy for delivering quality work, responsive service, timely communications and controlled costs. To ensure that we effectively manage the cost of providing our services to you, we will involve, whenever possible, associates at a more junior level and with correspondingly lower hourly rates.

Hourly rates (in Canadian dollars) for the lawyers in the proposed core service team are as follows:

Lawyer	Hourly Rate (2010)
Rocco Sebastiano	\$750
Richard Wong	\$600
Elliot Smith	\$365
Brett Ledger	\$900
Paul Ivanoff	\$650
Evan Thomas	\$405
Riyaz Dattu	\$775

We expect that initially the majority of the work would be done by Elliot and Rocco with advice from Richard, Brett and Paul. If the potential claims proceed to dispute resolution under the arbitration provisions of Section 16.2 of the contract or to litigation in court proceedings, we expect that Brett, Paul and Evan would have an increasing role in the conduct of this matter, with the drafting of litigation documents being done by Evan under the supervision of Brett and Paul. To the extent that any issues arise under NAFTA, or relating to liability of the Crown or Crown agencies, Riyaz would also be consulted.

These hourly rates will apply without a retainer or a minimum quantity of hours. Should the matter proceed to litigation, we may also engage law clerks whose hourly rates vary from \$115 to \$315.

We believe that our extensive involvement in advising the OPA, the Government of Ontario and private sector owners and developers on the Clean Energy Supply form of contract will contribute significantly to our ability to manage the legal services on this project in a very cost efficient manner, and in particular, as we ran the Southwest GTA procurement, we are intimately familiar with that form of contract. Furthermore, as we are currently advising the OPA on other potential claims by TCE, we have already considered many of the issues relating to liability under the contract including as it relates to the Supplier's economics and the waiver of indirect and consequential damages. Therefore, there is no learning curve on our end, which will result in a significant cost savings to the OPA. This, combined with our extensive litigation expertise, will allow us to quickly and efficiently begin the process of advising the OPA on any potential claims by TCE.

The Request for Submissions also requests information regarding the cost of disbursements. We do not anticipate any disbursements relating to travel and accommodations. Also, we do not charge clients for the use of meeting rooms in our client centre. With respect to other disbursements such as printing of documents and long distance calls, our disbursements are charged out essentially at cost without any additional mark-up.

C. Resumes

Rocco M. Sebastiano



416-862-5859

rsebastiano@osler.com

Education

1992 Osgoode Hall Law School, LL.B.
1989 Professional Engineers Ontario, P.Eng.
1985 University of Toronto, B.A.Sc. (Engineering Science
Nuclear and Thermal Power)

Year of Call

1994 Ontario

Rocco M. Sebastiano is the Chair of the firm's Energy – Power Group and a partner in the firm's Construction and Infrastructure Group. He is a qualified and experienced professional engineer who, prior to joining the firm, was employed as a nuclear design engineer and reactor safety analyst in the Nuclear Division of Ontario Hydro. Rocco's practice concentrates on energy, construction law and engineering and infrastructure matters. He has extensive experience on a wide range of major projects and has acted for various project participants, including owners, developers, contractors, operators, lenders, subcontractors, architects and engineers.

Rocco's project experience on power and infrastructure development includes advising the Ontario Power Authority, Hydro One, the Ontario Ministry of Energy and Atomic Energy of Canada Limited on matters such as the planning, procurement, development, engineering, construction, contracting, refurbishment and financing of natural gas, co-generation, nuclear, wind and hydro power generation projects and transmission and distribution systems.

Typical services include advising with respect to the structuring and development of the project, risk identification, allocation and management, tendering and procurement documents, permitting, licensing and approvals, corporate and project financing aspects and agreements, engineering, procurement and construction (EPC) contracts, power purchase agreements, energy supply contracts, transmission services agreements, refurbishment contracts, equipment procurement, operating and maintenance agreements, and other related commercial and technical contracts.

Professional Affiliations

- Law Society of Upper Canada
- Professional Engineers Ontario
- Canadian Bar Association
- The Canadian Council for Public-Private Partnerships
- Canadian Construction Association
- Ontario Energy Association

Representative Work

Rocco has advised on a number of major power generating and transmission projects such as:

- The **Ontario Power Authority** on numerous new generation and demand managements projects, including:
 - Potential claims by Suppliers under CES-style contracts in connection with ISEO market rule changes to generator cost guarantees.
 - Negotiation of the new **Early Mover CES Contracts** with TransAlta and Shell Energy, respectively, for the Sarnia Regional Cogeneration Plant and the Brighton Beach Power Generating Station.
 - **Southwest GTA RFP** and CES contract for up to 850 MW of gas fired generation.
 - **Hydroelectric Energy Supply Agreements** with Ontario Power Generation Inc. for the Lac Seul GS and the proposed upper and lower Mattagami River generating facilities.
 - Developing form of **Peaking Generation Contract** for gas fired peaking generation facilities.
 - Developing the renewable energy **Feed-in Tariff Program**, in connection with the *Green Energy and Green Economy Act, 2009*.
 - Negotiating the **Accelerated Clean Energy Supply Contracts** with Sithe Global Power Goreway for the 875 MW combined cycle **Goreway Station Project** in Brampton and with Portlands Energy Centre LP for the 560 MW combined cycle **Portlands Energy Centre** in downtown Toronto.
 - **GTA West Trafalgar Clean Energy RFP** and CES Contract with TransCanada Energy on the 600 MW combined cycle **Halton Hills Generating Station**.
 - **Demand Response Program** for Ontario (250 MW), including the development of the Program Rules and form of Contract for the procurement of the DR3 component of the program.
 - **York Region Demand Response Program** (20 MW), including the development and implementation of the program, procurement and form of contract.
 - Negotiation of the original **Early Mover CES Contracts** with TransAlta Energy and Coral Energy, respectively, for the Sarnia Regional Cogeneration Plant and the Brighton Beach Power Generating Station.
- **Atomic Energy of Canada Limited** on the **Ontario Nuclear Procurement Project**, the refurbishment and retubing of CANDU nuclear reactors at the **Bruce A Nuclear Generating Station** and **Pickering A Nuclear Generating Station** in Ontario and the **Pt. Lepreau Nuclear Generating Station** in New Brunswick and on the development, construction, commercial arrangements and subsequent cancellation of the **MAPLE Reactors** and associated radioisotope production facility at its Chalk River Research Facility.
- **East Windsor Cogeneration** in respect of the procurement and development of the East Windsor Cogeneration Centre in Windsor, Ontario pursuant to the Ontario Power Authority's **CHP I RFP**.
- The **Ministry of Energy (Ontario)** on the **Renewable Energy Supply (RES I and RES II) Procurements**, including consultations with the **IESO** and **Hydro One** on the review of transmission queue issues and the development of transmission and distribution constraint models and restricted transmission sub-zones for the planning and procurement of new renewable generating facilities.

- **The Ministry of Energy (Ontario) on the New Clean Generation & Demand-Side Projects (2500 MW) Procurement**, including the development of the procurement process, the Clean Energy Supply Contract, consultations with the **IESO** and **Hydro One** on transmission constraint issues, regulatory and commercial treatment of transmission connection and system upgrade costs under the Transmission System Code, and the development of the restricted transmission sub-zones in the evaluation model in the RFP.
- **Toronto Transit Commission** on the development and disputes relating to the Sheppard Subway project and the cancellation of the Eglinton Subway project.
- **TransÉnergie U.S. Ltd. on the New Jersey Cable Transmission Project**, New Jersey and New York, including the procurement and open-season process, project financing, negotiation of the EPC contract with ABB Inc. and the transmission services agreement.
- **Hydro One Inc. and TransÉnergie U.S. Ltd. on the Lake Erie Link Electricity Transmission Project**, Ontario and Pennsylvania, including project structuring, permitting, licensing and related regulatory matters, system connection issues, development, procurement and open-season process, negotiation of the EPC contract with ABB Inc. and the development of the transmission services agreement.

Richard G.C. Wong



416-862-6467
rwong@osler.com

Education

1995 University of Toronto, J.D.
1996 University of Toronto, B.A (Economics)

Year of Call

1997 Ontario
2000 New York

Richard Wong is a partner in the firm's Construction and Infrastructure Group with an emphasis on power and infrastructure development including the procurement, development, contracting and financing of nuclear, natural gas, co-generation, hydro, wind and other generation projects and the planning and development of the related systems. In particular, Richard's services include reviewing, negotiating and drafting equipment and other supply agreements, design agreements, EPC contracts, procurement documents (e.g. RFI/RFP/Tenders), power and capacity purchase agreements, engineering service and consulting agreements, construction management agreements, and other related corporate/commercial and technical agreements including joint venture agreements, development agreements, operation and maintenance agreements and supply agreements.

Professional Affiliations

- Law Society of Upper Canada
- Canadian Bar Association
- Ontario Bar Association
- New York State Bar Association
- Korean Canadian Lawyers Association

Representative Work

Richard has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the procurement and contract documents for the Southwest GTA procurement process, which resulted in the procurement of the 900 MW Oakville Generating Station.
- **Ontario Power Authority** in its development of the Combined Heat and Power (CHP) III Request for Proposals in the procurement of approximately 100 MW of renewable-fuelled CHP projects in Ontario, including the implementation of the transmission screening evaluation process utilized by the OPA.
- **East Windsor Cogeneration** in the development of the 84 MW East Windsor Cogeneration Centre in Windsor, Ontario pursuant to the Ontario Power Authority's CHP I RFP. Work included the negotiation and drafting of the EPC Contract, the turbine supply agreement, and the steam generator supply agreement.

- **Ontario Power Authority** in its development, in conjunction with the IESO, of the Program Rules and associated Contract for the procurement of Demand Response under the DR3 component of the OPA's Demand Response Program.
- **Ontario Power Authority** in the procurement documents for the GTA West Trafalgar RFP and the development and finalization of the associated Clean Energy Supply Contract, resulting in the combined cycle 600 MW Halton Hills Generating Station.
- **Ontario Ministry of Energy** on the Renewables I Request for Proposals in the procurement of 10 wind power projects across Ontario totalling 395 MW under the terms of the Renewable Energy Supply (RES) I Contract with Ontario Electricity Financial Corporation.
- **Ontario Ministry of Energy** on the Renewables II Request for Proposals in the procurement of eight wind power projects across Ontario totalling 955 MW under the terms of the RES II Contract with the Ontario Power Authority, including the development of the restricted transmission sub-zones in the Renewables II RFP and the review of transmission queue issues with the IESO.
- Review and analysis for **Hydro One** of the Ontario Power Authority's discussion papers regarding Transmission Planning and Development for the development of the Integrated Power System Plan.
- **Ontario Ministry of Energy** on the Renewables III Request for Proposals in the procurement for up to 200 MW of renewable generating facilities, that are under 20 MW in size.
- **Ontario Power Authority** on 500 MW of capacity in the Sarnia Regional Cogeneration Plant in the negotiation of the Early Mover Clean Energy Supply Contract with TransAlta Energy Corporation relating to the operation and supply of electricity from its generating facility.
- **Ontario Power Authority** on 560 MW of capacity in the Brighton Beach Generating Station in the negotiation of the Early Mover Clean Energy Supply Contract with Coral Energy Canada Inc. relating to the operation and supply of electricity from its generating facility.
- **Ontario Ministry of Energy** in its Request for Proposals for 2,500 MW of New Clean Generation and Demand-side Projects for the procurement of 2,235 MW of new gas-fuelled combined cycle generating facilities in various locations throughout Ontario under the terms of the Clean Energy Supply (CES) Contract, including the development of the restricted transmission sub-zones in the evaluation model.

Elliot A. Smith



416.862.6435
esmith@osler.com

Education

2004 University of Waterloo, B.A.Sc., Honours (Systems Design Engineering)
2007 University of Toronto, J.D.

Year of Call

2008 Ontario

Elliot Smith is an associate in the firm's Business Law Department in the Toronto office, where he is active in the Energy (Power) and Construction & Infrastructure Specialty Groups. Elliot works extensively on major infrastructure projects, providing assistance with project development, procurement, contract negotiation and administration issues. Elliot's practice has a strong emphasis on the procurement and construction of power plants, including combined heat and power, energy from waste, wind, solar and other renewable projects, as well as the development and negotiation of power and capacity purchase agreements.

Prior to joining Osler, Elliot worked at a number of institutions involved in the deregulated Ontario electricity market, including Ontario Power Generation and the Independent Electricity System Operator. He also worked at the Ontario Power Authority, where he assisted with the development of a regional electricity supply plan.

Representative Work

Elliot has advised on a number of major power and infrastructure developments for such clients as:

- **Ontario Power Authority** on the design, structure, consultation and documents for the renewable energy **Feed-in Tariff Program**.
- **Ontario Power Authority** on **Accelerated Clean Energy Supply Contract** with Portlands Energy Centre LP for the 560 MW combined cycle **Portlands Energy Centre** in downtown Toronto.
- **Ontario Power Authority** on the procurement process for a combined cycle power generation facility in **Southwest GTA**, which will include the development and finalization of an appropriate form of contract.
- **Pristine Power**, on the ongoing construction and equipment procurement for power projects in Ontario.

Brett Ledger



**Partner,
Litigation**
Toronto

416.862.6687
bledger@osler.com

Education
University of Windsor, LL.B.
University of Toronto, B.A.

Bar Admission(s)
Ontario (1979)

Practice Area(s): Litigation; Pensions & Benefits; Class Action

Brett specializes in corporate and commercial litigation with an emphasis on energy, environmental and general corporate litigation as well as class actions and administrative proceedings. His practice is national in scope and he has appeared before the courts of most provinces in Canada and the Supreme Court of Canada. Brett acts for some of Canada's largest energy and national resource companies on a wide variety of litigious matters, including Atomic Energy of Canada, Imperial Oil and Irving Oil. He also regularly acts as litigation counsel to many of Canada's major corporations and pension funds and has been involved in many of the leading pension decisions before the courts and pension tribunals. In addition, Brett has instructed at Osgoode Hall Law School's Intensive Trial Advocacy Program.

Recent Matters

- *MDS Nordion v. Atomic Energy of Canada Limited* – acting for AECL in connection with matters relating to the MAPLE Reactors and the associated New Processing Facility in Chalk River
- *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* 2004 SCC 54 – pension litigation in the Supreme Court of Canada relating to partial windup and surplus.
- *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 – acting for Atomic Energy of Canada Limited in the Supreme Court of Canada regarding confidentiality orders in environmental cases.
- *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.) – pension plan partial windup.
- *Imperial Oil Limited v. The Nova Scotia Superintendent of Pensions et al.*, (1995) 126 D.L.R. (4th) 343 (N.S.C.A.) – pension plan partial windup.
- *Smith v. Michelin North America* (2008) 71 C.C.P.B. 161- Nova Scotia Court of Appeal decision regarding contribution holidays.
- *Burke v. Hudson Bay Co.* (2008) ONCA 690– Court of Appeal representative action regarding surplus entitlement on sale of business.
- *Labrador Innu Assn. v. Newfoundland* (1077) 152 D.L.R. (4th) 50– Newfoundland Court of Appeal – aboriginal claims case relating to development of the Voisey's Bay Mine in Labrador.

- *Citizens' Mining Council of Newfoundland & Labrador v. Canada* [1999] F.C.J. No. 23 – Environmental assessment case in the Federal Court regarding environmental assessment of mining development.
- *Hembruff v. OMERS* (2005) O.A.C. 234 – Ontario Court of Appeal decision regarding fiduciary duties of pension administrators.
- *Lacroix v CMHC* (2009) 73 C.C.P.B. 224 and *Lloyd v. Imperial Oil Limited* (1999) 23 C.C.P.B. 39 – counsel in Ontario and Alberta pension class actions dealing with surplus and plan amendments.

Paul Ivanoff



**Partner,
Litigation**
Toronto

416.862.4223
pivanoff@osler.com

Education
University of New Brunswick, LL.B.
York University, B.A.

Bar Admission
Ontario (1993)

Practice Area(s): Litigation; Construction; Infrastructure

Paul's practice involves the litigation, arbitration and mediation of disputes arising out of construction and infrastructure projects. He also provides contract administration advice during the course of completion of projects. Paul's practice covers all aspects of construction law including contractual disputes involving construction contracts and specifications, construction liens, mortgage priorities, delay claims, bidding and tendering disputes, negligence, bond claims, and construction trusts. He advises all project participants on disputes related to a broad range of construction projects including the design and construction of airport facilities, power plants, highways, industrial facilities, commercial buildings, civil works facilities and subways. Paul is certified as a Specialist in Construction Law by the Law Society of Upper Canada.

Recent Matters

- **Greater Toronto Airports Authority** in numerous claims relating to the design, construction and maintenance of air terminal facilities
- **CH2M Hill and Veco Corporation** in an Ontario action involving allegations of conspiracy, fraud and oppression, which focussed on the propriety of the Ontario courts assuming jurisdiction over the dispute
- **Stone & Webster Canada L.P.** in disputes relating to the installation of Selective Catalytic Reduction (SCR) equipment at Ontario Power Generating Stations
- A project owner in an action involving the construction of a co-generation power plant
- A leading engineering firm in a multi-party Ontario action involving allegations of negligence and breach of contract relating to the design and construction of an industrial processing system
- An Ontario municipality in connection with procurement advice relating to bidding and tendering issues
- A nuclear technology and engineering company in a dispute relating to the supply and installation of equipment
- A leading Canadian contractor in various claims and disputes relating to roadway construction
- Automobile manufacturers in various disputes relating to projects undertaken at automobile assembly facilities

Evan Thomas



**Associate,
Litigation**
Toronto

416.862.4907
ethomas@osler.com

Education

University of Toronto, J.D.
London School of Economics, M.Sc. (Economics)
University of British Columbia, B.A. (Hons.)

Bar Admission(s)

Ontario (2007)

Practice Area(s): Litigation

Evan practises general corporate/commercial litigation and has experience in franchise, construction, privacy, insolvency, and information technology matters. He has appeared before the Information and Privacy Commission (Ontario) and the Ontario Superior Court of Justice (Civil and Commercial Lists). Prior to attending law school, Evan worked in the information technology sector and has an avid interest in e-discovery issues and other uses of technology in litigation. As an articling student, Evan was seconded to the mergers & acquisitions group at RBC Financial Group.

Recent Matters

- Various proceedings pending in Ontario related to the recovery of assets in Canada for the benefit of victims of a multi-billion dollar Ponzi scheme.
- A cross-border insolvency proceeding under the *Companies' Creditors Arrangements Act* and Chapter 11 of the U.S. Bankruptcy Code.
- The successful response to a motion for an interlocutory injunction to restrain the termination of a subcontract on a \$70-million information technology project.
- The defence of an ongoing action for over \$100 million in damages by a wholesaler following the termination of a distribution relationship.
- The successful response to an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* to the Information and Privacy Commission (Ontario).

Publications/Events/Education

- *Regional Electricity Market Integration: A Comparative Perspective, Competition and Regulation in Network Industries*, Volume 8 (2007) No. 2 (co-authored).
- *To Notify or Not to Notify: Responding to Data Breach Incidents*, February 2007 (co-authored with Jennifer Dolman).
- *Beyond Gridlock: The Case for Greater Integration of Regional Electricity Markets*, C.D. Howe Institute Commentary, March 2006 (co-authored).

Riyaz Dattu



Partner,
Corporate
Toronto

416.862.6569
rdattu@osler.com

Education
Osgoode Hall Law School, LL.M.
University of Toronto, LL.B.

Bar Admission(s)
Ontario (1984)

Practice Area(s): International Trade

Riyaz advises multinational and domestic businesses on international trade policy and investment matters, international trade strategies and market-access concerns. On international trade regulations, he advises on all aspects of economic sanctions, export and import controls, national security, anti-bribery laws, government procurement, customs laws, transfer pricing and trade remedies such as anti-dumping, countervailing and safeguard measures. Riyaz also acts as counsel in international trade and investment disputes involving the application of trade laws and regulations and the enforcement of treaties. He has acted as counsel from the time of the very earliest WTO disputes concerning Canada, and the first two investment arbitrations under Canada's bilateral investment promotion and protection treaties. During his more than 25 years of practice, Riyaz has advised and represented leading businesses in a full range of industry sectors.

Recent Matters

Riyaz has been counsel in more than 50 Canadian and international trade remedies proceedings (and one-third of all initial investigations commenced since 1992 under Canada's trade remedies laws), 13 challenges under Chapter 19 of NAFTA and the Canada-United States Free Trade Agreement (including one-half of all Canadian proceedings under NAFTA that were completed) and in excess of 40 proceedings before the Federal Court of Canada. He has acted in most of the significant trade remedies cases litigated in Canada, and has also argued landmark cases before NAFTA Panels and the Federal Court of Canada.

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, December 10, 2010 2:31 PM
To: Michael Lyle
Subject: Re: Message to Mayor Craig

Yes apparently, Gov't told MPs about potential deal. Leaks happen.

From: Michael Lyle
Sent: Friday, December 10, 2010 01:47 PM
To: Susan Kennedy; Hillary Thatcher
Subject: FW: Message to Mayor Craig

FYI

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: Ben Chin
Sent: December 10, 2010 1:47 PM
To: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Cc: Colin Andersen; Amir Shalaby; Michael Lyle
Subject: FW: Message to Mayor Craig

Heads up, TCE may feel a need to contact the Mayor of Cambridge today. I think it's the fair and responsible thing to do. I've given others a heads up as well.



Ben Chin | Vice President, Corporate Communications
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: ben.chin@powerauthority.on.ca
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From: Chris Breen [mailto:chris_breen@transcanada.com]

Sent: December 10, 2010 1:20 PM

To: Ben Chin

Subject: Message to Mayor Craig

Sir,

If I am asked to call the Mayor today, please consider below and feel free to improve!

Purpose – show the Mayor some respect and open a channel of communication.

Timing Rationale – competitors are aware of proposed plan and likely speaking to the City – so its important that we tell the Mayor we are interested in his input and understanding what the City thinks and needs.

Message Notes:

- Intro myself, TC and give my cell #;
- Remind him of OPA LTEP and IESO 18 month outlook regarding KW-C;
- Remind him that we own a piece of land on Eagle St. and there are other reasonable sites in Cambridge;
- Remind him that we are in discussion with OPA on how to peacefully wrap up OGS cancellation;
- Tell him that we have no deal with OPA but will stay in touch as things evolve;
- Tell him that we would like to meet with him to understand his views and discuss opportunities for the City; and
- Invite him to call me anytime if he has questions or concerns.

Thanks,

Chris Breen

www.transcanada.com

416.605.3524

Please note our new address:

Royal Bank Plaza, South Tower

200 Bay Street, Suite 2400

Post Office Box 43

Toronto, Ontario M5J 2J1

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Crystal Pritchard

From: Michael Killeavy
Sent: Friday, December 10, 2010 3:26 PM
To: Ben Chin; JoAnne Butler; Michael Lyle; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: Re: Message to Mayor Craig

Ok. Will we know what he's going to say?

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: Ben Chin
Sent: Friday, December 10, 2010 03:18 PM
To: Michael Killeavy; JoAnne Butler; Michael Lyle; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: RE: Message to Mayor Craig

Absolutely...Just to be clear, I'm not calling the Mayor. But I will be speaking with Chris Breen before he calls the Mayor.



Ben Chin | Vice President, Corporate Communications
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: ben.chin@powerauthority.on.ca
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From: Michael Killeavy
Sent: December 10, 2010 3:00 PM
To: Ben Chin; JoAnne Butler; Michael Lyle; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: Re: Message to Mayor Craig

I'll need a debriefing on your conversation with the mayor when it's convenient.

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: Ben Chin
Sent: Friday, December 10, 2010 02:16 PM
To: Michael Killeavy; JoAnne Butler; Michael Lyle; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: RE: Message to Mayor Craig

Great, thanks everybody.



Ben Chin | Vice President, Corporate Communications
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: ben.chin@powerauthority.on.ca
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From: Michael Killeavy
Sent: December 10, 2010 2:12 PM
To: JoAnne Butler; Michael Lyle; Ben Chin; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: Re: Message to Mayor Craig

Ok. The concern I have is that whatever is said creates an expectation on which someone (us) will need to deliver on and that can hamstring negotiations.

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 10, 2010 02:09 PM
To: Michael Lyle; Michael Killeavy; Ben Chin; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: Re: Message to Mayor Craig

Yes, I think that is where we are headed...talk as any other developer...no reference to OGS...

JCB

From: Michael Lyle
Sent: Friday, December 10, 2010 02:07 PM
To: JoAnne Butler; Michael Killeavy; Ben Chin; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby
Subject: RE: Message to Mayor Craig

Would you be comfortable if TCE does not discuss bullet points 4 and 5 (reference to OPA discussions re OGS cancellation)?

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: JoAnne Butler
Sent: December 10, 2010 2:00 PM
To: Michael Killeavy; Ben Chin; Deborah Langelaan
Cc: Colin Andersen; Amir Shalaby; Michael Lyle
Subject: Re: Message to Mayor Craig

I agree completely with Michael. Say nothing to Breen and don't agree with this. This is hanging ourselves way out there and TCE hasn't even coughed up the data we need.

JCB

From: Michael Killeavy
Sent: Friday, December 10, 2010 01:49 PM
To: Ben Chin; Deborah Langelaan; JoAnne Butler

Cc: Colin Andersen; Amir Shalaby; Michael Lyle
Subject: Re: Message to Mayor Craig

I'd prefer this didn't happen.

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

From: Ben Chin
Sent: Friday, December 10, 2010 01:46 PM
To: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Cc: Colin Andersen; Amir Shalaby; Michael Lyle
Subject: FW: Message to Mayor Craig

Heads up, TCE may feel a need to contact the Mayor of Cambridge today. I think it's the fair and responsible thing to do. I've given others a heads up as well.



Ben Chin | Vice President, Corporate Communications
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6007 | Fax: 416.967.1947 | Email: ben.chin@powerauthority.on.ca
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From: Chris Breen [mailto:chris_breen@transcanada.com]
Sent: December 10, 2010 1:20 PM
To: Ben Chin
Subject: Message to Mayor Craig

Sir,

If I am asked to call the Mayor today, please consider below and feel free to improve!

Purpose – show the Mayor some respect and open a channel of communication.

Timing Rationale – competitors are aware of proposed plan and likely speaking to the City – so its important that we tell the Mayor we are interested in his input and understanding what the City thinks and needs.

Message Notes:

- Intro myself, TC and give my cell #;
- Remind him of OPA LTEP and IESO 18 month outlook regarding KW-C;
- Remind him that we own a piece of land on Eagle St. and there are other reasonable sites in Cambridge;
- Remind him that we are in discussion with OPA on how to peacefully wrap up OGS cancellation;
- Tell him that we have no deal with OPA but will stay in touch as things evolve;
- Tell him that we would like to meet with him to understand his views and discuss opportunities for the City; and
- Invite him to call me anytime if he has questions or concerns.

Thanks,

Chris Breen

www.transcanada.com

416.605.3524

Please note our new address:

Royal Bank Plaza, South Tower

200 Bay Street, Suite 2400

Post Office Box 43

Toronto, Ontario M5J 2J1

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Thank you.

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, December 14, 2010 4:57 PM
To: Susan Kennedy; Michael Killeavy
Subject: RE: Draft Directive

I would change the order of the directive around. Talk about KW need first before discussing Oakville. We should also discuss whether we want to put in language about reasonable cost and balancing risk and reward between TCE and consumers.

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
Fax: 416.969.6383
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From: Susan Kennedy
Sent: December 14, 2010 1:17 PM
To: Michael Killeavy
Cc: Michael Lyle
Subject: RE: Draft Directive

I concur, I'm just not sure the gov't will.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: December 14, 2010 1:10 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: Re: Draft Directive

The Boxwood site is not yet a done deal. I believe that we ought to keep it general until the deal's done for fear of driving up the price, which will undoubtedly be passed on to the ratepayer.

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: Susan Kennedy
Sent: Tuesday, December 14, 2010 01:03 PM
To: Michael Lyle; Michael Killeavy
Subject: Draft Directive

Privileged and Confidential (Solicitor and Client Privilege)

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

First cut at KWC Directive attached for review and comment. Let me know who (if anyone) should see this first draft.

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

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, December 15, 2010 12:42 PM
To: Michael Killeavy
Cc: Michael Lyle
Subject: RE: Call with David Lever
Attachments: MOU_-_TransCanada_OPA December 14 2010_shk.DOC

Ideally, I'd like to get a consult with Mike Lyle first. I've attached a mark-up which I think can/could get me to "hold your nose" okay with signing the LOI pre-directive (and which still might be acceptable to TCE).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: December 15, 2010 12:37 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: RE: Call with David Lever

I understand. Shall we instruct Rocco to cancel the call scheduled for this afternoon?

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
416-5209788 (CELL)
416-967-1947 (FAX)

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

From: Susan Kennedy
Sent: December 15, 2010 12:34 PM
To: 'Sebastiano, Rocco'; Michael Killeavy
Cc: Smith, Elliot; Ivanoff, Paul; Michael Lyle
Subject: RE: Call with David Lever

I am uncomfortable agreeing to negotiate in good faith without a directive, so we may have a timing issue.

We know we have no authority to do this without a directive and right now we don't have one.

I have a draft directive circulating internally and gave a "best efforts" undertaking to get the draft out the door to the Ministry today for review.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: December 15, 2010 12:07 PM
To: Michael Killeavy; Susan Kennedy
Cc: Smith, Elliot; Ivanoff, Paul
Subject: Call with David Lever

At David's request, we have set up a call this afternoon to see if the lawyers can finalize the MOU and Acknowledgement. As a result, it would be good if we could go over the points raised on my two emails this morning on the MOU and Acknowledgement before that call. I am available between now and 2 pm to discuss if need be.

Thanks, Rocco

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

From: Lever, David A.N. [<mailto:DLEVER@MCCARTHY.CA>]
Sent: Wednesday, December 15, 2010 11:57 AM
To: Sebastiano, Rocco
Cc: Huber, Harold R.
Subject: Re:

Perfect. We will call you at 330. Thanks

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Wednesday, December 15, 2010 11:45 AM
To: Lever, David A.N.
Cc: Huber, Harold R.
Subject: RE:

David,

I should be available after 3:30 pm today to discuss the MOU and Acknowledgement and hopefully we can get these two documents finalized today. Not sure that I'll be in a position to say much more today about the Indemnity Agreement.

Thanks, Rocco

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

From: Lever, David A.N. [<mailto:DLEVER@MCCARTHY.CA>]
Sent: Wednesday, December 15, 2010 10:19 AM
To: Sebastiano, Rocco
Cc: Huber, Harold R.
Subject:

Rocco, is there a time that you would be free to chat late this afternoon on the MOU, Acknowledgment, and the Indemnity.

David

=====

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[TCE Letterhead]

[WITH PREJUDICE]

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

Attention: •

Dear Sirs:

Re: Potential Development of a Simple Cycle Natural Gas-Fired Power Generation Project

This letter ("**MOU**") sets forth the understanding between TransCanada Energy Ltd. ("**TCE**") and the Ontario Power Authority ("**OPA**") regarding the potential development of a simple cycle natural gas-fired power generation project in the Kitchener-Waterloo-Cambridge area having an approximate [season 3 degraded] capacity of 450MW (the "**Potential Project**") and entering into a peaking generation agreement with respect thereto.

1. **Background.** TCE was notified by the OPA that it was the selected proponent under the Southwest GTA Request for Proposals procurement process on September 30, 2009. TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the "**Contract**") with the OPA on October 9, 2009.

TCE entered into contracts and expended funds to develop the Facility (as defined in the Contract).

On October 7, 2010, the Minister of Energy announced that the Southwest GTA plant would not proceed and, on that date, TCE received a letter from Colin Andersen of the OPA Re: Southwest GTA Clean Energy Supply Contract between TransCanada Energy Ltd. and the OPA dated October 9, 2009 (the "**October 7 Letter**").

In anticipation of receipt by the OPA of a direction pursuant to section 25.35 of the Electricity Act, 1998 and in accordance with the October 7 Letter, TCE and the OPA have been working cooperatively to identify other generation projects that meet Ontario's electricity system needs including those needs identified subsequently in Ontario's Long Term Energy Plan and the IESO's 18-Month Outlook Update (December 3, 2010). TCE and the OPA have identified a site in Cambridge, Ontario as a potential location for the Potential Project. It is anticipated that the Potential Project will use the gas turbines sourced under an equipment supply agreement originally entered into by TCE and MPS Canada, Inc. with respect to the Facility.

2. **Good Faith Negotiations.** The OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the "**Definitive Agreement**") in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE. The Definitive Agreement shall be based on the form of the Northern York Region Peaking Generation Contract except that the "NRR" thereunder shall include all gas delivery and

management services costs, which agreement shall be satisfactory to TCE and the OPA in their sole discretion. The "NRR" under the Definitive Agreement shall also include an amount to account for all costs reasonably incurred by TCE with respect to the Facility as well as TCE's anticipated financial value of the Contract. The target date for execution of the Definitive Agreement shall be June 30, 2011.

3. **Legal Effect.** The parties hereto acknowledge that sections 2, 3 and 4 of this MOU constitute a legally binding agreement regarding the matters contemplated herein. Each party hereby represents and warrants to the other that such party has full power and authority to execute and deliver this MOU, and that the execution and delivery of this MOU by such party has been authorized by all requisite corporate action on the part of such party. The remaining provisions of this MOU do not create any legally binding obligations.
4. **General.**
 - (a) This MOU and its application and interpretation will be governed exclusively by the laws of the Province of Ontario and the federal laws of Canada applicable therein regardless of the laws that might otherwise govern under applicable conflict of law principles.
 - (b) The parties' relationship to each other under this MOU is that of independent contractors. Nothing contained in this MOU is intended to place the parties in the relationship of partners, joint venturers, principal-agent, or employer-employee, and neither party shall have any right to obligate or bind the other party in any manner whatsoever.
 - (c) This MOU may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of executed counterparts hereof may be made electronically.
 - (d) The parties acknowledge that this MOU is confidential, in accordance with the terms of the Confidentiality Agreement between the parties dated as of October 8, 2010.
 - (e) Neither party will assign this agreement without the prior written consent of the other party.

If the foregoing correctly sets forth our mutual understanding and intentions, please sign the enclosed counterpart originals of this MOU and return one of the counterparts to the attention of the undersigned on or before December •, 2010. Provided that this letter is executed by the OPA by such date, this MOU shall become effective as of such date of acceptance otherwise it will be null and void.

Yours very truly,

TRANSCANADA ENERGY LTD.

Per: _____

Name: •

Title: •

Per: _____

Name: •

Title: •

ACCEPTED AND AGREED to this _____ day of •, 2010.

ONTARIO POWER AUTHORITY

Per: _____

Name: •

Title: •

Per: _____

Name: •

Title: •

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, December 15, 2010 12:50 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: RE: Call with David Lever

Ok. Please let me know what you want to do. I didn't know anything about this 2pm teleconference until Rocco emailed me and presume you didn't know either. I don't want them agreeing for us over the teleconference if we aren't comfortable.

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
416-5209788 (CELL)
416-967-1947 (FAX)

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

From: Susan Kennedy
Sent: December 15, 2010 12:42 PM
To: Michael Killeavy
Cc: Michael Lyle
Subject: RE: Call with David Lever

Ideally, I'd like to get a consult with Mike Lyle first. I've attached a mark-up which I think can/could get me to "hold your nose" okay with signing the LOI pre-directive (and which still might be acceptable to TCE).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: December 15, 2010 12:37 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: RE: Call with David Lever

I understand. Shall we instruct Rocco to cancel the call scheduled for this afternoon?

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
416-5209788 (CELL)
416-967-1947 (FAX)

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

From: Susan Kennedy
Sent: December 15, 2010 12:34 PM
To: 'Sebastiano, Rocco'; Michael Killeavy
Cc: Smith, Elliot; Ivanoff, Paul; Michael Lyle
Subject: RE: Call with David Lever

I am uncomfortable agreeing to negotiate in good faith without a directive, so we may have a timing issue.

We know we have no authority to do this without a directive and right now we don't have one.

I have a draft directive circulating internally and gave a "best efforts" undertaking to get the draft out the door to the Ministry today for review.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: December 15, 2010 12:07 PM
To: Michael Killeavy; Susan Kennedy
Cc: Smith, Elliot; Ivanoff, Paul
Subject: Call with David Lever

At David's request, we have set up a call this afternoon to see if the lawyers can finalize the MOU and Acknowledgement. As a result, it would be good if we could go over the points raised on my two emails this morning on the MOU and Acknowledgement before that call. I am available between now and 2 pm to discuss if need be.

Thanks, Rocco

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

From: Lever, David A.N. [<mailto:DLEVER@MCCARTHY.CA>]
Sent: Wednesday, December 15, 2010 11:57 AM
To: Sebastiano, Rocco
Cc: Huber, Harold R.
Subject: Re:

Perfect. We will call you at 330. Thanks

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

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Wednesday, December 15, 2010 11:45 AM
To: Lever, David A.N.

Cc: Huber, Harold R.
Subject: RE:

David,

I should be available after 3:30 pm today to discuss the MOU and Acknowledgement and hopefully we can get these two documents finalized today. Not sure that I'll be in a position to say much more today about the Indemnity Agreement.

Thanks, Rocco

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

From: Lever, David A.N. [<mailto:DLEVER@MCCARTHY.CA>]
Sent: Wednesday, December 15, 2010 10:19 AM
To: Sebastiano, Rocco
Cc: Huber, Harold R.
Subject:

Rocco, is there a time that you would be free to chat late this afternoon on the MOU, Acknowledgment, and the Indemnity.

David

=====
This e-mail may contain information that is privileged, confidential and/or exempt from disclosure.

No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s).

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THESE DOCUMENTS SONT LA PROPRIETE DE LA BIBLIOTHEQUE DE LA MAIRIE DE MONTREAL

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, December 15, 2010 4:07 PM
To: Susan Kennedy; JoAnne Butler; Michael Lyle
Subject: RE: Revised Draft Directive

Could we put an "out" option in the Directive that states that if we can't negotiate an agreement with TCE that is in the best interests of the ratepayer, we don't need to conclude an agreement at any cost? I know that this might be tough, considering that we need to build in sunk costs for OGC plus the financial value of the OGS contract, but I am concerned that this Directive ties our hands. The later we actually get the directive, the less the risk is, I suppose.

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
416-5209788 (CELL)
416-967-1947 (FAX)

From: Susan Kennedy
Sent: December 15, 2010 3:51 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Subject: RE: Revised Draft Directive

Sorry. Attached this time. BL and clean.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: JoAnne Butler
Sent: December 15, 2010 3:48 PM
To: Susan Kennedy; Michael Lyle; Michael Killeavy
Subject: RE: Revised Draft Directive

Nothing attached...

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: Susan Kennedy
Sent: Miércoles, 15 de Diciembre de 2010 03:48 p.m.
To: Michael Lyle; Michael Killeavy
Cc: JoAnne Butler
Subject: Revised Draft Directive

Attached. Incorporating Mike's comments. Ideally, I'd like to get the draft to the Ministry today, or tomorrow noon (at the latest).

Thanks,

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

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, December 15, 2010 4:36 PM
To: Michael Killeavy; JoAnne Butler; Michael Lyle
Subject: RE: Revised Draft Directive
Attachments: BL_KWC Directive_v3-2.docx

Revised per below suggestion.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: December 15, 2010 4:07 PM
To: Susan Kennedy; JoAnne Butler; Michael Lyle
Subject: RE: Revised Draft Directive

Could we put an "out" option in the Directive that states that if we can't negotiate an agreement with TCE that is in the best interests of the ratepayer, we don't need to conclude an agreement at any cost? I know that this might be tough considering that we need to build in sunk costs for OGC plus the financial value of the OGS contract, but I am concerned that this Directive ties our hands. The later we actually get the directive, the less the risk is, I suppose.

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
416-5209788 (CELL)
416-967-1947 (FAX)

From: Susan Kennedy
Sent: December 15, 2010 3:51 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy
Subject: RE: Revised Draft Directive

Sorry. Attached this time. BL and clean.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: JoAnne Butler
Sent: December 15, 2010 3:48 PM
To: Susan Kennedy; Michael Lyle; Michael Killeavy
Subject: RE: Revised Draft Directive

Nothing attached...

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: Susan Kennedy
Sent: Miércoles, 15 de Diciembre de 2010 03:48 p.m.
To: Michael Lyle; Michael Killeavy
Cc: JoAnne Butler
Subject: Revised Draft Directive

Attached. Incorporating Mike's comments. Ideally, I'd like to get the draft to the Ministry today, or tomorrow noon (at the latest).

Thanks,

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

December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Kitchener-Waterloo-Cambridge Area New Supply

In its Long Term Energy Plan, the Government identified the continued need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area (the "KWC Area") where demand is growing at more than twice the provincial rate.

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

Southwest Greater Toronto Area Supply

On August 18, 2008, the former Minister of Energy, the Honourable George Smitherman, directed (the "SWGTA Directive") the OPA to initiate a competitive procurement process for a combined-cycle natural gas-fired electricity generation facility with a rated capacity of up to approximately 850MW for deployment in the southwest Greater Toronto Area (the "SWGTA Procurement").

On October 9, 2009, the OPA concluded the SWGTA Procurement and signed a contract (the "the SWGTA Contract") with TransCanada Energy Ltd. ("TransCanada") to design, build and operate a 900MW generating station in Oakville (the "Oakville Generating Station") over a 20 year term.

On October 7, 2010, I announced (i) that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station no longer necessary and, (ii) that a transmission solution will be implemented to maintain reliable supply in the southwest Greater Toronto Area.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

I direct the OPA to proceed with negotiations with TransCanada related to the KWC Project with a view to:

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

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

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

I further direct that the SWGTA Directive is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, December 21, 2010 4:24 PM
To: Susan Kennedy
Subject: FW: advice on need for Oakville palnt and alternative ways of meeting the need.
Attachments: SW GTA Alternatives Sept 13 2010.ppt

For your edification.

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

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

From: Amir Shalaby
Sent: December 21, 2010 4:17 PM
To: Michael Lyle
Cc: Joe Toneguzzo
Subject: advice on need for Oakville palnt and alternative ways of meeting the need.

Here is the summary of the advice we provided.
amir



ONTARIO POWER AUTHORITY



September 13, 2010

Alternatives for Southwest GTA

Prepared by: Power System Planning

Scope of this presentation

- Rationale for Southwest GTA when planned in 2007
- Changes since 2007
- Alternatives for replacement
 - Transmission aspects
 - Generation aspects
- Preliminary results of analysis

Rationale for building gas-fired generation in Southwest GTA

1. Replace coal
2. Complement wind

By placing generation in Southwest GTA:

3. Restore Supply-Demand balance for GTA
4. Relieve constrained transmission
 - *Auto-transformer at Claireville TS*
 - *Auto-transformer at Trafalgar TS*
 - *Richview-Manby transmission corridor*
 - *Reduce transmission losses*

What has changed since 2007

- **Recession has reduced demand forecast, but not in GTA**
 - *Current demand projection is 1,100 MW lower by 2015*
 - *GTA load forecast is less affected*
- **Supply picture has changed:**
 - FIT program increases the amount of renewable generation
 - Less gas-fired generation planned
 - Prospect of Pickering continued operation
 - Uncertainty about Bruce refurbishment schedule
- **Delays in approvals process for Oakville GS**

The effect of changes since 2007 on drivers for the plant

Factors shaping requirement for Oakville Generating Station	Current relevance in view of changes since 2007	Comments
Replace coal	Less relevant	Delays in OGS approvals will delay OGS in-service to beyond 2014: outside of the coal replacement timeframe
Complement wind	More relevant	FIT program will result more renewables, increasing requirement for flexible supply sources within Ontario's mix
Restore Supply-Demand Balance for GTA	Same	Demand in GTA continues to be robust. Need for transmission reinforcement starts in 2018
Relieve constrained transmission		

OPA has been asked to evaluate three alternatives to the current Oakville GS

1. GTA transmission expansion and Nanticoke generation
2. GTA transmission expansion and Halton Hills GS expansion
3. Relocate Oakville GS to north Oakville and connect by transmission lines to Oakville TS

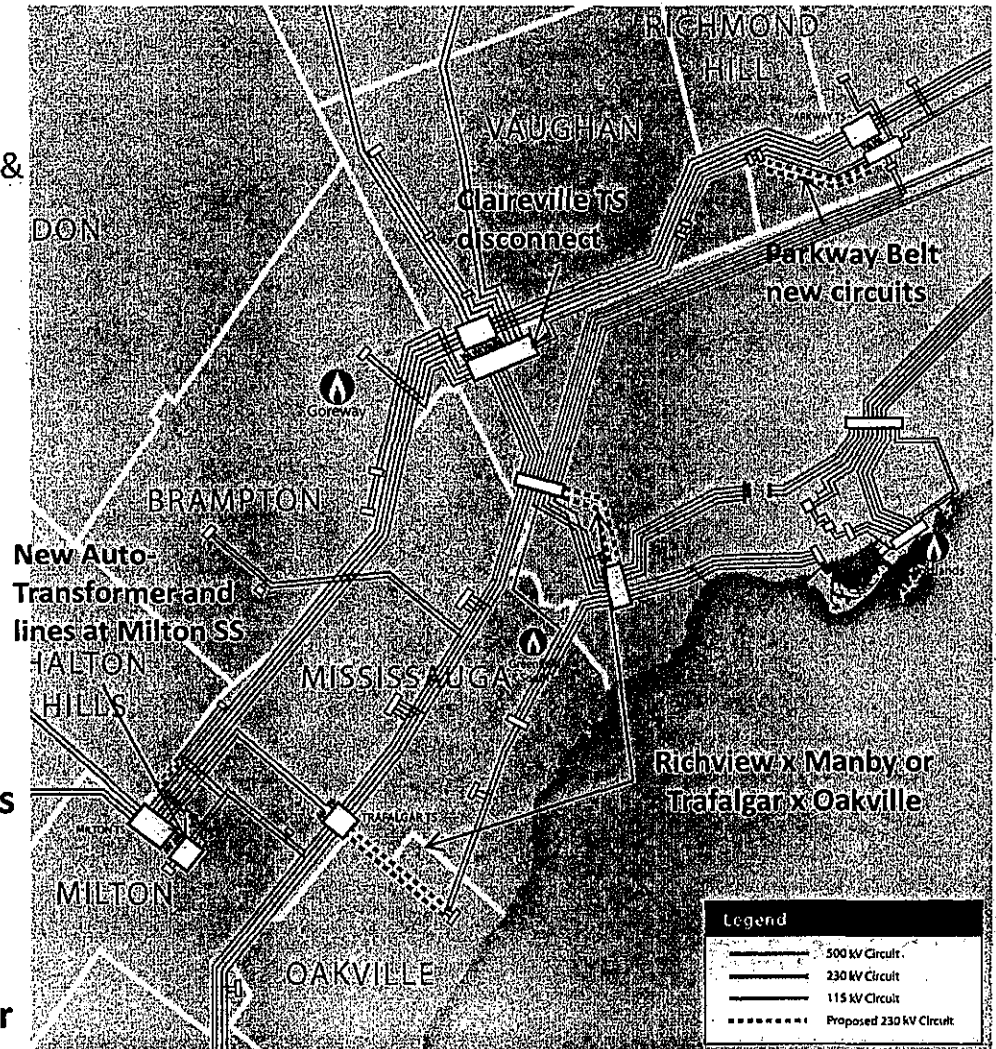
Option 1: GTA transmission and Nanticoke generation

Extensive new transmission in GTA costing \$200M :

- Claireville TS auto-transformer relief
 - 7km new transmission lines to Richmond Hill #1 & #2
 - \$65M (overhead and underground)
- Trafalgar TS auto-transformer relief
 - New Auto-transformers at Milton SS and lines to Halton Hills TS
 - \$90M to \$105M (station and overhead)
- Richview to Manby Corridor relief
 - \$20M - \$30M (TxO or RxM)
 - 7km, \$20M for Trafalgar x Oakville
 - 6.5km, \$30M for Richview x Manby
- Increased transmission losses

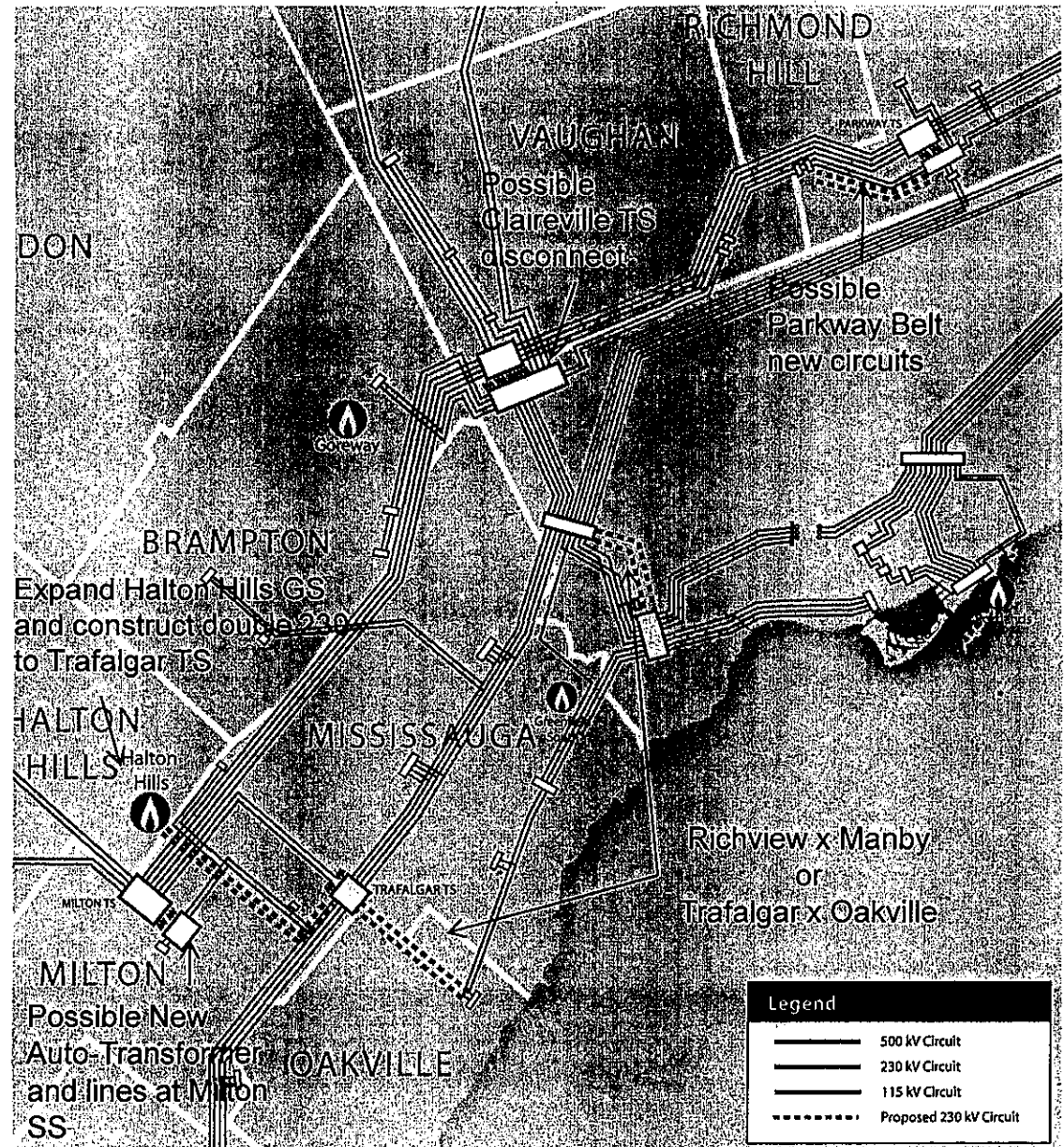
Note 1 - Generation sites available, OPG facilities can be repowered but Gas pipeline has to be extended to Nanticoke: \$150 Million, three years or more

Note 2 – With current plan for placing Phase 4 or 5 of Korean Consortium in the Bruce area, only the advancement of Milton station costs now apply



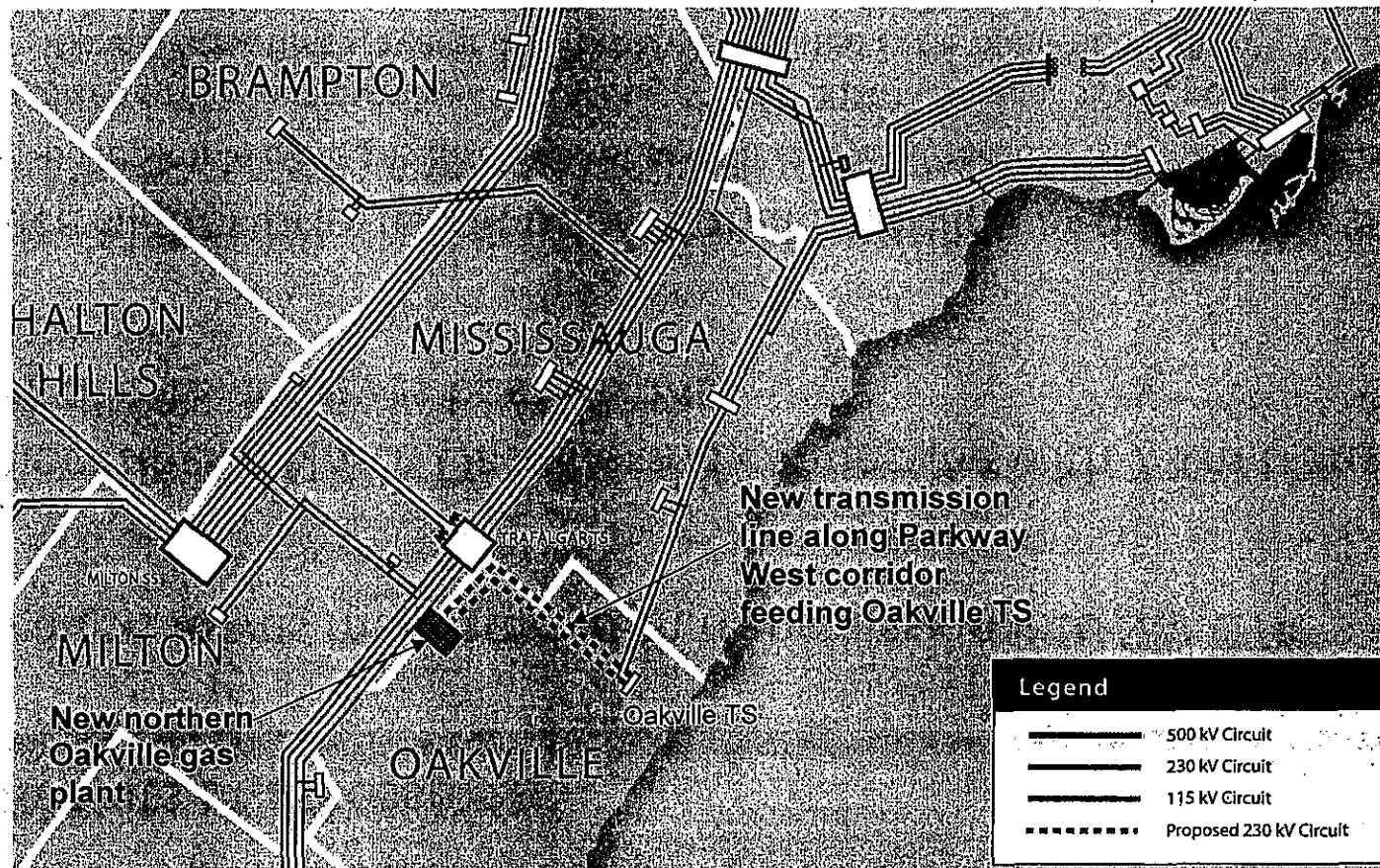
Option 2: GTA transmission and Halton Hills GS expansion

- Existing generating site can accommodate added units, but it is in a busy transmission corridor, inadequate to incorporate significant amounts of new generation without major transmission
- Requires comparable amount and cost of transmission to option one
- 12 km new transmission line required from Halton Hills GS to Trafalgar TS to allow for expanded generation (est. cost: \$40M)
- This option adds generation to the GTA and thus partially restores GTA supply/demand balance
 - but may only provide partial relief to Claireville TS and Trafalgar TS



Option 3: North Oakville generation connected by 7 Km transmission to Oakville south

- **Limited transmission needed: only 7 Km to the south on an existing right of way designated for transmission, preserves corridors shown for option 1 within GTA for future use**
- **\$20M cost of new transmission if it is built as overhead transmission, \$100M-\$150M if underground**



Results of assessment

- All alternatives must start with transmission into SW GTA
- Relocating to North Oakville and connecting with 7 Km transmission to Oakville TS achieves best results
- Place higher priority on operational flexibility and transmission relief
 - Build Simple cycle gas turbines not combined cycle (because they can better complement wind)
 - Size to relieve transmission (starting around 2018). Smaller size is possible, around 350-500 MW
It can be the first stage of an ultimate combined cycle plant of 850 MW
 - In service date can be delayed from original 2013 date to 2015. If 2015 in-service is not feasible, then other generation options will have to be activated.

APPENDICES

Contents:

Appendix A: Energy and peak demand projections to 2015

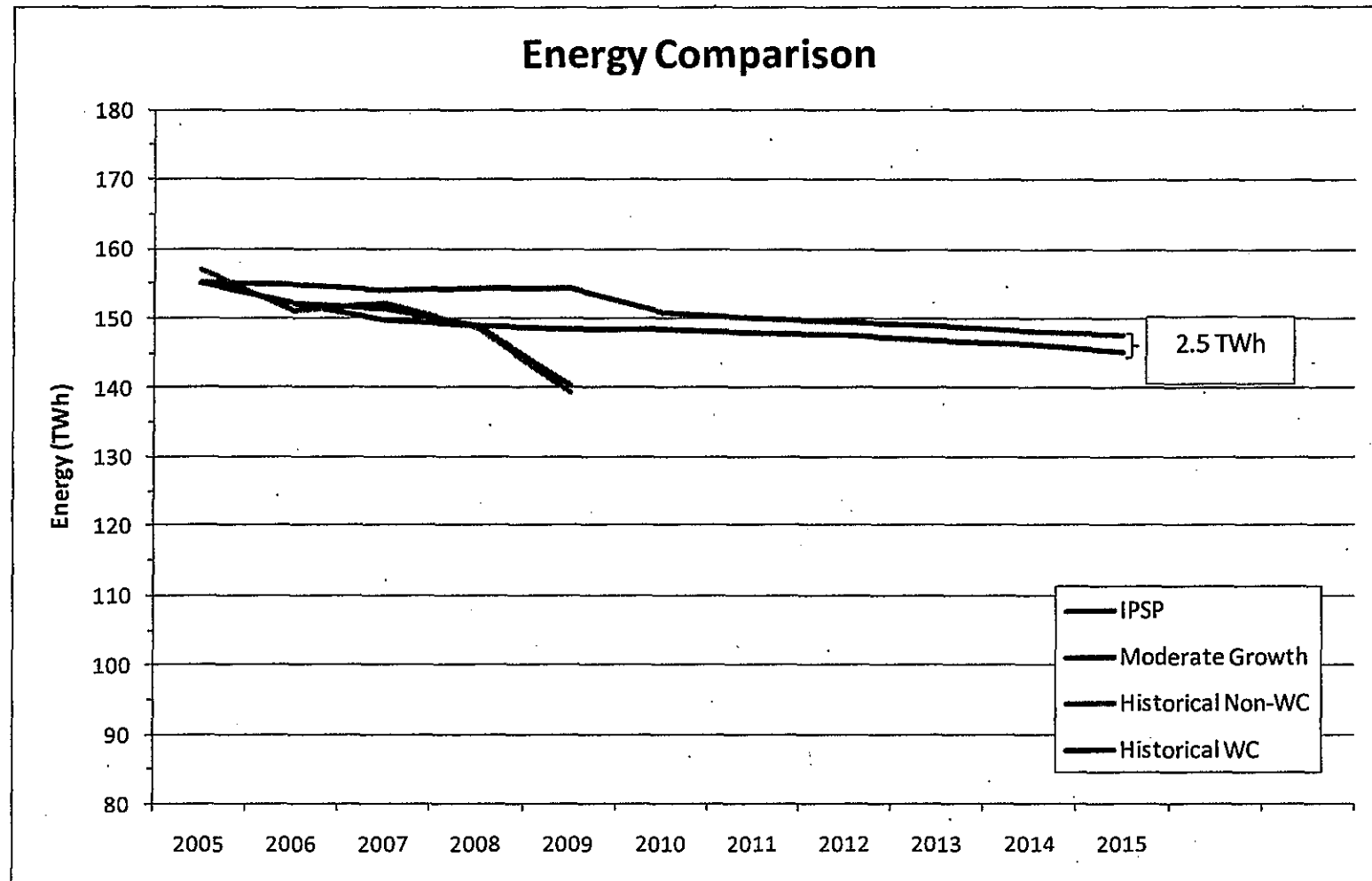
Appendix B: Supply projections to 2015

Appendix C: Drivers for need in southwest GTA

Appendix D: Other relevant details for option three

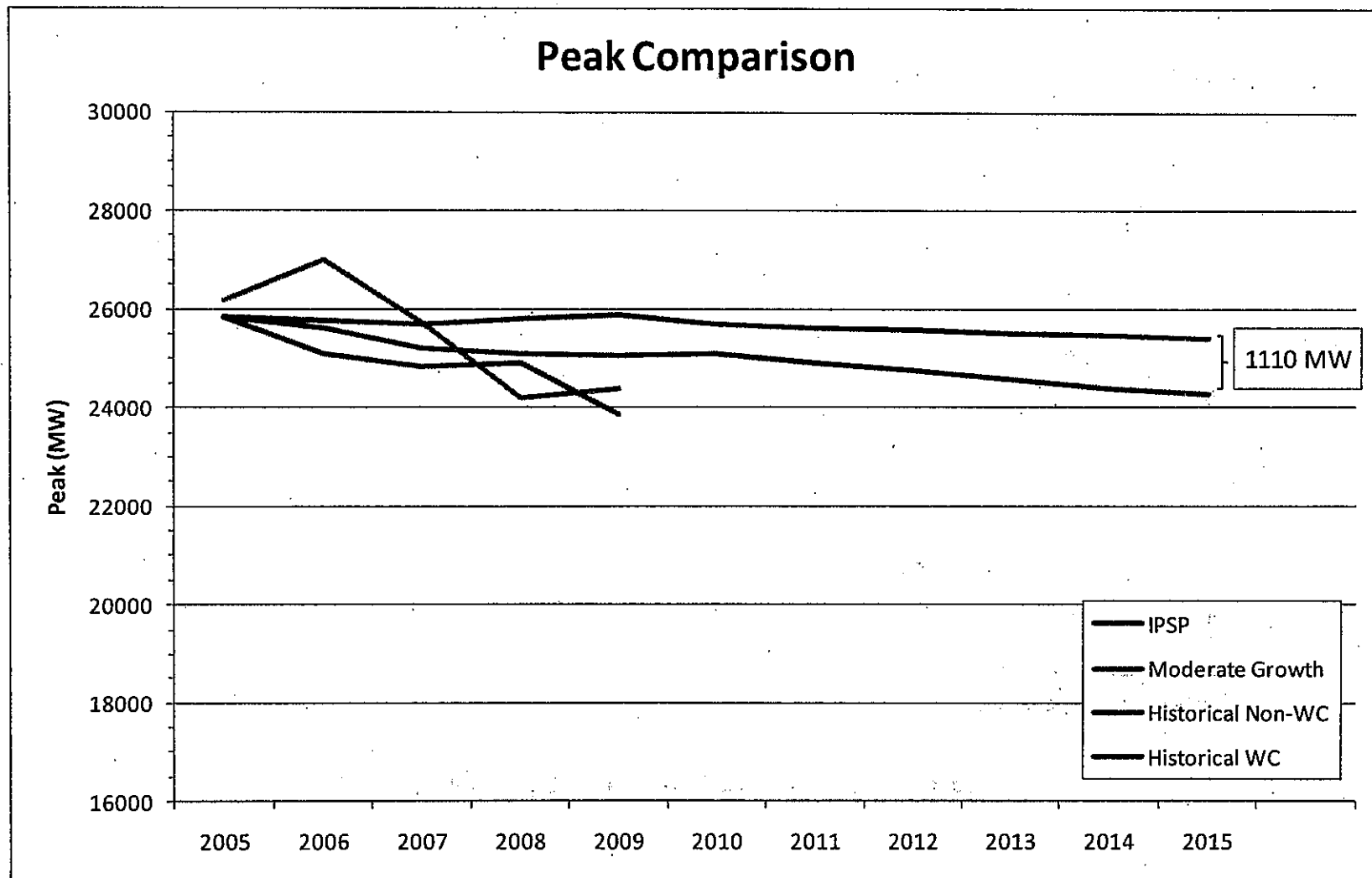
Appendix A:

Energy demand forecast is now 2.5 TWh lower than forecast made in 2007



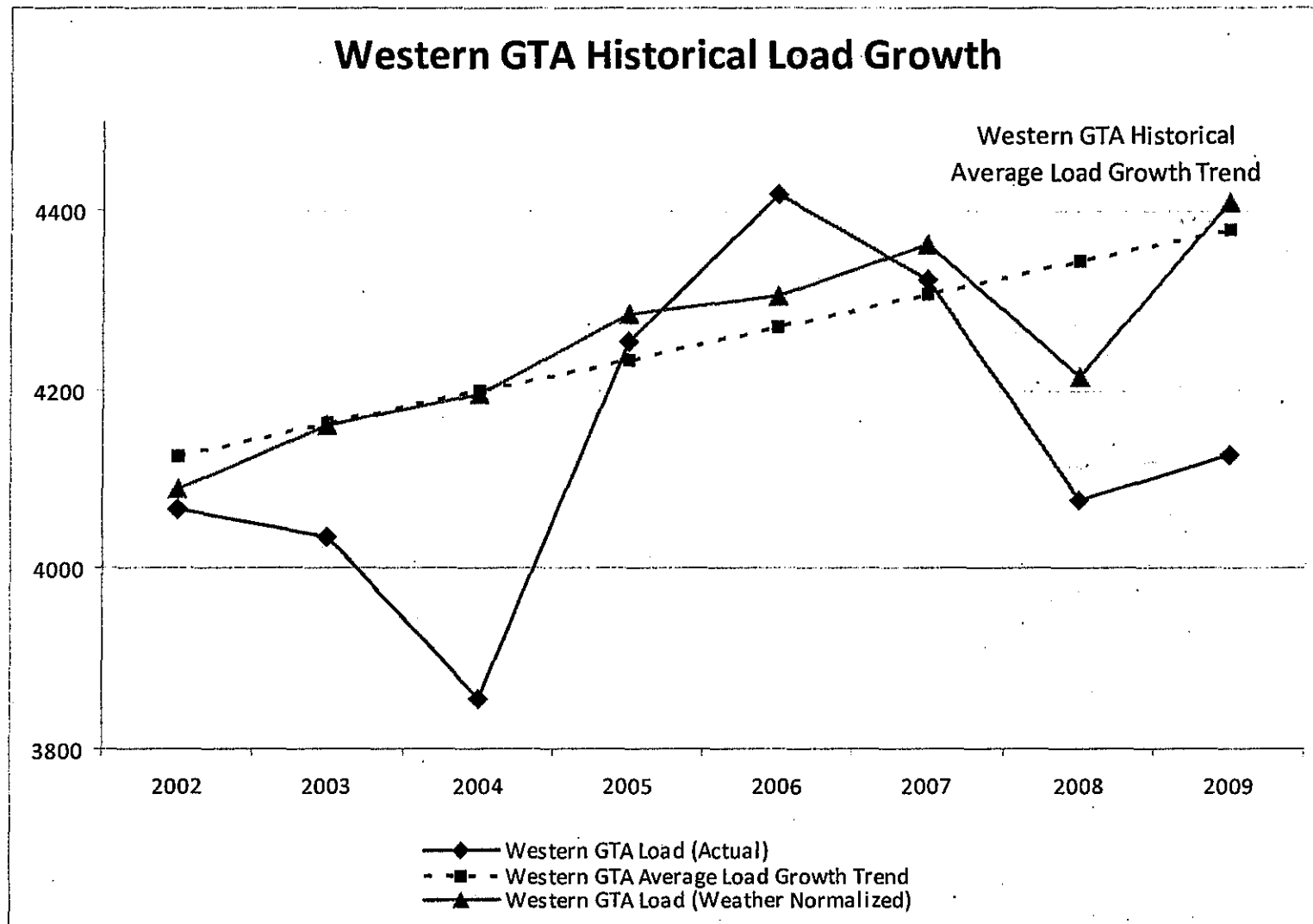
Appendix A:

Peak demand forecast for 2015 is now 1110 MW lower than forecast made in 2007



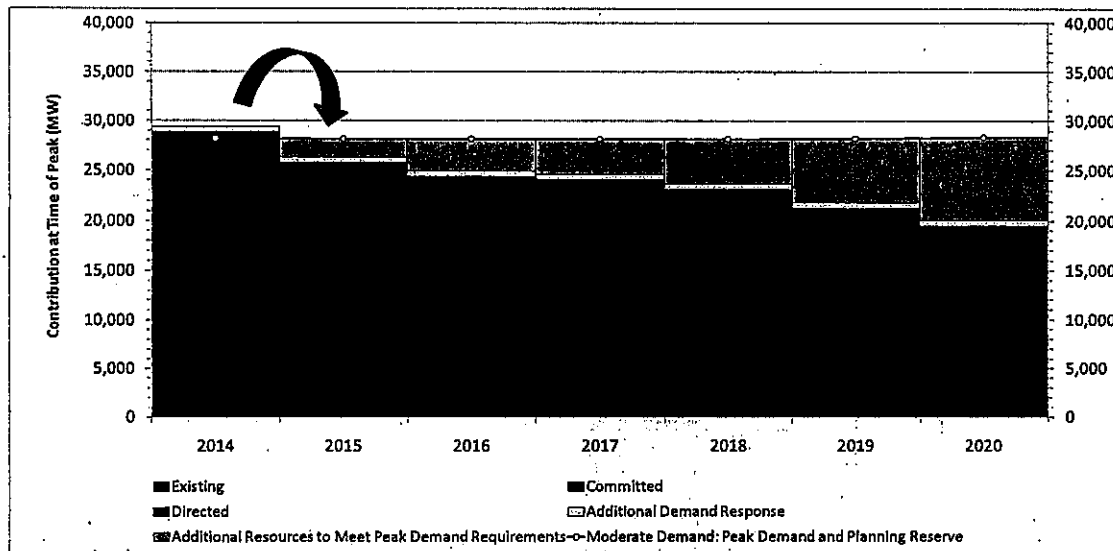
Appendix A:

Demand is robust in western GTA



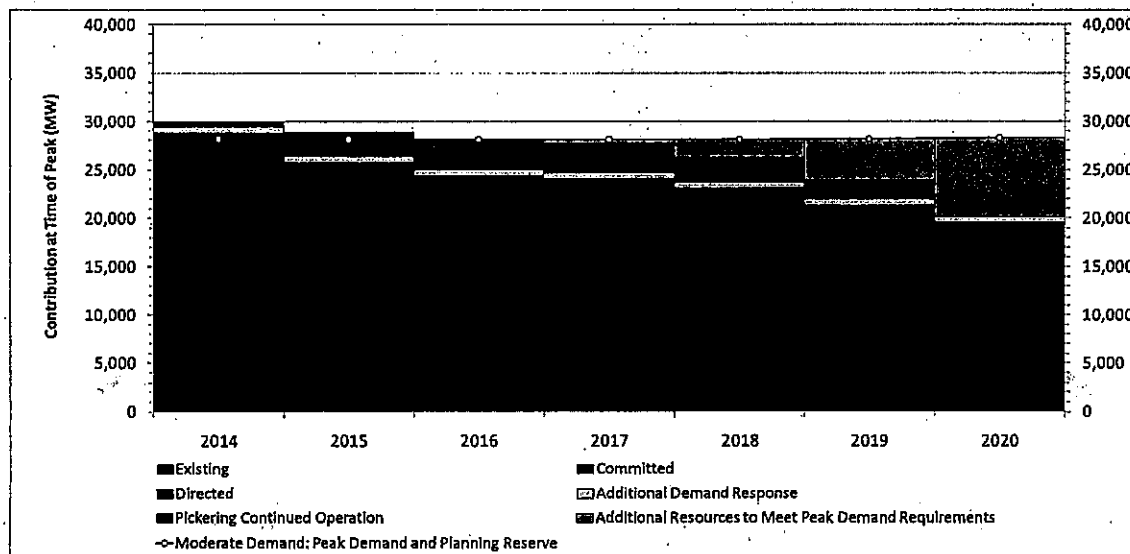
Appendix B:

Supply gap without Southwest GTA starts in 2015



Without Pickering Continued Operation

- 1,760 MW gap starts in 2015 and grows
- Reduction in supply between 2014 and 2015 is mostly due to Pickering end of life (4 units, 2062 MW) and coal closure (4 units, 1286 MW)



With Pickering Continued Operation

- Gap starts around 2018

Supply outlook by project in the year 2015 (Installed MW)



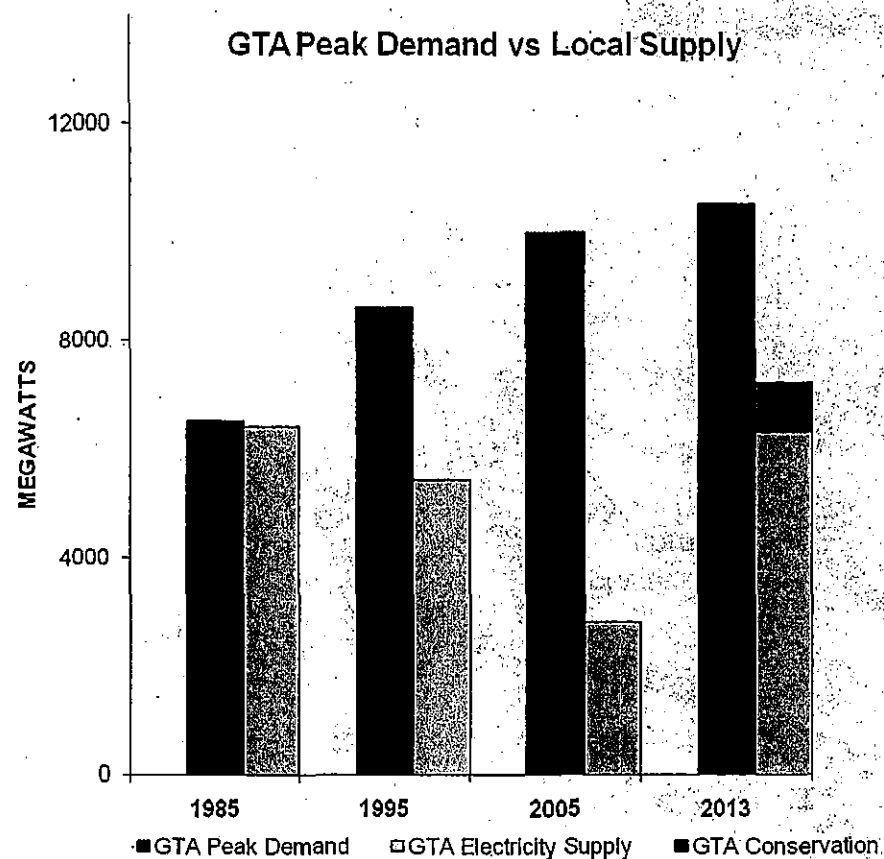
ONTARIO
POWER AUTHORITY

Appendix C:

Supply-Demand balance in GTA

New GTA supply from 2005 to 2013:

- Goreway GS – 860 MW (2009)
- Portlands Energy Center – 550 MW (2009)
- Halton Hills GS – 600 MW (2010)
- Northern York Region – 350 MW (2011)
- Greenfield South – 280 MW (2012)
- Oakville GS – 900 MW (2014)



Appendix C:

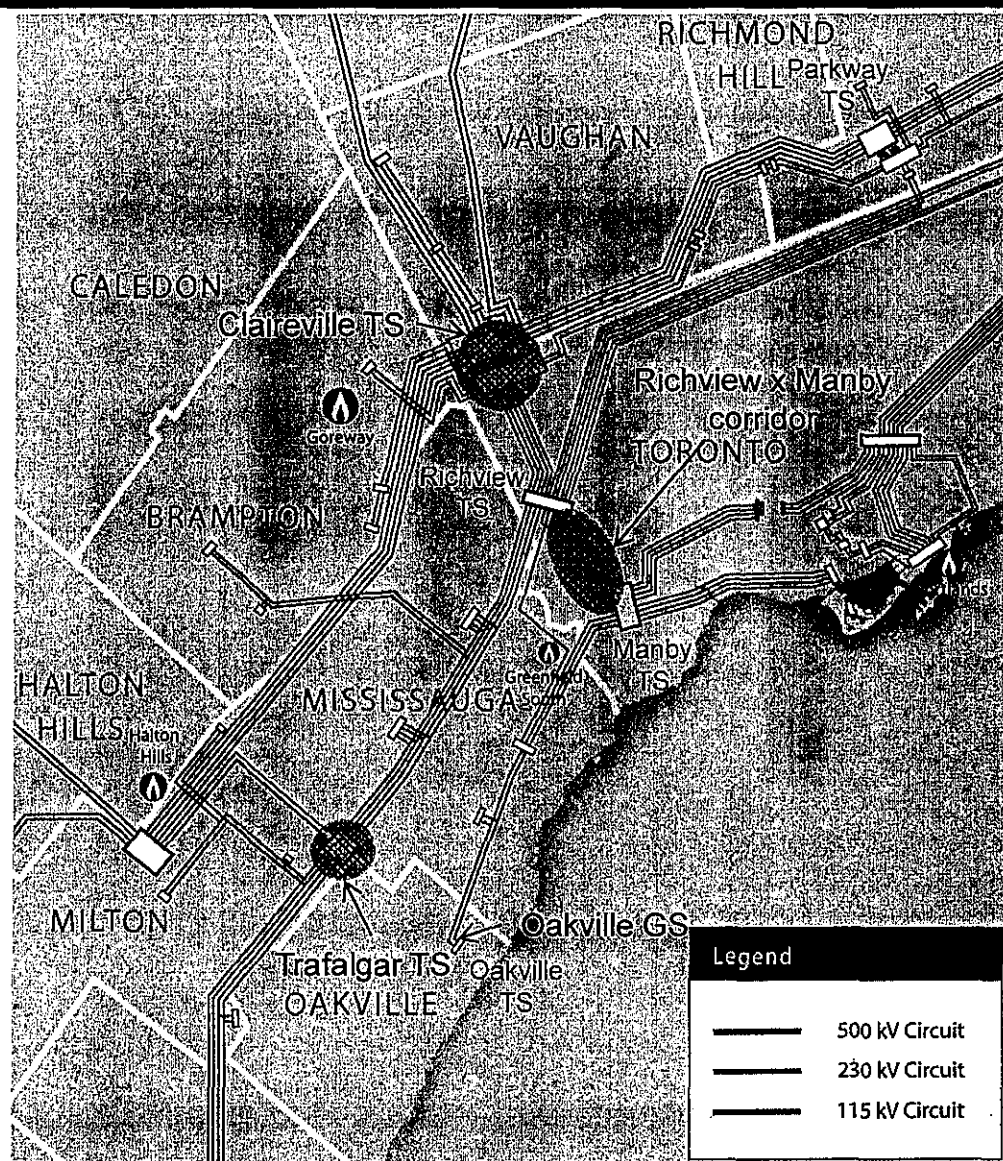
Western GTA – constrained transmission

•Key Stations

- Claireville TS
- Richview TS
- Manby TS
- Oakville TS
- Parkway TS
- Trafalgar TS

•Constrained transmission

- Richview x Manby corridor
- Transformers at Claireville TS
- Capacity at Trafalgar TS



Appendix D:

Transmission corridor information for option three

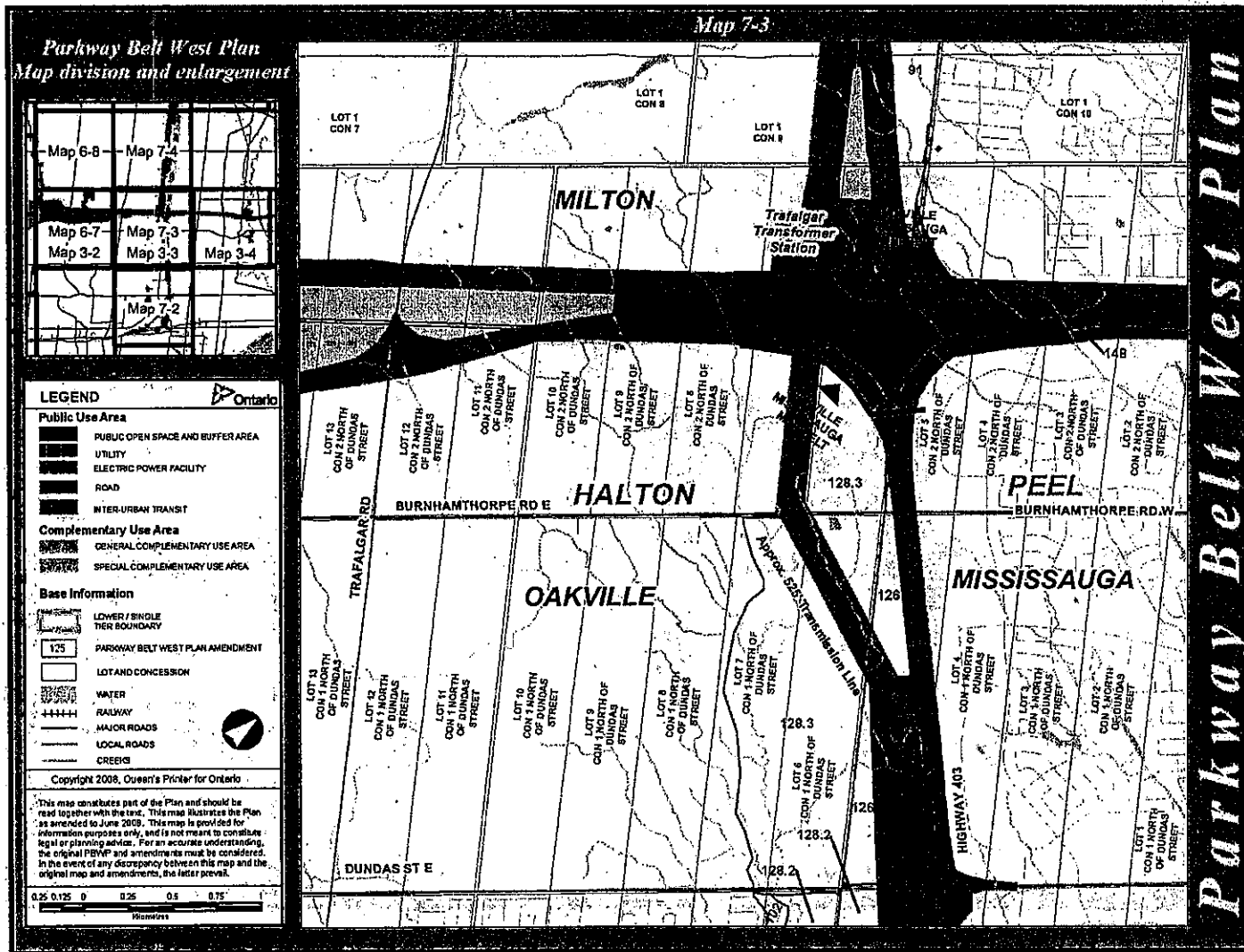
- Parkway Belt West Plan was implemented by the Province of Ontario in 1978 “for the purposes of creating a multi-purpose utility corridor, urban separator and linked open space system”
- Land corridor is available for transmission, but has no transmission towers on it. Previous attempts to build transmission overhead met with local objections
- Exemption Order OHK-11 under the Environmental Assessment Act provides for certain Transmission ROWs within the Parkway Belt, including Trafalgar TS x Oakville TS, to be exempt from EA requirements

Appendix D:

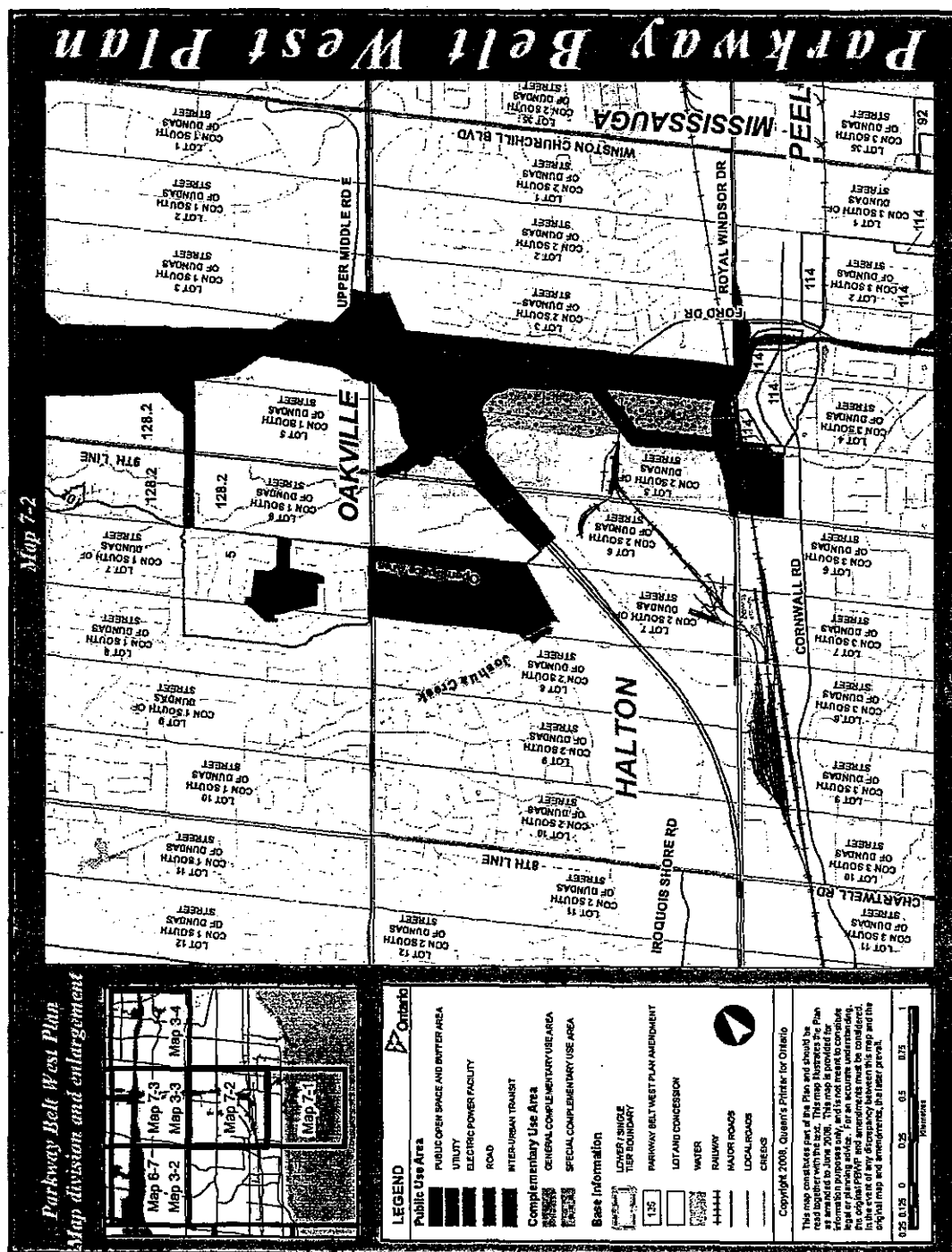
Approximate Trafalgar x Oakville Right of Way



North Trafalgar to Oakville TS



Appendix D:



Appendix D:

Transmission corridor information for option three

- Parkway Belt West Plan was implemented by the Province of Ontario in 1978 “for the purposes of creating a multi-purpose utility corridor, urban separator and linked open space system”
- Land corridor is available for transmission, but has no transmission towers on it. Previous attempts to build transmission overhead met with local objections
- Exemption Order OHK-11 under the Environmental Assessment Act provides for certain Transmission ROWs within the Parkway Belt, including Trafalgar TS x Oakville TS, to be exempt from EA requirements

Appendix D:

Approximate Trafalgar x Oakville Right of Way



Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, December 22, 2010 7:46 AM
To: Michael Killeavy
Cc: Michael Lyle
Subject: Auditor General Request re Oakville
Attachments: MEM_AuditorGeneralRequestReSWGTA.doc; MEM_Confidentiality Obligation.docx

Privileged and Confidential (Solicitor and Client Privilege)

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

I don't believe Mike Lyle has really had a chance to fully review the attached; however, given time constraints I wanted to get it to you.

I've also attached a sample of the cover memo we used in connection with turning over another document to the AG which may be useful depending on what, ultimately, is requested by the AG.

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



MEMORANDUM

DATE: December 22, 2010
TO: Michael Killeavy
FROM: Susan Kennedy
RE: Auditor General Request for Oakville Generating Station Information and Documentation

Privileged and Confidential (Solicitor and Client Privilege)

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

Background

You have advised that the Auditor General (or a member of his staff) has requested certain information in connection with a special audit being conducted by the Auditor General (the "AG"). Specifically, the following information has been requested:

1. What was the reason for signing the contract in 2009?
2. What was the reason for cancelling the contract now? Please provide supporting documents for the rationale.
3. When did the OPA/Ministry decide that the Oakville plant is no longer needed?
4. Can I get a copy of the contract?
5. What is the status of the contract? Has it been determined what the penalty will be for terminating the contract?

You have asked whether the OPA must produce the documentation and respond to the questions.

Answer

Yes.

Executive Summary

Summary Rationale

Essentially section 10 of the *Auditor General Act* (the "Act") provides the AG the power to access "all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by... a Crown controlled corporation...".

The OPA is a Crown controlled corporation pursuant to the definition in the Act.

The right of access to information is not qualified in any way, whether by third party confidentiality obligations of the OPA or otherwise. In fact, subsection 10(3) provides that a disclosure to the AG does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.

Confidentiality Agreement with TransCanada

All or part of the material and information that has been requested by the AG is covered by confidentiality arrangements between the OPA and TransCanada.

Article 8 of the Southwest GTA Clean Energy Supply Contract between the OPA and TransCanada dated as of the 9th day of October, 2009 (the "Contract") imposes confidentiality obligations on the OPA. Section 8.1(b) of the contract requires:

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 8.2.

Section 8.2 of the Contract requires:

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.

Exhibit B of the Contract is classified as "Mutually Confidential Information", the Auditor General's request to see the Contract implies the complete contract (i.e. inclusive of Exhibit B) and, as such, triggers the obligations on the OPA pursuant to section 8.1(b) and section 8.2 of the Contract.

The OPA must promptly notify TransCanada of Auditor General's request to be provided with a copy of the Contract.

In addition, the Auditor General will likely request follow-up documentation that may trigger further obligations under the Contract or obligations under the Confidentiality Agreement between the OPA and TransCanada dated as of the 8th day of October, 2010 (this agreement contains provisions similar to those of the Contract).

Suggested Responses

1. What was the reason for signing the contract in 2009?

- The OPA received a direction from the Minister of Energy and Infrastructure pursuant to section 10 of the *Electricity Act*, to procure:
http://www.powerauthority.on.ca/sites/default/files/page/7561_August_18_1008_-_Southwest_GTA_Supply.pdf
- Pursuant to the SWGTA Directive, the OPA conducted a competitive procurement. TransCanada Energy Ltd. was the successful proponent and pursuant to the requirements of the RFP process, the OPA signed the contract with TransCanada on October 9, 2009. Public disclosure relating to the procurement is located at:
<http://www.powerauthority.on.ca/gp/southwest-greater-toronto-area>

2. What was the reason for cancelling the contract now? Please provide supporting documents for the rationale.

- The Government announced on October 7, 2010 that the plant would not proceed as changes in demand and supply - including more than 8,000 megawatts of new, cleaner power and successful conservation efforts - eliminated the need for a natural gas plant in the area. The Government announced that a transmission solution would be used to meet the areas electricity needs:

<http://news.ontario.ca/mei/en/2010/10/oakville-power-plant-not-moving-forward.html>

The Government's analysis regarding demand and need in the southwest GTA is included in the Ministry of Energy's draft supply mix directive to the OPA which is posted for comment on the Environmental Registry until January 7, 2011:

The 2007 Integrated Power System Plan submitted to the OEB included a forecasted need for three additional gas plants in the Province, including one in the Kitchener-Waterloo-Cambridge area and one in the southwest GTA. Due to changes in demand along with the addition of approximately 8,400 MW of new supply since 2003, the outlook has changed and two of the proposed plants, including the proposed plant in Oakville, are no longer required. A transmission solution to maintain reliable supply in the southwest GTA will be required.

<http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTExNDIz&statusId=MTY3MTY0&language=en>

3. When did the OPA/Ministry decide that the Oakville plant is no longer needed?
 - We [I] do not know when the Ministry decided the Oakville plant was no longer needed. Based on the timing of the Ministry's announcement, it would appear to have been sometime in Q3 2010.
4. Can I [AG] get a copy of the contract?
 - Portions of the contract are subject to confidentiality obligations which require that the OPA provide TransCanada with notice of the request prior to disclosure. The form of the Contract (the "Form") is publicly available and a copy is provided to you at this time. If you require a copy of the actual contract, the OPA has a contractual obligation to notify TransCanada of the disclosure request, see Article 8 of the Form, prior to releasing the Agreement.
5. What is the status of the contract? Has it been determined what the penalty will be for terminating the contract?
 - The contract does not provide for a "penalty" for contract termination. The OPA is currently negotiating the terms of the termination of the contract with TransCanada. Any costs associated with the termination of the contract will not be known until negotiations are completed.

It is likely that the discussion will lead to additional questions and requests for information.

Detailed Rationale

Auditor General Act

Section 9.1(3) of the Act provides that:

The Auditor General may conduct a special audit of a Crown controlled corporation or a subsidiary of a Crown controlled corporation.

Section 10 of the Act provides, as follows:

Duty to furnish information

10. (1) Every ministry of the public service, every agency of the Crown, every Crown controlled corporation and every grant recipient shall give the Auditor General the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

Access to records

(2) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.

No waiver of privilege

(3) A disclosure to the Auditor General under subsection (1) or (2) does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege. 2004, c. 17, s. 13.

Section 11.2 of the Act provides

Prohibition re obstruction

11.2 (1) No person shall obstruct the Auditor General or any member of the Office of the Auditor General in the performance of a special audit under section 9.1 or an examination under section 9.2 and no person shall conceal or destroy any books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property that the Auditor General considers to be relevant to the subject-matter of the special audit or examination. 2004, c. 17, s. 13.

Offence

(2) Every person who knowingly contravenes subsection (1) and every director or officer of a corporation who knowingly concurs in such a contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or imprisonment for a term of not more than one year, or both. 2004, c. 17, s. 13.

Penalty, corporation

(3) If a corporation is convicted of an offence under subsection (2), the maximum penalty that may be imposed on the corporation is \$25,000. 2004, c. 17, s. 13.

Based on the language of the Act, the AG has a very broad right to documentation and information.

It should also be noted that the AG has the power to examine persons under oath. Section 11 provides:

Power to examine on oath

11. (1) The Auditor General may examine any person on oath on any matter pertinent to an audit or examination under this Act. 2004, c. 17, s. 13.

Same

(2) For the purpose of an examination, the Auditor General has the powers that Part II of the *Public Inquiries Act* confers on a commission, and that Part applies to the examination as if it were an inquiry under that Act. 2004, c. 17, s. 13.



NOTICE OF CONFIDENTIALITY OBLIGATION

DATE: •

TO: Auditor General

RE: Southwest GTA Clean Energy Supply Contract (the "Contract")

Please note that the attached Contract is subject to a confidentiality obligation.

The recipient of this document is requested, to the extent possible in connection with the discharge of its duties:

- To not make additional copies of the Contract
- To limit circulation of the Contract
- To maintain the confidentiality of the Contract

The document is part of an on-going negotiation. Disclosure could damage the negotiation process and the interests of the Province of Ontario.

If you have any questions relating to the document or the confidentiality obligations of the Ontario Power Authority related to the document, please feel free to contact:

Michael Killeavy, Director, Contract Management

W: 416-969-6299

E: michael.killeavy@powerauthority.on.ca

or

Susan Kennedy, Director, Corporate/Commercial Law Group

W: 416-969-6054

E: susan.kennedy@powerauthority.on.ca

Thank you.

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, December 23, 2010 4:04 PM
To: Michael Lyle; Michael Killeavy; JoAnne Butler
Subject: FW: Revised direction
Attachments: KWC TransCanada Direction.20 12 2010.docx; KWC TransCanada Direction.20 12 2010.cln.docx

Privileged and Confidential (Solicitor and Client Privilege)

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

Please see attached and below.

From my perspective, we can probably live with most of the proposed changes; however, the revision which removes the reference/instruction to the OPA to take into account the "financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project" seem problematic. Absent a direction to do so, I'm not sure how we could justify taking that into account in pricing the Cambridge contract.

In addition, I'm a bit worried about the removal of the "In light of the foregoing ..." paragraph as it makes it somewhat more difficult to justify essentially entering into the Cambridge plant agreement in settlement of the Oakville cancellation (and any business decisions that are informed by the fact that the Cambridge Plant is supposed to be, in part, in settlement of the Oakville cancellation).

All input greatly appreciated.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

Thank you.

Carolyn

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

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prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

December 1, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background Kitchener-Waterloo-Cambridge Area New Supply

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

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

Southwest Greater Toronto Area Supply

On August 18, 2008, the former Minister of Energy, the Honourable George Smith, directed (the "SWGTA Directive") the OPA to initiate a competitive procurement process for a combined cycle natural gas-fired electricity generation facility with a rated capacity of up to approximately 850MW for deployment in the southwest Greater Toronto Area (the "SWGTA Procurement").

On October 9, 2009, Pursuant to a direction dated August 18, 2008 (the "2008 Direction"), the OPA concluded, procured the SWGTA Procurement and signed a contract (the "the SWGTA Contract") with TransCanada Energy Ltd. ("TransCanada") to the design, construction, build and operation of a 900MW natural gas generating station in Oakville (the "Oakville Generating Station") over a 20-year term.

On October 7, 2010, I announced (i) that the Oakville Generating Station would not proceed as changes in demand and supply have made the Oakville Generating station no longer necessary

and, (ii) that a transmission solution will be implemented to maintain reliable supply in the southwest Greater Toronto Area.

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

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

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

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

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

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

I further direct that the SWGTA-2008 Direction~~ve~~ is hereby revoked.

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

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LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

Brad Duguid
Minister of Energy

CONFIDENTIAL DRAFT

December 1, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Direction

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

- a) negotiating and executing an implementation agreement which would, among other things, provide that the OPA indemnify TransCanada pending the completion of a final contract with respect to certain costs that TransCanada must incur if an in service date of the [spring of 2014] is to be met;

- b) concluding and executing a definitive contract with TransCanada by [June 30, 2011], which will address the reliability needs described above.

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

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

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I further direct that the 2008 Direction is hereby revoked.

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

1
Brad Duguid
Minister of Energy

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, December 23, 2010 4:42 PM
To: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: Re: Revised direction

Yes.

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

From: Michael Lyle
Sent: Thursday, December 23, 2010 04:09 PM
To: Michael Killeavy; Susan Kennedy; JoAnne Butler
Subject: Re: Revised direction

As would our Board.

From: Michael Killeavy
Sent: Thursday, December 23, 2010 04:07 PM
To: Susan Kennedy; Michael Lyle; JoAnne Butler
Subject: RE: Revised direction

As we discussed I agree that we'd need the "financial value of the SWGTA Contract" mentioned, otherwise I'd be loath to include recovery of this in any negotiated contract for a replacement facility.

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
416-5209788 (CELL)
416-967-1947 (FAX)

From: Susan Kennedy
Sent: December 23, 2010 4:04 PM

To: Michael Lyle; Michael Killeavy; JoAnne Butler
Subject: FW: Revised direction

Privileged and Confidential (Solicitor and Client Privilege)

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Please see attached and below.

From my perspective, we can probably live with most of the proposed changes; however, the revision which removes the reference/instruction to the OPA to take into account the "financial value of the SWGTA Contract to assess the appropriate economic value of the KWC Project" seem problematic. Absent a direction to do so, I'm not sure how we could justify taking that into account in pricing the Cambridge contract.

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All input greatly appreciated.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

Thank you.

Carolyn

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

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Crystal Pritchard

From: Deborah Langelaan
Sent: Friday, December 31, 2010 11:53 AM
To: 'John Mikkelsen (John_mikkelsen@transcanada.com)'
Cc: Colin Andersen; JoAnne Butler; Michael Lyle; Kim Marshall; Michael Killeavy; Susan Kennedy; 'Rocco Sebastiano (rsebastiano@osler.com)'; 'Paul Ivanoff (pivanoff@osler.com)'
Subject: MPS Fixed Pricing for Conversion Package

John,

Further to our letter of 21 December 2010 to TCE, the OPA requests that TCE obtain fixed pricing from MPS on or before 11 February 2011 for the M501GAC fast start conversion package, which also includes the conversion from combined cycle to simple cycle ("conversion package"). For greater certainty, this is not any OPA agreement to proceed with work on, or commitment to, the conversion package. Furthermore, this request does not imply any OPA agreement to the background or terms of the proposed letter agreement between MPS and TCE that was sent to us yesterday, and should not be construed as such.

We request that MPS provides us with an itemized scope of work for the conversion package and that the itemization of the fixed pricing be based on this scope of work.

Kind Regards,
Deb

Crystal Pritchard

From: John Mikkelsen [john_mikkelsen@transcanada.com]
Sent: Friday, December 31, 2010 3:47 PM
To: Deborah Langelaan
Cc: Colin Andersen; JoAnne Butler; Michael Lyle; Kim Marshall; Michael Killeavy; Susan Kennedy; rsebastiano@osler.com; pivanoff@osler.com; Terry Bennett; John Cashin; Terri Steeves; Janine Watson; Brandon Anderson; Karl Johansson; Bill Small; David Lever
Subject: RE: MPS Fixed Pricing for Conversion Package

Dear Deborah,

Thank you for your e-mail this morning (re MPS Fixed Pricing for Conversion Package) advising us that the OPA does not, as of this date, agree to deploy the Fast Start GTs.

As you aware, the contract with MPS Canada, Inc. places TransCanada under tight timelines, and we need to provide notification today (December 31, 2010) to MPS Canada, Inc. ("MPS") if we wish to extend the suspension from December 31, 2010 or else we will be deemed to have released MPS from suspension. Release from suspension will cause MPS to proceed with the original M501GACs, absent an agreement in principle to proceed with the conversion to the M501GAC Fast Start. Given that the OPA has not agreed to proceed with work on, or commitment to, the conversion package, and as there is no prospect of a project that could deploy the original M501GAC machines, we have notified MPS that we are extending suspension for another month to January 31, 2011.

In accordance with your e-mail, we are willing to again request fixed pricing from MPS for the M501GAC fast start conversion package and to ask to have it before February 11, 2011. As the provision of this information is at the discretion of MPS we cannot make any commitments on their behalf with respect to their agreement to provide such information. Further, while MPS indicated that they would be able to provide a firm price by February 10, 2011, their position to date has been that they would first require some fairly firm direction regarding the Fast Start. Therefore, we cannot guarantee the delivery of this information by MPS on your deadline.

Before we approach MPS for this firm pricing, we would like direction from the OPA as to the scope of information you are seeking in your request for firm pricing. TransCanada suggests that we ask MPS to provide the following breakdown of costs:

1. Cost of suspension from October 7, 2010 to February 17, 2011 (assumed notice to release from suspension date – please confirm)
2. Cost of delayed delivery (per budgetary proposal)
3. Cost of additional scope including but not limited to the cost of the increased exhaust and cooling system scope (delineated by major works)
4. Cost of the conversion of the M501GAC to M501GAS Fast Start gas turbine

We ask that you indicate whether this breakdown meets the OPA's requirements at your nearest convenience. Please know that, in the event MPS cannot or will not supply information when and as requested, TransCanada will do our best to continue to work with the OPA to arrive at a mutually satisfactory solution.

We note that, since the suspension letter agreement signed today extends the suspension to January 31, 2011, a further suspension request will have to be made to MPS for the month (or part of the month) of February if TransCanada is not put in a position to commit to the Fast Start until the firm pricing is received.

Finally, we ask you to bear in mind that the cost of terminating under the Cancellation Schedule will increase from 75% to 90%, if Notice of Termination is not received by MPS before January 21, 2011.

We thank you for your efforts to date and look forward to continue working with you on this important project in the New Year.

Kind regards,

John Mikkelsen, P.Eng.
Director, Eastern Canada, Power Development
TransCanada
Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1
Tel: 416.869.2102
Fax: 416.869.2056
Cell: 416.559.1664

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Friday, December 31, 2010 11:53 AM
To: John Mikkelsen
Cc: Colin Andersen; JoAnne Butler; Michael Lyle; Kim Marshall; Michael Killeavy; Susan Kennedy; rsebastiano@osler.com; pivanoff@osler.com
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This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message.
Thank you.

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, January 05, 2011 4:37 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Subject: FW: Revised direction
Attachments: KWC TransCanada Direction 20 12 2010 - OPA Comments_110105.docx

fyi

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: January 5, 2011 4:34 PM
To: 'Calwell, Carolyn (MEI)'
Subject: RE: Revised direction

Carolyn,

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

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

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

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

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

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, January 18, 2011 10:22 AM
To: Michael Lyle
Subject: FW: Ministry of Energy Request
Attachments: KWC TransCanada Direction 20 12 2010 - OPA Comments_110105 (3).docx; RE: Ministry of Energy Request

Mike, See attached (and below). I'd appreciate your input. Thanks.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: January 17, 2011 6:55 PM
To: Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; Ivanoff, Paul; Smith, Elliot
Subject: RE: Ministry of Energy Request

Susan,

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

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

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

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

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

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

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Monday, January 17, 2011 4:19 PM
To: Sebastiano, Rocco; Deborah Langelaan; Michael Killeavy
Cc: Ivanoff, Paul
Subject: Ministry of Energy Request

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

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

Please let me know if I've missed anything.

Thanks,

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

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January ■, 2011 ~~December ■, 2010~~

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Comment [shk]: Since directive is given pursuant to s. 25.32(4), I believe this is necessary to establish that a directive relates to an initiative that was planned by the Crown after January 1, 2004 and before the Board's first approval of the OPA's procurement process. See, for example, [redacted]

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

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LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

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

Brad Duguid
Minister of Energy

Confidential Draft

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, January 18, 2011 9:17 AM
To: 'Sebastiano, Rocco'
Cc: Michael Killeavy; Deborah Langelaan; 'Ivanoff, Paul'; 'Smith, Elliot'
Subject: RE: Ministry of Energy Request

Thanks for this. I like the changes but will need to check with Mike Lyle to see if he concurs. I think the change to the "In negotiating this contract, ..." paragraph will make the Ministry happier than the existing language.

The paragraph:

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

was added to the Directive by the Ministry, so I don't believe removing that paragraph is a non-starter.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: January 17, 2011 6:55 PM
To: Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; Ivanoff, Paul; Smith, Elliot
Subject: RE: Ministry of Energy Request

Susan,

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

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

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

justify the NRR under the KWC contract, while at the same time protecting the OPA's position in the event of future litigation.

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

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

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Monday, January 17, 2011 4:19 PM
To: Sebastiano, Rocco; Deborah Langelaan; Michael Killeavy
Cc: Ivanoff, Paul
Subject: Ministry of Energy Request

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

Please let me know if I've missed anything.

Thanks,

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

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Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, January 18, 2011 12:37 PM
To: Murray Campbell
Cc: Michael Lyle; Michael Killeavy
Subject: Search needed

Privileged and Confidential (Solicitor and Client Privilege)

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

Murray,

Can I trouble you to do a Hansard search to see what Minister Duguid has said in the House regarding Southwest GTA? Specifically, Mike Lyle has a recollection that the Minister is on record as having said something along the lines that costs associated with Southwest GTA would be recovered by TCE through a different/replacement/other facility.

This is needed in connection with trying to finalize a directive on the subject. The directive is needed urgently, so would it be possible to have search done/completed by mid-day tomorrow? Let me know re timing and if you need any more details.

Many thanks,

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

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, January 20, 2011 3:49 PM
To: Michael Lyle
Subject: FW: Directive - Status Update?

See below. Do you have a feel re the can we show draft directive to TCE question -- my instinct is no or, possibly, NO! but you've likely got a better feel for sensitivities on such a thing.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Susan Kennedy
Sent: January 20, 2011 3:48 PM
To: Michael Killeavy
Subject: RE: Directive - Status Update?

I doubt we will have a directive this week. I'm still playing with language to deal with the fact that the Ministry doesn't want to talk about costs and once I get something (which is proving less easy than I had hoped). Once I get something, I'm going to need internal [OPA] buy in before sending it to the Ministry.

I don't think the OPA can show a draft directive to a third party (at the end of the day the directives come from/belong to MEI). In any event, s decision to do so is way above my pay grade (and would probably have to be cleared with MEI regardless).

I don't think MEI would relish input from a potential contract counterparty but I really don't know for sure.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: January 20, 2011 3:43 PM
To: Susan Kennedy
Subject: Directive - Status Update?

Susan,

How are we doing on the directive?

TCE is requesting that some sort of indemnification be built into the Implementation Agreement to cover the gas turbine agreement costs. Can we do this if we consider it to be part of their development costs?

TCE also wants to see a copy of the draft directive. Do we ever do this?

I am in the TCE meeting now.

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

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, January 20, 2011 4:41 PM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Revised draft KWC directive
Attachments: KWC TransCanada Direction 20 12 2010 - OPA Comments_110120.docx

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

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

or

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

It was articulated as "nothing about costs".

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

January 11, 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

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

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, January 21, 2011 5:39 AM
To: Michael Lyle
Subject: Re: Revised draft KWC directive

That was an Oslers suggestion. Haven't floated it yet; however, I think the language is highly desirable if we are going with the later language to establish what the relevant context is.

From: Michael Lyle
Sent: Thursday, January 20, 2011 07:01 PM
To: Susan Kennedy
Subject: RE: Revised draft KWC directive

I am a bit confused. Attached draft has the "in lieu of OGS" paragraph. Are they ok with this?

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

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

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

or

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

It was articulated as "nothing about costs".

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

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, January 21, 2011 8:52 AM
To: Deborah Langelaan
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive

My response to Michael Killeavy:

"I doubt we will have a directive this week. I'm still playing with language to deal with the fact that the Ministry doesn't want to talk about costs and once I get something (which is proving less easy than I had hoped). Once I get something, I'm going to need internal [OPA] buy in before sending it to the Ministry.

I don't think the OPA can show a draft directive to a third party (at the end of the day the directives come from/belong to MEI). In any event, a decision to do so is way above my pay grade (and would probably have to be cleared with MEI regardless).

I don't think MEI would relish input from a potential contract counterparty but I really don't know for sure."

I will also tell you quite frankly that it is not dissimilar to us asking them for approval rights on their board resolutions, which I am highly confident they will find cheeky.

We absolutely could not provide it without the consent of Mike Lyle (possibly Colin) and, for sure, the Ministry.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Deborah Langelaan
Sent: January 21, 2011 8:47 AM
To: Susan Kennedy
Subject: FW: K-W Directive

Susan;

Before I advise TCE that we cannot share a copy of the draft Directive would you mind providing me with a reason why? I understand the confidential nature of the document but they will probably press me for an explanation.

Thanks,
Deb

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

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

From: Michael Killeavy
Sent: January 20, 2011 8:04 PM
To: Deborah Langelaan
Cc: Susan Kennedy
Subject: K-W Directive

Deb,

Could you please let TCE know that we cannot share a copy of the draft directive with TCE.

Thanks,
Michael

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

Crystal Pritchard

From: Deborah Langelaan
Sent: Friday, January 21, 2011 9:29 AM
To: Susan Kennedy
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive

Susan;

As expected TCE was not happy with our response. They asked if there would be some opportunity for them to review the language in the Directive before it is formally issued to the OPA. I advised TCE I would run it up the chain of command.

Deb

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Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

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

From: Susan Kennedy
Sent: January 21, 2011 8:52 AM
To: Deborah Langelaan
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive

My response to Michael Killeavy:

"I doubt we will have a directive this week. I'm still playing with language to deal with the fact that the Ministry doesn't want to talk about costs and once I get something (which is proving less easy than I had hoped). Once I get something, I'm going to need internal [OPA] buy in before sending it to the Ministry.

I don't think the OPA can show a draft directive to a third party (at the end of the day the directives come from/belong to MEI). In any event, a decision to do so is way above my pay grade (and would probably have to be cleared with MEI regardless).

I don't think MEI would relish input from a potential contract counterparty but I really don't know for sure."

I will also tell you quite frankly that it is not dissimilar to us asking them for approval rights on their board resolutions, which I am highly confident they will find cheeky.

We absolutely could not provide it without the consent of Mike Lyle (possibly Colin) and, for sure, the Ministry.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Deborah Langelaan
Sent: January 21, 2011 8:47 AM
To: Susan Kennedy
Subject: FW: K-W Directive

Susan;

Before I advise TCE that we cannot share a copy of the draft Directive would you mind providing me with a reason why? I understand the confidential nature of the document but they will probably press me for an explanation.

Thanks,
Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
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Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Crystal Pritchard

From: Michael Killeavy
Sent: Friday, January 21, 2011 3:55 PM
To: Susan Kennedy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: 'RSebastiano@osler.com'
Subject: Re: Revised draft KWC directive

Thank you.

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: Susan Kennedy
Sent: Friday, January 21, 2011 03:50 PM
To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: 'RSebastiano@osler.com' <RSebastiano@osler.com>
Subject: RE: Revised draft KWC directive

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

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

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

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

Many thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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or

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

It was articulated as "nothing about costs".

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

Crystal Pritchard

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

This time with attachment – apologies.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: January 21, 2011 3:51 PM
To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
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or

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

It was articulated as “nothing about costs”.

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

December 1, 2010

January 1, 2011

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

Dear Mr. Anderson Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

}

Brad Duguid
Minister of Energy

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

Formatted: Font: Bold

Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Friday, January 21, 2011 5:27 PM
To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: Smith, Elliot
Subject: RE: Revised draft KWC directive

Susan, I'll give this some thought over the weekend, but at first blush, there isn't any easy way to delete that key sentence and replace it with something which gives the OPA the necessary negotiating parameters...

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Friday, January 21, 2011 4:57 PM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: Sebastiano, Rocco
Subject: RE: Revised draft KWC directive

This time with attachment – apologies.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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From: Susan Kennedy
Sent: January 21, 2011 3:51 PM
To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: 'RSebastiano@osler.com'
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or

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

It was articulated as "nothing about costs".

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Crystal Pritchard

From: JoAnne Butler
Sent: Friday, January 21, 2011 5:33 PM
To: 'rsebastiano@osler.com'; Susan Kennedy; Michael Killeavy; Michael Lyle; Deborah Langelaan
Cc: 'ESmith@osler.com'
Subject: Re: Revised draft KWC directive

We need the language in there that protects us. If necessary, we take it to higher levels.

We can catch up on Monday.

JCB

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To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: Smith, Elliot <ESmith@osler.com>
Subject: RE: Revised draft KWC directive

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Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Monday, January 24, 2011 9:43 AM
To: JoAnne Butler; Susan Kennedy; Michael Killeavy; Michael Lyle; Deborah Langelaan
Cc: Smith, Elliot
Subject: RE: Revised draft KWC directive

Susan,

A few comments on the revised draft Directive,

- In the first paragraph under "Background", consider deleting "an additional". Although this is an additional gas plant in Ontario, it is not "an additional gas plant in Kitchener-Waterloo-Cambridge" as far as I am aware. Also, in the next sentence, add a space between the words in "the KWC Area"
- Under the heading "Direction", in the paragraph starting "As with all electricity generation projects...", if this is to remain in the directive then consider adding the word "applicable" before "local, municipal..." and delete the word "local" as the word does not have a legal meaning given that "municipal" is already there. So, it would read "undergo all applicable municipal and environmental approvals..." This way, if the project is exempted from certain municipal approvals (as in the case of PEC and YEC), then they would not be applicable.
- Regarding the sentence "In negotiating...", I think that the revised words circulated on Friday, do not provide the OPA with the comfort it needs to include costs from OGS, but at least there is some reference to it. Deleting the sentence altogether is not the answer, but I can't think of something to replace it with without a reference back to OGS. I agree with JoAnne, that we need to do whatever we can to insist that the language remain in the directive otherwise we'll either be stuck with a law suit on our hands by TCE or alternatively, the OPA may be stuck with a challenge from at the OEB if it includes OGS costs in the KWC contract without a directive to do so.

Thanks, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Friday, January 21, 2011 5:33 PM
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Crystal Pritchard

From: Susan Kennedy
Sent: Monday, January 24, 2011 10:17 AM
To: Michael Killeavy; JoAnne Butler; 'Sebastiano, Rocco'
Cc: Michael Lyle
Subject: Directive
Attachments: RE: Directive Blackline; Directive Blackline; Draft Directive.

Importance: High

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

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

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

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

Thanks.

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

Crystal Pritchard

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

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Attached.

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

Crystal Pritchard

From: Susan Kennedy
Sent: Monday, January 24, 2011 10:06 AM
To: 'Calwell, Carolyn (MEI)'
Subject: Draft Directive
Attachments: KWC TransCanada Direction 20 12 2010 - OPA Comments_110124.docx

I'll follow with a blackline.

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

January 11, 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Comment [shk1]: As per October discussions and October 7 letter, this was agreed to with TCE. Language is needed if this is to be considered as part of new plant pricing at some stage.

Comment [SHK2]: Under the heading "Direction", in the paragraph starting "As with all electricity generation projects...", if this is to remain in the direction then consider adding the word "applicable" before "local, municipal", and delete the word "local" as the word does not have a legal meaning given that "municipal" is already there. So, it would read "undergo all applicable municipal and environmental approvals...". This way, if the project is exempted from certain municipal approvals (as in the case of PEC and YEC), then they would not be applicable.

Comment [OPA3]: Consider whether this statement should be deleted. OPA is considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRR. This statement may inadvertently prevent use of such a strategy. In addition, this statement is not actually correct for all electricity generation projects procured by the OPA (e.g., legal exemptions granted to YEC and PEC). OPA understands that there is some possibility of facilitative regulation for KWC project and this statement could be limiting.

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, January 26, 2011 1:06 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
Subject: FW: Direction
Attachments: KWC TransCanada Direction.26 01 2011.cln.docx

Importance: High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]
Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

Susan,

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Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
Legal Services Branch
Ministry of the Attorney General
777 Bay Street, Suite 425
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416.212.5409

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January , 2011

Mr. Colin Andersen
Chief Executive Officer

Ontario Power Authority

Suite 1600

120 Adelaide Street West

Toronto, ON M5H 1T1

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Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should look for opportunities to reprofile investments already made by TransCanada.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: JoAnne Butler
Sent: Wednesday, January 26, 2011 3:33 PM
To: 'Sebastiano, Rocco'; 'Smith, Elliot'
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction
Attachments: KWC TransCanada Direction.26 01 2011.cln.docx
Importance: High

Can we get your comments on this one? Colin is trying to buy us some time....thanks...

JCB

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

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

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

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
Subject: FW: Direction
Importance: High

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

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Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

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Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

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

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January , 2011

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

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Background

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The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should look for opportunities to reprofile investments already made by TransCanada.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

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Brad Duguid
Minister of Energy

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, January 26, 2011 3:47 PM
To: JoAnne Butler; 'RSebastiano@osler.com'; 'ESmith@osler.com'
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: Re: Direction

This still doesn't do it for me. The language is still too vague. There is no express language authorizing us to include OGS sunk costs and the financial value of the SWGTA.

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: Wednesday, January 26, 2011 03:33 PM
To: 'Sebastiano, Rocco' <RSebastiano@osler.com>; 'Smith, Elliot' <ESmith@osler.com>
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction

Can we get your comments on this one? Colin is trying to buy us some time....thanks...

JCB

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

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joanne.butler@powerauthority.on.ca

From: Susan Kennedy
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To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
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Sent: January 26, 2011 1:02 PM
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Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, January 26, 2011 5:18 PM
To: 'RSebastiano@osler.com'; JoAnne Butler
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; 'ESmith@osler.com'
Subject: Re: Direction

Thank you Rocco.

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: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, January 26, 2011 04:49 PM
To: JoAnne Butler
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
Subject: RE: Direction

JoAnne, I'll keep my comments focussed on the key issues in the revised directive, as there are numerous grammatical errors, defined term references and other typos that also need to get cleaned up before this gets finalized.

- Last sentence of the first paragraph under "Direction". The clause "look for opportunities to reprofile investments already made by TransCanada" would address our efforts regarding the MPS equipment supply contract and the fast-start conversion; however, costs incurred on OGS (such as payments made to Ford for real property, demolition, contract cancellation, legal and other costs on the legal challenges to the municipal interim control by-law, etc...) are sunk costs which cannot be "reprofiled" for use on KWC or any other project. As such, the \$33.6 million (unsubstantiated) costs which TCE has listed as "non-recoverable costs" for OGS would not be captured by this statement. Furthermore, the loss of the anticipated financial value of the contract for OGS (i.e., the alleged \$503 million NPV that TCE has quoted) could not be characterized as an investment to be "reprofiled" but is an alleged damage flowing from the termination of the contract. To keep this in focus, what we are really talking about is the difference between the anticipated financial value of the OGS contract versus the anticipated financial value of the KWC contract (without any adjustment or "addor" for the OGS non-recoverable costs). It is this difference that TCE would want to recover as an addor to the NRR on the KWC contract, in addition to the addor for the OGS non-recoverable costs.

- Second paragraph under "Direction", not sure how to give legal meaning to "having regard to... the mutual termination of the contract for the Oakville Generation Project..." It could be interpreted simply to mean

that by entering into the contract for the KWC project, the OPA and TCE will agree to mutually terminate the OGS contract. Reading between the lines, and in particular, the words that are now omitted, we can certainly speculate that these words are intended to mean a lot more than that, but if we were to ask a third party to read this without any context and ask her whether this could be read to mean that the OPA can include the alleged loss of the anticipated financial value of the terminated contract, we'd have a hard time convincing her of this argument, particularly given that the OGS contract contains a waiver of indirect or consequential damages (such as loss of profits) in Article 14.

All of this to say, if the OPA were to receive this directive as drafted, it would not legally permit the OPA to include in the economic value of the KWC contract those costs which TCE would seek to recover as damages in a breach of contract claim under the OGS contract or under the terms of the October 7 OPA letter to TCE.

Regards, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Wednesday, January 26, 2011 3:33 PM
To: Sebastiano, Rocco; Smith, Elliot
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction
Importance: High

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Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, January 26, 2011 9:03 PM
To: Susan Kennedy
Subject: RE: Direction

Fair enough. As usual my schedule sucks but I do have time later in the afternoon.

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: Susan Kennedy
Sent: January 26, 2011 9:01 PM
To: Michael Lyle
Subject: Fw: Direction

Should we do something to follow-up on this? Even with the chat we had with Colin, I'm a bit concerned about leaving the statement, "not legally permit" statement hanging out there (on the basis that it may morph into being reported as a legal opinion from external counsel).

I would like to understand exactly what Rocco meant by "not legally permit" and try and get on the same page, preferably before one of JoAnne or Michael says this in a board meeting and one or other of us gets asked to agree or disagree.

I think we should probably call Rocco and have a discussion as to his rationale.

From: Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]
Sent: Wednesday, January 26, 2011 04:49 PM
To: JoAnne Butler
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
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416-969-6071 Fax.
joanne.butler@powerauthority.on.ca

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle

Subject: FW: Direction
Importance: High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

Susan,

I have been instructed to send you the attached as a courtesy. You will see significant editing from the version that you sent me. I have conveyed the messages that you conveyed to me about the OPA's requirements.

Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
Legal Services Branch
Ministry of the Attorney General
777 Bay Street, Suite 425
Toronto ON M5G 2E5
416.212.5409

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de le divulguer sans autorisation.

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, January 26, 2011 9:05 PM
To: Susan Kennedy
Subject: RE: Direction

I get the feeling that there is some of Rocco giving the client what he rightly assumed they wanted to hear in all of this.

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: Susan Kennedy
Sent: January 26, 2011 9:01 PM
To: Michael Lyle
Subject: Fw: Direction

Should we do something to follow-up on this? Even with the chat we had with Colin, I'm a bit concerned about leaving the statement, "not legally permit" statement hanging out there (on the basis that it may morph into being reported as a legal opinion from external counsel).

I would like to understand exactly what Rocco meant by "not legally permit" and try and get on the same page, preferably before one of JoAnne or Michael says this in a board meeting and one or other of us gets asked to agree or disagree.

I think we should probably call Rocco and have a discussion as to his rationale.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, January 26, 2011 04:49 PM
To: JoAnne Butler
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
Subject: RE: Direction

JoAnne, I'll keep my comments focussed on the key issues in the revised directive, as there are numerous grammatical errors, defined term references and other typos that also need to get cleaned up before this gets finalized.

- Last sentence of the first paragraph under "Direction". The clause "look for opportunities to reprofile investments already made by TransCanada" would address our efforts regarding the MPS equipment supply

contract and the fast-start conversion; however, costs incurred on OGS (such as payments made to Ford for real property, demolition, contract cancellation, legal and other costs on the legal challenges to the municipal interim control by-law, etc...) are sunk costs which cannot be "reprofiled" for use on KWC or any other project. As such, the \$33.6 million (unsubstantiated) costs which TCE has listed as "non-recoverable costs" for OGS would not be captured by this statement. Furthermore, the loss of the anticipated financial value of the contract for OGS (i.e., the alleged \$503 million NPV that TCE has quoted) could not be characterized as an investment to be "reprofiled" but is an alleged damage flowing from the termination of the contract. To keep this in focus, what we are really talking about is the difference between the anticipated financial value of the OGS contract versus the anticipated financial value of the KWC contract (without any adjustment or "add" for the OGS non-recoverable costs). It is this difference that TCE would want to recover as an add to the NRR on the KWC contract, in addition to the add for the OGS non-recoverable costs.

- Second paragraph under "Direction", not sure how to give legal meaning to "having regard to... the mutual termination of the contract for the Oakville Generation Project..." It could be interpreted simply to mean that by entering into the contract for the KWC project, the OPA and TCE will agree to mutually terminate the OGS contract. Reading between the lines, and in particular, the words that are now omitted, we can certainly speculate that these words are intended to mean a lot more than that, but if we were to ask a third party to read this without any context and ask her whether this could be read to mean that the OPA can include the alleged loss of the anticipated financial value of the terminated contract, we'd have a hard time convincing her of this argument, particularly given that the OGS contract contains a waiver of indirect or consequential damages (such as loss of profits) in Article 14.

All of this to say, if the OPA were to receive this directive as drafted, it would not legally permit the OPA to include in the economic value of the KWC contract those costs which TCE would seek to recover as damages in a breach of contract claim under the OGS contract or under the terms of the October 7 OPA letter to TCE.

Regards, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Wednesday, January 26, 2011 3:33 PM
To: Sebastiano, Rocco; Smith, Elliot
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction
Importance: High

Can we get your comments on this one? Colin is trying to buy us some time....thanks...

JCB

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

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

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

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle

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Director, Corporate/Commercial Law Group

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A/Deputy Director
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Crystal Pritchard

From: Deborah Langelaan
Sent: Thursday, January 27, 2011 7:23 PM
To: Susan Kennedy
Cc: Michael Lyle
Subject: Re: TCE Meeting

Susan;

It appears as if I misunderstood the purpose of your meeting with Rocco. I will schedule a 9:00 meeting to discuss process letter approach with TCE.

Deb

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

From: Susan Kennedy
Sent: Thursday, January 27, 2011 07:17 PM
To: Deborah Langelaan
Cc: Michael Lyle
Subject: RE: TCE Meeting

Hi Deb, Re the below, I just figured out we're playing a bit of broken telephone. JoAnne mentioned that you guys had a 9AM meeting set up with Rocco to discuss the "process letter" approach and she had hoped Mike and/or I could attend.

Mike and I have a teleconference for 9:30 set up with Rocco to discuss a couple of matters but not, in fact, the actual directive [since I assume your info came from Rocco, he may have not completely understood what we wanted to discuss as we left him a somewhat cryptic voicemail]. Subject to Mike disagreeing, I don't want the participants expanded beyond Mike, myself and Rocco with respect to the scheduled 9:30 call.

As a result, I'm not completely sure if you guys have a 9AM meeting set up with Rocco [presumably in person] or not.

Here is the lay of the land, I can be in the office slightly after 9AM, I have a medical appointment for 8:30 which I can't really reschedule but it shouldn't take too long and is relatively close to office.

I can't speak to Mike's schedule.

Mike and I have a 9:30 teleconference on a different topic [although Rocco may have misunderstood the reason for the call] and a group session on that topic is really appropriate. I'd prefer not to have the 9:30 meeting hijacked but we can probably either start or finish on the process letter.

My blackberry is sitting on my desk, so I have some constraints on my email access until after 9AM tomorrow.

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

From: Deborah Langelaan
Sent: Thu 1/27/2011 5:46 PM
To: Susan Kennedy
Subject: TCE Meeting

Susan;

We've just returned from a meeting with TCE where we discussed a novel approach to resolving the Directive issue. They suggested handling it in a similar fashion as we did for PEC where the OPA provided a Process Letter that contained Goreway's NRR as a benchmark and the Directive referenced the letter. That way sensitive commercial information was never made public through the Directive. I understand you are meeting with Rocco tomorrow morning to discuss the Directive and if you're okay we (JoAnne, Michael, me) would like to join you for the discussion. Please let me know if you're agreeable to this.

Thanks,

Deb

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

T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca

<blocked::mailto:|deborah.langelaan@powerauthority.on.ca> |

Crystal Pritchard

From: Deborah Langelaan
Sent: Monday, January 31, 2011 5:48 PM
To: 'rsebastiano@osler.com'
Cc: Anshul Mathur; JoAnne Butler; Michael Killeavy; Michael Lyle; Susan Kennedy; 'esmith@osler.com'
Subject: Fw: TransCanada - MPS - Release from Suspension

Rocco,

Do you see a need for the OPA to respond?

Deb

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: Monday, January 31, 2011 05:40 PM
To: Deborah Langelaan
Cc: JoAnne Butler; Terry Bennett <terry_bennett@transcanada.com>; Michael Killeavy; Terri Steeves <terri_steeves@transcanada.com>; John Cashin <john_cashin@transcanada.com>; David Lever <DLEVER@MCCARTHY.CA>; rsebastiano@osler.com <rsebastiano@osler.com>; Susan Kennedy; Geoff Murray <geoff_murray@transcanada.com>
Subject: TransCanada - MPS - Release from Suspension

With Prejudice

Dear Deborah,

Further to our recent discussions and emails, we have advised you that the suspension of the MPS contract for the gas turbines will expire today. Without further action by TCE, the suspension lapses and MPS would recommence work on the original turbines.

Notwithstanding the changes in the scope delineation and pricing delineation provided by MPS on Friday January 28, 2011, TCE believes that the most prudent course of action at this time would be to release MPS from suspension and direct them to commence work on converting the turbines to Fast Start, but to delay any decisions on the additional scope of work required for simple cycle operation at the Cambridge project (the cooling system and stacks). The choice of the fast start option will meet the requirements of the proposed Cambridge plant and, if that plant were not to proceed, will, in our opinion, increase the marketability of the turbines for reuse or resale. It will also fix the costs that TCE and the OPA are exposed to, in accordance with MPS's proposal, versus the unknown cost of continuing the suspension.

In light of our ongoing discussions regarding the Cambridge project, and notwithstanding the recent disagreement regarding OGS damages which we are attempting to resolve with you, TCE intends to proceed as described above. We trust that the OPA concurs with this decision. In the event that the OPA and TCE do not reach agreement on the Cambridge project or an alternative project, any costs incurred by TCE under the MPS contracts, including for the above changes, will form part of any damage claim which TCE will have against the OPA for repudiation / termination of the OGS project.

Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

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Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Monday, January 31, 2011 6:34 PM
To: Deborah Langelaan
Cc: Anshul Mathur; JoAnne Butler; Michael Killeavy; Michael Lyle; Susan Kennedy; Smith, Elliot
Subject: Re: TransCanada - MPS - Release from Suspension

I don't see any need for the OPA to respond to TCE's email.

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

Regards, Rocco

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Monday, January 31, 2011 05:47 PM
To: Sebastiano, Rocco
Cc: Anshul Mathur <Anshul.Mathur@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>; Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Michael Lyle <Michael.Lyle@powerauthority.on.ca>; Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Smith, Elliot
Subject: Fw: TransCanada - MPS - Release from Suspension

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Sent: Monday, January 31, 2011 05:40 PM
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Cc: JoAnne Butler; Terry Bennett <terry_bennett@transcanada.com>; Michael Killeavy; Terri Steeves <terri_steeves@transcanada.com>; John Cashin <john_cashin@transcanada.com>; David Lever <DLEVER@MCCARTHY.CA>; rsebastiano@osler.com <rsebastiano@osler.com>; Susan Kennedy; Geoff Murray <geoff_murray@transcanada.com>
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Best regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, February 02, 2011 4:49 PM
To: JoAnne Butler
Cc: Michael Lyle
Subject: Fw: BOARD STAFF IR I-1-21
Attachments: I-1-21 BOARD STAFF IR.docx

Do you have any thoughts on how to answer this? I don't think we/I can answer (a). I'm not sure what we can say about (b) unless it's "we are awaiting a directive from the Minister", or words to this effect.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy
Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

From: Martha McOuat

Sent: January 25, 2011 2:08 PM

To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka

Cc: Michael Lyle; Anna LeBourdais

Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25:	Interrogatories received from Intervenors, distributed to authors immediately
February 1:	Your responses due to Regulatory Affairs
February 2-3:	Regulatory and Legal review, some further edits by authors may be required
February 4:	Mike Lyle review; some further edits may be required. Submit full package to Colin for review
February 7:	Colin's comments received, some further edits may be required
February 8:	Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais

Sent: January 25, 2011 1:53 PM

To: Martha McOuat

Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

BOARD STAFF INTERROGATORY 21

QUESTION

Supply Procurement and Contract Management

Issue 3.3

Does Strategic Objective #3 adequately reflect the tasks that the OPA is charged with by statute and directives in 2011, and do the initiatives capture the range of activity required to achieve that end?

Board Staff question #21

References

Exhibit B/Tab 3/Schedule 1/Page 5 and 6

Preamble

The OPA states in its pre-filed evidence that Initiative 4 for Strategic Objective #3 is "Contract management and financial settlements of existing electricity supply contracts." In 2009, the OPA entered into a contract with a TransCanada Energy Ltd. to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville in response to an August 18, 2008 directive from the Minister of Energy and Infrastructure to procure supply for the Southwest Greater Toronto Area. On October 7, 2010 the Government of Ontario stated that the construction of a proposed natural gas plant in Oakville would no longer be required going forward.

Questions

- a) What is the status of the August 18, 2008 directive? How is the OPA planning to procure supply for the Southwest Greater Toronto Area in the absence of the Oakville contract?
- b) What process will the OPA undertake to terminate the contract? What resources are budgeted for this negotiation? How will performance be measured?

RESPONSE

Enter response here...

Filed: February 8, 2011

EB-2010-0279

Exhibit I

Tab 1

Schedule 21.

Page 2 of 2

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, February 02, 2011 5:12 PM
To: Michael Lyle; JoAnne Butler
Subject: Re: BOARD STAFF IR I-1-21

Ok.

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

From: Michael Lyle
Sent: Wednesday, February 02, 2011 05:10 PM
To: Michael Killeavy; JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I think the answer is to (a) that we are negotiating a mutually agreed termination of the OGS contract in light of the Minister's announcement of October 7, 2010. PSP can help you with the supply component of the answer. On (b), the answer is that we are in negotiations with TCE, describe that a component of internal staff (2 ER part of the time) time is assigned to this work along with internal legal time and external legal counsel and consultant. We will insert some general language about no specific budget having been created for this particular matter. On performance metric, I assume that limiting the cost to ratepayers in negotiating mutually agreed termination is how we will judge our performance.

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

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From: Michael Killeavy
Sent: February 2, 2011 4:49 PM
To: JoAnne Butler

Cc: Michael Lyle
Subject: Fw: BOARD STAFF IR I-1-21

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Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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February 4:	Mike Lyle review; some further edits may be required. Submit full package to Colin for review
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February 8:	Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais
Sent: January 25, 2011 1:53 PM
To: Martha McQuat
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

Crystal Pritchard

From: JoAnne Butler
Sent: Thursday, February 03, 2011 9:12 AM
To: Michael Lyle; Michael Killeavy
Subject: RE: BOARD STAFF IR I-1-21

Yep, Mike's comments look great to me...I think that we should confirm the resource numbers, though....between Anshul, Deb, you, me, Susan, execs as appropriate, we have more than 2 ER part time. I don't want it to appear understaffed considering the incredible value and scrutiny that this contract has, nor do I want it to seem overstaffed. We need to strike the balance.

JCB

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

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

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

From: Michael Lyle
Sent: Miércoles, 02 de Febrero de 2011 05:11 p.m.
To: Michael Killeavy; JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I think the answer is to (a) that we are negotiating a mutually agreed termination of the OGS contract in light of the Minister's announcement of October 7, 2010. PSP can help you with the supply component of the answer. On (b), the answer is that we are in negotiations with TCE, describe that a component of internal staff (2 ER part of the time) time is assigned to this work along with internal legal time and external legal counsel and consultant. We will insert some general language about no specific budget having been created for this particular matter. On performance metric, I assume that limiting the cost to ratepayers in negotiating mutually agreed termination is how we will judge our performance.

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

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From: Michael Killeavy
Sent: February 2, 2011 4:49 PM

To: JoAnne Butler
Cc: Michael Lyle
Subject: Fw: BOARD STAFF IR I-1-21

Do you have any thoughts on how to answer this? I don't think we/I can answer (a). I'm not sure what we can say about (b) unless it's "we are awaiting a directive from the Minister", or words to this effect.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy
Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,
Kevin

From: Martha McOuat
Sent: January 25, 2011 2:08 PM
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy;

Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka

Cc: Michael Lyle; Anna LeBourdais

Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

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Sent: January 25, 2011 1:53 PM

To: Martha McOuat

Subject:

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Cheers,

Anna

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, February 03, 2011 7:18 PM
To: 'ESmith@osler.com'; Deborah Langelaan
Cc: 'PIvanoff@osler.com'; 'RSebastiano@osler.com'; Michael Lyle; Susan Kennedy
Subject: Re: Opinion on Residual Value

Thank you Elliot. Your analysis is very helpful.

As a follow up, if the OPA were to be found by a court to have repudiated the contract, would the OPA be able to rely on the exclusion clause related to consequential damages?

Thanks again for this.

Michael

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

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, February 03, 2011 07:04 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: Opinion on Residual Value

Michael/Deb,

As discussed, we have had a lawyer in our research group look into the question of whether the salvage value of TCE's facility is encompassed by the words of the OPA's October 7 letter to TCE. I've set out below his preliminary findings.

Based on the standard principal of damages at common law, if we look at the benefit of the contract to TCE, it includes both the 20-year revenue stream from the OPA and whatever TCE is left with at the end of the term. In other words, on an assessment of the expectation value of damages of the contract, we would typically expect the residual value would factor in. This result is more intuitive if you look to an analogy that goes the other way. For example, if this were a nuclear power plant rather than a gas-fired power plant, we would expect to discount the significant decommissioning costs from any lost profits in calculating the damages for breach of contract.

That said, although we would expect the residual value of the facility to factor into an assessment of damages, it is necessary to take into account a significant contingency in the residual value to reflect the possibility that the facility either does not exist or does not function in 20 years. In this particular case, that contingency would also need to take into account the considerable uncertainty around both the price of gas and the price of electricity in 20 years.

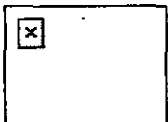
There was very little case law on point, but we did find one case that considered the concept of salvage value. It was a dispute between Air Canada and Ticketnet, who were partnering to develop an e-ticketing application. When the application was partially complete, Air Canada was to finish it and share the final product with Ticketnet. A dispute arose and Air Canada refused to finish the application or permit Ticketnet to finish the application. Ticketnet sued Air Canada for loss of profits. In calculating its lost profits, Ticketnet did not include any residual value for the software. The trial judge found that the lack of residual value constituted a conservative assumption by Ticketnet, and in part used this to draw his conclusion that the valuation was a reasonable one. This analysis was affirmed by the Ontario Court of Appeal. From this point, it can be inferred that the court considered residual value to be a valid head of damage since if the court did not, it would not have seen the exclusion of residual value as a conservative assumption.

With respect to the words of the October 7 letter, it references "reasonable damages...*including* the anticipated financial value of the Contract." As written, the words "anticipated financial value of the Contract" are encompassed as part of the "reasonable damages" and not a stand-alone or separate head of damages. From this we would tend to draw the conclusion that the words of the letter do not change the analysis of the damages resulting from a breach of the contract since the letter itself only promises "reasonable damages".

Lastly, as you know there is an exclusion of consequential damages (including loss of profits) set out in the agreement, so to the extent that was applicable, it would considerably change the overall analysis of the damages for breach of contract.

I hope this has been helpful. Please let us know if you have any follow-up questions or comments.

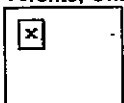
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 5:17 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan; Smith, Elliot; Ivanoff, Paul
Subject: Re: Opinion on Residual Value

We need this as soon as you can provide it and no later than Monday afternoon. Sorry to jam you.

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

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, February 03, 2011 04:58 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>
Subject: RE: Opinion on Residual Value

We have one of our lawyers in our research group doing some research on the issue to see if there has been any case law on this as it is a bit of an esoteric point. We'll try to get our memo revised in the next couple of days to consider this issue.

Given that this is also a commercial/business point as opposed to simply a legal interpretation issue, I wonder whether it would make sense to get someone at a financial advisory firm like Macquarie's (for example, Paul Bradley) or someone like Rob Cary to weigh in on this point. The benefit of this is that if we end up having to negotiate the issue "anticipated financial value of the Contract" someone with Paul's or Rob's background on project financing and financial modelling would be able to assist us in ways that Safouh cannot given that his background is more on the technical aspects of the project.

Regards, Rocco

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 4:25 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Opinion on Residual Value

Rocco,

When might we get your opinion on whether residual value of a project might reasonably be considered as damages for a breach of contract?

We need to meet with TCE next week to "negotiate" alleged loss of profit on OGS and it would be helpful to have your opinion before we meet.

Thanks,
Michael

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

From: Susan Kennedy
Sent: Friday, February 04, 2011 8:21 AM
To: Michael Killeavy
Cc: Bonny Wong; Terry Gabriele; Michael Lyle
Subject: Financial Audit 2010 - Osler Audit Letter
Attachments: 20110204091233.pdf

Thanks,

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

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Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON, M5X 1B8

Attention: Mr. Rocco Sebastiano

January 24, 2011

Dear Sir(s):

In connection with the preparation and audit of our financial statements for the fiscal period ended December 31, 2010, we have made the following evaluations of claims and possible claims with respect to which your firm's advice or representation has been sought:

Description

TransCanada and Ontario Power Authority - In light of the Ontario Government's announcement with respect to the Oakville Generating Station, that the gas plant in Oakville is no longer needed and the plant will not proceed, TransCanada and Ontario Power Authority (OPA) have begun discussions where both sides have mutually agree to terminate the contract and are in the process of discussing reasonable payments TransCanada is entitled to.

Evaluation

Likelihood of loss is not determinable and the amount is not reasonably estimable.

*Need
text for
Greenfield
South
matter*

Would you please advise us, as of February 2, 2011, on the following points:

- (a) Are the claims and possible claims properly described?
- (b) Do you consider that our evaluations are reasonable?
- (c) Are you aware of any claims not listed above which are outstanding? If so, please include in your response letter the names of the parties and the amount claimed.

This enquiry is made in accordance with the Joint Policy Statement of January 1978 approved by The Canadian Bar Association and the Auditing Standards Committee of The Canadian Institute of Chartered Accountants.

Please address your reply, marked "Privileged and Confidential," to this company and send a signed copy of the reply directly to our auditors, KPMG LLP, Attention: Sandra Chiu via email at schiu1@kpmg.ca

Yours truly,

Michael Lyle

General Council and VP Legal
cc: KPMG LLP

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, February 04, 2011 9:19 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive
Attachments: KWC TransCanada Direction 26 01 2011 cln - OPA Comments_110204v1.docx

Privileged and Confidential (Solicitor and Client Privilege)

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

Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

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

February/January, 2011

Mr. Colin Andersen
Chief Executive Officer
Ontario Power Authority
Suite 1600

120 Adelaide Street West
Toronto, ON M5H 1T1

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project—that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Martha McOuat
Sent: Friday, February 04, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?

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

From: Michael Lyle
Sent: February 4, 2011 9:38 AM
To: Susan Kennedy; Michael Killeavy; Martha McOuat
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
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-----Original Message-----

From: Susan Kennedy
Sent: February 4, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity

Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: February 4, 2011 8:30 AM
To: Martha McOuat; Susan Kennedy
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,
Michael

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

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

From: Martha McOuat
Sent: Thu 03-Feb-11 5:04 PM
To: Susan Kennedy

Cc: Michael Killeavy
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy
Sent: February 2, 2011 4:51 PM
To: Anna LeBourdais
Cc: Martha McOuat; Miriam Heinz
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
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Subject: BOARD STAFF IR I-1-21

Michael,

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Anna LeBourdais

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Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy

Cc: Michael Lyle; Anna LeBourdais
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To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka
Cc: Michael Lyle; Anna LeBourdais
Subject: FW:

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Sent: January 25, 2011 1:53 PM
To: Martha McOuat
Subject:

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Cheers,

Anna

Crystal Pritchard

From: Michael Lyle
Sent: Friday, February 04, 2011 9:42 AM
To: Martha McQuat
Subject: FW: BOARD STAFF IR I-1-21

Although I would add our standard line about not having capacity to break down costs.

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

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

From: Martha McQuat
Sent: February 4, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

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From: Michael Lyle
Sent: February 4, 2011 9:38 AM
To: Susan Kennedy; Michael Killeavy; Martha McQuat
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

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

From: Susan Kennedy
Sent: February 4, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: February 4, 2011 8:30 AM
To: Martha McOuat; Susan Kennedy
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,
Michael

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

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

From: Martha McOuat
Sent: Thu 03-Feb-11 5:04 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy
Sent: February 2, 2011 4:51 PM
To: Anna LeBourdais
Cc: Martha McOuat; Miriam Heinz
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy
Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

From: Martha McOuat
Sent: January 25, 2011 2:08 PM
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka
Cc: Michael Lyle; Anna LeBourdais
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25: authors immediately	Interrogatories received from Intervenors, distributed to
February 1:	Your responses due to Regulatory Affairs
February 2-3: may be required	Regulatory and Legal review, some further edits by authors
February 4: Submit full package to Colin for review	Mike Lyle review; some further edits may be required.
February 7: required	Colin's comments received, some further edits may be
February 8:	Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais
Sent: January 25, 2011 1:53 PM
To: Martha McOuat
Subject:

Attached is the scanned version of the BOARD.STAFF's interrogatories.

Cheers,

Anna

Crystal Pritchard

From: Michael Lyle
Sent: Friday, February 04, 2011 1:29 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; "
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

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General Counsel and Vice President
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-----Original Message-----

From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

I specifically asked Susan to include Contract Capacity of 450 MW but based on yesterday's discussions it looks like we need a little wiggle room. Perhaps the language could be "approximately 450 MW".

Deb

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

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

From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

Could we mention the nameplate capacity of instead of referring to the Contract Capacity, or not mention capacity at all? We may need some flexibility in this regard as we go forward with TCE.

Is it possible to mention the 7 October 2010 letter from the OPA to TCE in the last sentence on the second page, e.g., "... to reprofile investments already made by TransCanada and minimize overall costs in the context of the 7 October 2010 letter from the OPA to TransCanada"? I am thinking that we need something that links that letter's commitment to the negotiations, otherwise why are we doing it.

Michael

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

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

From: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler;
'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

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

Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

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

Crystal Pritchard

From: JoAnne Butler
Sent: Friday, February 04, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; "; "
Subject: RE: Latest Attempt at Directive

Yes, that could work - it would need to be changed in both background and directive paragraph. I am comfortable with the other red lines that Susan made....

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

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

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

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

From: Michael Killeavy
Sent: Viernes, 04 de Febrero de 2011 01:34 p.m.
To: Michael Lyle; Deborah Langelaan; Susan Kennedy; JoAnne Butler; "; "
Subject: RE: Latest Attempt at Directive

Sure, up to 500 MW is good.

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

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

From: Michael Lyle
Sent: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; "; "
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

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Deb

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T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca |

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

From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

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Michael

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Michael.killeavy@powerauthority.on.ca

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

From: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler;
'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

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All input welcome and appreciated.

Susan H. Kennedy

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Crystal Pritchard

From: Michael Killeavy
Sent: Friday, February 04, 2011 6:43 PM
To: 'RSebastiano@osler.com'
Cc: Deborah Langelaan; Michael Lyle; Susan Kennedy; 'ESmith@osler.com'; 'PIvanoff@osler.com'
Subject: Re: Opinion on Residual Value

Thank you Rocco. This is helpful.

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, February 04, 2011 06:38 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Michael Lyle; Susan Kennedy; Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>
Subject: RE: Opinion on Residual Value

Michael,

In our view, assuming that the OPA has repudiated the Contract, such a repudiation would not, in itself, prevent the OPA from relying on s. 14.1 of the Contract, which excludes liability for consequential damages.

The Supreme Court of Canada recently "laid to rest" the doctrine of fundamental breach as it relates to the enforceability of an exclusion of liability clause: *Tercon Contractors Ltd. v. British Columbia*, 2010 SCC 4 (*Tercon*). Following *Tercon*, a party that repudiates or "fundamentally breaches" an agreement does not thereby forfeit the protection of an exclusion clause. Instead, the court will apply the following three-part test in determining the applicability and validity of an exclusion clause in a given case:

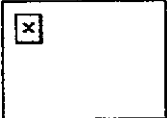
1. As a matter of interpretation, does the wording of the exclusion clause apply to the particular circumstances of the case?
2. If the exclusion clause applies, was it unconscionable at the time the contract was made?
3. If the exclusion clause applies and was not unconscionable at the time of formation, should the court nevertheless refuse to enforce it on the basis of an overriding public policy (*i.e.*, party seeking to rely on the exclusion clause has engaged in fraud, criminality, or other unconscionable behaviour)?

In our view, it is likely that s. 14.1 of the Contract would meet the requirements of this three-part test in the circumstances of this case:

1. In terms of applicability, s. 14.1 is broadly worded so as to apply to a party's liability "under this Agreement or under any cause of action relating to the subject matter of this Agreement";
2. It appears unlikely that s. 14.1 was "unconscionable" at the time it was made (it was agreed to by sophisticated parties with access to legal counsel, it does not constitute a total bar on liability, and it protects both parties); and
3. The OPA, in repudiating the Contract, has not engaged in conduct that justifies a refusal to enforce s. 14.1 on the basis of an "overriding public policy" (the repudiation was not criminal, duplicitous or otherwise unconscionable).

However, we caution that further research may be required to determine the extent to which TCE's claims for damages fall within the scope of s. 14.1. Section 14.1 excludes liability for "consequential damages, *including* loss of profits" (emphasis added). TCE could raise the argument that s. 14.1 would not exclude liability for lost profits that constitute *direct* damages (albeit TCE would then have to establish how its loss of profits were a direct consequence as opposed to an indirect consequence of the OPA's repudiation of the Contract). Furthermore, as discussed in our legal memo of December 1, 2010, TCE could also argue that the OPA's letter of October 7, 2010 constitutes a waiver of OPA's ability to rely upon Section 14.1.

Thanks, Rocco



Rocco Sebastiano
Partner

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 7:18 PM
To: Smith, Elliot; Deborah Langelaan
Cc: Ivanoff, Paul; Sebastiano, Rocco; Michael Lyle; Susan Kennedy
Subject: Re: Opinion on Residual Value

Thank you Elliot. Your analysis is very helpful.

As a follow up, if the OPA were to be found by a court to have repudiated the contract, would the OPA be able to rely on the exclusion clause related to consequential damages?

Thanks again for this.

Michael

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Michael.killeavy@powerauthority.on.ca

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, February 03, 2011 07:04 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: Opinion on Residual Value

Michael/Deb,

As discussed, we have had a lawyer in our research group look into the question of whether the salvage value of TCE's facility is encompassed by the words of the OPA's October 7 letter to TCE. I've set out below his preliminary findings.

Based on the standard principal of damages at common law, if we look at the benefit of the contract to TCE, it includes both the 20-year revenue stream from the OPA and whatever TCE is left with at the end of the term. In other words, on an assessment of the expectation value of damages of the contract, we would typically expect the residual value would factor in. This result is more intuitive if you look to an analogy that goes the other way. For example, if this were a nuclear power plant rather than a gas-fired power plant, we would expect to discount the significant decommissioning costs from any lost profits in calculating the damages for breach of contract.

That said, although we would expect the residual value of the facility to factor into an assessment of damages, it is necessary to take into account a significant contingency in the residual value to reflect the possibility that the facility either does not exist or does not function in 20 years. In this particular case, that contingency would also need to take into account the considerable uncertainty around both the price of gas and the price of electricity in 20 years.

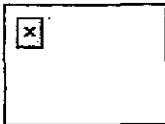
There was very little case law on point, but we did find one case that considered the concept of salvage value. It was a dispute between Air Canada and Ticketnet, who were partnering to develop an e-ticketing application. When the application was partially complete, Air Canada was to finish it and share the final product with Ticketnet. A dispute arose and Air Canada refused to finish the application or permit Ticketnet to finish the application. Ticketnet sued Air Canada for loss of profits. In calculating its lost profits, Ticketnet did not include any residual value for the software. The trial judge found that the lack of residual value constituted a conservative assumption by Ticketnet, and in part used this to draw his conclusion that the valuation was a reasonable one. This analysis was affirmed by the Ontario Court of Appeal. From this point, it can be inferred that the court considered residual value to be a valid head of damage since if the court did not, it would not have seen the exclusion of residual value as a conservative assumption.

With respect to the words of the October 7 letter, it references "reasonable damages...including the anticipated financial value of the Contract." As written, the words "anticipated financial value of the Contract" are encompassed as part of the "reasonable damages" and not a stand-alone or separate head of damages. From this we would tend to draw the conclusion that the words of the letter do not change the analysis of the damages resulting from a breach of the contract since the letter itself only promises "reasonable damages".

Lastly, as you know there is an exclusion of consequential damages (including loss of profits) set out in the agreement, so to the extent that was applicable, it would considerably change the overall analysis of the damages for breach of contract.

I hope this has been helpful. Please let us know if you have any follow-up questions or comments.

Elliot



Elliot Smith
Associate

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8



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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 5:17 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan; Smith, Elliot; Ivanoff, Paul
Subject: Re: Opinion on Residual Value

We need this as soon as you can provide it and no later than Monday afternoon. Sorry to jam you.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-969-6288 (office)
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Michael.killeavy@powerauthority.on.ca

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, February 03, 2011 04:58 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul
<PIvanoff@osler.com>
Subject: RE: Opinion on Residual Value

We have one of our lawyers in our research group doing some research on the issue to see if there has been any case law on this as it is a bit of an esoteric point. We'll try to get our memo revised in the next couple of days to consider this issue.

Given that this is also a commercial/business point as opposed to simply a legal interpretation issue, I wonder whether it would make sense to get someone at a financial advisory firm like Macquarie's (for example, Paul Bradley) or someone like Rob Cary to weigh in on this point. The benefit of this is that if we end up having to negotiate the issue "anticipated financial value of the Contract" someone with Paul's or Rob's background on project financing and financial modelling would be able to assist us in ways that Safouh cannot given that his background is more on the technical aspects of the project.

Regards, Rocco

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 4:25 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Opinion on Residual Value

Rocco,

When might we get your opinion on whether residual value of a project might reasonably be considered as damages for a breach of contract?

We need to meet with TCE next week to "negotiate" alleged loss of profit on OGS and it would be helpful to have your opinion before we meet.

Thanks,
Michael

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Crystal Pritchard

From: Karen Frecker
Sent: Monday, February 07, 2011 9:57 AM
To: Martha McQuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I've spoken with Joe Toneguzzo and we have identified the following text to replace part (a):

The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area. The OPA plans to address the aspects of this solution related to the bulk system in the second IPSP.

The second sentence is optional.

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

From: Martha McQuat
Sent: February 4, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?

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

From: Michael Lyle
Sent: February 4, 2011 9:38 AM
To: Susan Kennedy; Michael Killeavy; Martha McQuat
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

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

From: Susan Kennedy
Sent: February 4, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

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Director, Corporate/Commercial Law Group

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Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

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Attachments: I-1-21 BOARD STAFF v3 (MK kf) 2011-02-07.docx

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Sent: February 7, 2011 9:57 AM
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The second sentence is optional.

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Sent: February 4, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

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Subject: RE: BOARD STAFF IR I-1-21

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BOARD STAFF INTERROGATORY 21

QUESTION

Supply Procurement and Contract Management

Issue 3.3

Does Strategic Objective #3 adequately reflect the tasks that the OPA is charged with by statute and directives in 2011, and do the initiatives capture the range of activity required to achieve that end?

Board Staff question #21

References

Exhibit B/Tab 3/Schedule 1/Page 5 and 6

Preamble

The OPA states in its pre-filed evidence that Initiative 4 for Strategic Objective #3 is "Contract management and financial settlements of existing electricity supply contracts." In 2009, the OPA entered into a contract with a TransCanada Energy Ltd. to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville in response to an August 18, 2008 directive from the Minister of Energy and Infrastructure to procure supply for the Southwest Greater Toronto Area. On October 7, 2010 the Government of Ontario stated that the construction of a proposed natural gas plant in Oakville would no longer be required going forward.

Questions

- a) What is the status of the August 18, 2008 directive? How is the OPA planning to procure supply for the Southwest Greater Toronto Area in the absence of the Oakville contract?
- b) What process will the OPA undertake to terminate the contract? What resources are budgeted for this negotiation? How will performance be measured?

RESPONSE

(a) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011. As noted in the LTEP, because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003 the outlook has changed, and the plant in Oakville is no longer required. However, a

Comment [KEF1]: Mike, please confirm whether this is adequate in light of the question regarding the status of the directive.

DRAFT – CONFIDENTIAL – For the Advice of Counsel – Not for External Circulation

Filed: February 8, 2011

EB-2010-0279

Exhibit 1

Tab 1

Schedule 21

Page 2 of 3

1 transmission solution to maintain reliable supply in the Southwest GTA will be required. The
2 OPA is in the process of developing a transmission solution which meets the reliability
3 requirements for the Southwest Greater Toronto Area.

4 (b) As noted above, the OPA is in negotiations with TransCanada Energy to terminate the
5 contract. In addition to their other responsibilities, three staff members The OPA has
6 entered into negotiations with TransCanada Energy to terminate the OGS contract on
7 mutually satisfactory terms. Three staff members from Electricity Resources and the Legal
8 department have been have been deployed assigned to negotiate the termination of the
9 OGS contract the negotiating team. The OPA staff is assisted by external legal counsel and
10 a technical consultant. As reflected in the Board's Issues Decision, the OPA does not
11 currently have the ability to allocate or budget internal staff costs on a project-by-project
12 basis. The OPA acknowledges the statement in the Issues Decision that "an organization
13 with the OPA's sophistication and responsibilities should be able to provide information as
14 to how its budget is allocated among initiatives" and, accordingly, the OPA will endeavour
15 to develop a capability to allocate internal staff costs for the purposes of its next revenue
16 requirement submission. Performance will be measured in terms of limiting the cost to the
17 ratepayer.

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EB-2010-0279
Exhibit I
Tab 1
Schedule 21
Page 3 of 3

1

2

Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, February 08, 2011 8:15 AM
To: Karen Frecker; Martha McOuat; Michael Lyle; Susan Kennedy; Joe Toneguzzo
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

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Based on Colin's comments and review today with Mike Lyle and external legal counsel, the language in the Oakville GS interrogatory now reads:

(a) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. As noted in the LTEP, because of changes in demand along with the addition of approximately 8,400 MW of new supply since 2003 the outlook has changed, and the plant in Oakville is no longer required. However, a transmission solution to maintain reliable supply in the Southwest GTA will be required. The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area.

(b) As noted above, the OPA is in negotiations with TransCanada Energy to terminate the contract. In addition to their other responsibilities, three staff members from Electricity Resources and the Legal department have been assigned to the negotiating team. The OPA staff is assisted by external legal counsel and a technical consultant. Performance will be measured in terms of limiting the cost to the ratepayer.

Please advise if you have any concerns.

Thanks,

Karen

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

From: Karen Frecker
Sent: February 7, 2011 9:57 AM
To: Martha McOuat; Michael Lyle; Susan Kennedy; Michael Killeavy; Joe Toneguzzo
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I've spoken with Joe Toneguzzo and we have identified the following text to replace part (a):

The OPA is in the process of developing a transmission solution which meets the reliability requirements for the Southwest Greater Toronto Area. The OPA plans to address the aspects of this solution related to the bulk system in the second IPSP.

The second sentence is optional.

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

From: Martha McOuat
Sent: February 4, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?

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

From: Michael Lyle
Sent: February 4, 2011 9:38 AM
To: Susan Kennedy; Michael Killeavy; Martha McOuat
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

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

From: Susan Kennedy
Sent: February 4, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity

Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: February 4, 2011 8:30 AM
To: Martha McOuat; Susan Kennedy
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,
Michael

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

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

From: Martha McOuat
Sent: Thu 03-Feb-11 5:04 PM
To: Susan Kennedy

Cc: Michael Killeavy
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy
Sent: February 2, 2011 4:51 PM
To: Anna LeBourdais
Cc: Martha McOuat; Miriam Heinz
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy

Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

From: Martha McOuat
Sent: January 25, 2011 2:08 PM
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka
Cc: Michael Lyle; Anna LeBourdais
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25:
authors immediately

Interrogatories received from Intervenors, distributed to

February 1: Your responses due to Regulatory Affairs

February 2-3: Regulatory and Legal review, some further edits by authors
may be required

February 4: Mike Lyle review; some further edits may be required.
Submit full package to Colin for review

February 7: Colin's comments received, some further edits may be
required

February 8: Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais
Sent: January 25, 2011 1:53 PM
To: Martha McOuat
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, February 08, 2011 9:31 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Deborah Langelaan; "; "
Subject: RE: Latest Attempt at Directive
Attachments: KWC.TransCanada Direction 26 01 2011 cin - OPA Comments_110204v2.docx

Privileged and Confidential (Solicitor and Client Privilege)

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Further to the below, attached is my "later [and greater, hopefully] attempt at a KWC Directive that might meet MEI and OPA needs if not wants).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: JoAnne Butler
Sent: February 4, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; "; "
Subject: RE: Latest Attempt at Directive

Yes, that could work - it would need to be changed in both background and directive paragraph. I am comfortable with the other red lines that Susan made....

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

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

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

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

From: Michael Killeavy
Sent: Viernes, 04 de Febrero de 2011 01:34 p.m.
To: Michael Lyle; Deborah Langelaan; Susan Kennedy; JoAnne Butler; "; "
Subject: RE: Latest Attempt at Directive

Sure, up to 500 MW is good.

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: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; '';
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

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-----

From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler;
Subject: RE: Latest Attempt at Directive

I specifically asked Susan to include Contract Capacity of 450 MW but based on yesterday's discussions it looks like we need a little wiggle room. Perhaps the language could be "approximately 450 MW".

Deb

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

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

From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

Could we mention the nameplate capacity of instead of referring to the Contract Capacity, or not mention capacity at all? We may need some flexibility in this regard as we go forward with TCE.

Is it possible to mention the 7 October 2010 letter from the OPA to TCE in the last sentence on the second page, e.g., "... to reprofile investments already made by TransCanada and minimize overall costs in the context of the 7 October 2010 letter from the OPA to TransCanada"? I am thinking that we need something that links that letter's commitment to the negotiations, otherwise why are we doing it.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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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: Susan Kennedy

Sent: Fri 04-Feb-11 9:18 AM

To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler;
'rsebastiano@osler.com'; 'ESmith@osler.com'

Subject: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

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Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

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

February/January , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450 up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract

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capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, February 08, 2011 9:31 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Deborah Langelaan; "; "
Subject: RE: Latest Attempt at Directive
Attachments: KWC TransCanada Direction 26 01 2011 cln - OPA Comments_110204v2.docx

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: JoAnne Butler
Sent: February 4, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; "; "
Subject: RE: Latest Attempt at Directive

Yes, that could work - it would need to be changed in both background and directive paragraph. I am comfortable with the other red lines that Susan made....

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

120 Adelaide Street West, Suite 1600
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Sent: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; ''
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

Michael Lyle
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From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

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

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From: Michael Killeavy
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To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
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From: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
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All input welcome and appreciated.

Susan H. Kennedy

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February/January, 2011

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Chief Executive Officer
Ontario Power Authority
Suite 1600
120 Adelaide Street West
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In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract

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capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

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As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, February 16, 2011 5:20 AM
To: 'rsebastiano@osler.com'; Deborah Langelaan
Cc: Michael Killeavy; 'esmith@osler.com'
Subject: Re: Latest Attempt at Directive

That might even be more palatable "up the street". I'll make the suggested change and punt it over. Thanks

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, February 15, 2011 07:33 PM
To: Deborah Langelaan
Cc: Michael Killeavy; Susan Kennedy; Smith, Elliot <ESmith@osler.com>
Subject: RE: Latest Attempt at Directive

Paul suggested deleting the words "settlement discussions" and replacing with the word "negotiations". With this change, the sentence would read as follows:

"To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with negotiations in respect of the mutual termination of the contract for the Oakville Generating Station..."

Thanks, Rocco

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

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Tuesday, February 15, 2011 9:50 AM
To: Sebastiano, Rocco
Cc: Michael Killeavy
Subject: FW: Latest Attempt at Directive

Rocco;

Do you have any comments on the latest version of the Directive? I recall you mentioning a concern with the "settlement discussions" language.

Deb

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

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

From: Susan Kennedy
Sent: February 8, 2011 9:31 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Deborah Langelaan; ''
Subject: RE: Latest Attempt at Directive

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: JoAnne Butler
Sent: February 4, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; ''; ''
Subject: RE: Latest Attempt at Directive

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JoAnne C. Butler
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-----Original Message-----

From: Michael Killeavy
Sent: Viernes, 04 de Febrero de 2011 01:34 p.m.
To: Michael Lyle; Deborah Langelaan; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Sure, up to 500 MW is good.

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: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

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

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

From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

I specifically asked Susan to include Contract Capacity of 450 MW but based on yesterday's discussions it looks like we need a little wiggle room. Perhaps the language could be "approximately 450 MW".

Deb

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

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

From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

Could we mention the nameplate capacity of instead of referring to the Contract Capacity, or not mention capacity at all? We may need some flexibility in this regard as we go forward with TCE.

Is it possible to mention the 7 October 2010 letter from the OPA to TCE in the last sentence on the second page, e.g., "... to reprofile investments already made by TransCanada and minimize overall costs in the context of the 7 October 2010 letter from the OPA to TransCanada"? I am thinking that we need something that links that letter's commitment to the negotiations, otherwise why are we doing it.

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: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler;
'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

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

Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

T: 416-969-6054

F: 416-969-6383

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

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Crystal Pritchard

From: Susan Kennedy
Sent: Friday, February 18, 2011 11:23 AM
To: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan
Subject: FW: KWC Directive - Suggested Revisions
Attachments: MISC_110218_KWC TransCanada Direction.docx

FYI

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

From: Susan Kennedy
Sent: Fri 2/18/2011 11:18 AM
To: Calwell, Carolyn (MEI)
Subject: KWC Directive - Suggested Revisions

Carolyn,

I'd mentioned that Colin had had some discussions with MEI (I can't quite remember who he spoke to) regarding some tweaks to the draft KWC directive - primarily regarding the need to allow the contract for the new plant to, potentially, form part of the settlement re Oakville. Generating Station termination (if this happens, it would affect the pricing for the new plant which, without such a link, would be impossible to justify).

Latest attempt to accomplish this objective is attached.

Regards,

Susan

February/January , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450 up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

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Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant-with contract

capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with negotiations in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Michael Lyle
Sent: Friday, February 18, 2011 11:33 AM
To: Colin Andersen
Subject: FW: KWC Directive - Suggested Revisions
Attachments: MISC_110218_KWC TransCanada Direction.docx

FYI. This is the latest version of the draft direction shared with the Ministry.

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

From: Susan Kennedy
Sent: February 18, 2011 11:23 AM
To: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan
Subject: FW: KWC Directive - Suggested Revisions

FYI

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

From: Susan Kennedy
Sent: Fri 2/18/2011 11:18 AM
To: Calwell, Carolyn (MEI)
Subject: KWC Directive - Suggested Revisions

Carolyn,

I'd mentioned that Colin had had some discussions with MEI (I can't quite remember who he spoke to) regarding some tweaks to the draft KWC directive - primarily regarding the need to allow the contract for the new plant to, potentially, form part of the settlement re Oakville Generating Station termination (if this happens, it would affect the pricing for the new plant which, without such a link, would be impossible to justify).

Latest attempt to accomplish this objective is attached.

Regards,

Susan

February/January , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450 up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant-with contract

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capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with negotiations in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, February 22, 2011 9:25 AM
To: Michael Killeavy; JoAnne Butler; Michael Lyle; Deborah Langelaan
Subject: RE: KWC Directive - Suggested Revisions
Attachments: KWC Directive - Suggested Revisions

The version I sent to Carolyn had the "up to 500MW" language in it. So I think it should be fine.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy
Sent: February 21, 2011 9:17 AM
To: JoAnne Butler; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: Re: KWC Directive - Suggested Revisions

It should say up to 500 MW.

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

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

From: JoAnne Butler
Sent: Monday, February 21, 2011 09:03 AM
To: Susan Kennedy; Michael Lyle; Michael Killeavy; Deborah Langelaan
Subject: Re: KWC Directive - Suggested Revisions

Susan,

Do we have to change the MW's in the Direction part? Right now it says 450, not the "up to 500".

JCB

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

From: Susan Kennedy
Sent: Friday, February 18, 2011 11:23 AM
To: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan
Subject: FW: KWC Directive - Suggested Revisions

FYI

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

From: Susan Kennedy

Sent: Fri 2/18/2011 11:18 AM

To: Calwell, Carolyn (MEI)

Subject: KWC Directive - Suggested Revisions

Carolyn,

I'd mentioned that Colin had had some discussions with MEI (I can't quite remember who he spoke to) regarding some tweaks to the draft KWC directive - primarily regarding the need to allow the contract for the new plant to, potentially, form part of the settlement re Oakville Generating Station termination (if this happens, it would affect the pricing for the new plant which, without such a link, would be impossible to justify).

Latest attempt to accomplish this objective is attached.

Regards,

Susan

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, February 18, 2011 11:19 AM
To: 'Calwell, Carolyn (MEI)'
Subject: KWC Directive - Suggested Revisions
Attachments: MISC_110218_KWC TransCanada Direction.docx

Carolyn,

I'd mentioned that Colin had had some discussions with MEI (I can't quite remember who he spoke to) regarding some tweaks to the draft KWC directive - primarily regarding the need to allow the contract for the new plant to, potentially, form part of the settlement re Oakville Generating Station termination (if this happens, it would affect the pricing for the new plant which, without such a link, would be impossible to justify).

Latest attempt to accomplish this objective is attached.

Regards,

Susan

February/January, 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450 up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Crystal Pritchard

From: JoAnne Butler
Sent: Wednesday, March 02, 2011 4:05 PM
To: Michael Lyle
Subject: FW: Teleconference Board meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m.

Your view?? We can discuss verbally??

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

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

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

From: Michael Killeavy
Sent: Miércoles, 02 de Marzo de 2011 04:04 p.m.
To: JoAnne Butler; John Zych; Deborah Langelaan
Subject: RE: Teleconference Board meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m.

Ok but I advise against putting details of the offer in any slide presentation.

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

From: JoAnne Butler
Sent: March 2, 2011 4:02 PM
To: John Zych; Michael Killeavy; Deborah Langelaan
Subject: RE: Teleconference Board meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m.

John, please add an Oakville GS Update for fifteen minutes.

Deb, Michael, the Board Chair has asked that we provide the slides in advance so please do that. Mike Lyle has said that it is ok. Consider the update from the last slides that we presented last week...so maybe one or two slides at the most since we have to have them to Colin by Friday. The biggest thing to note is probably that the TCE offer has been received and what our proposed plans and timing are to counter.

JCB

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

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

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

From: John Zych
Sent: Miércoles, 02 de Marzo de 2011 03:45 p.m.
To: Colin Andersen; Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins
Cc: Irene Mauricette; Clare Hudson; Robert Godhue; Crystal Pritchard; Cathy Schell; Marsha Terry; Jacquie Davidson; OPA Directors
Subject: Teleconference Board meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m.

The (former) potential Board teleconference meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m. will now be held.

A draft agenda is attached. Please advise whether I have described your agenda item correctly (title, information/decision and presenters) and have allotted an appropriate amount of time for it. The RES curtailment matter is still tentative. Are there any other items?

Materials need to be submitted to Colin Andersen for his review by Friday, March 4 (with a copy to John Zych); materials must be received by LARA at the close of business on Tuesday, March 8, and the mailing will be on Wednesday, March 9. (This will be a teleconference meeting, so no printed material will be needed.)

The first slide of the slide deck, in the case of a presentation of information, should consist of the purpose of the presentation and a statement of present status of the matter and, in the case of presentation for a decision, the slide deck should consist of the purpose of the presentation and the "bottom line", i.e., what approval the Board is being asked to grant.

A CEO report is already underway.

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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From: John Zych
Sent: March 1, 2011 2:10 PM
To: Colin Andersen; Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins
Cc: Irene Mauricette; Clare Hudson; Robert Godhue; Crystal Pritchard; Cathy Schell; Marsha Terry; Jacquie Davidson; OPA Directors
Subject: Potential teleconference Board meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m.

At last Friday's Board meeting, the Board members agreed to cancel the scheduled in-person Board meeting to be held on Tuesday, March 15 and Wednesday, March 16 and to potentially hold a Board teleconference meeting on Wednesday, March 16, 2011 from 12:00 (noon) to 2:00 p.m. (This meeting will not be held if we have no business for it.)

Therefore, by 12:00 (noon), Wednesday (tomorrow), please advise me of any items of Board business that may need to go to (i) a potential Board teleconference meeting on Wednesday, March 16, 2011, or (ii) at any other time in March or in April prior to the April 6 and April 7 in-person Board meeting. (The April 6 and April 7 Board meeting days are to be devoted to a Board stakeholder day (April 6) and a Board strategy session (April 7) but I assume that any critical Board business can be fit into those days if needed.)

If we hold the Wednesday, March 16 Board teleconference meeting, the mailing for it will be on Wednesday, March 9. Therefore, mailing materials will have to be received by LARA at the close of business on Tuesday, March 8 and will need to be submitted to Colin Andersen for his review by Friday, March 4.

A CEO report is already underway.

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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Crystal Pritchard

From: John Zych
Sent: Friday, March 04, 2011 3:43 PM
To: Michael Lyle; Susan Kennedy
Subject: FW: Board of Directors' OGS Contract Wind Up Update Presentation - 16 March 2011
Attachments: OGS_BOD_CM_20110316.ppt

Importance: High

FYI.

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
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John.Zych@powerauthority.on.ca

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

From: Michael Killeavy
Sent: March 4, 2011 3:37 PM
To: Colin Andersen
Cc: John Zych; Deborah Langelaan; JoAnne Butler
Subject: Board of Directors' OGS Contract Wind Up Update Presentation - 16 March 2011 ...
Importance: High

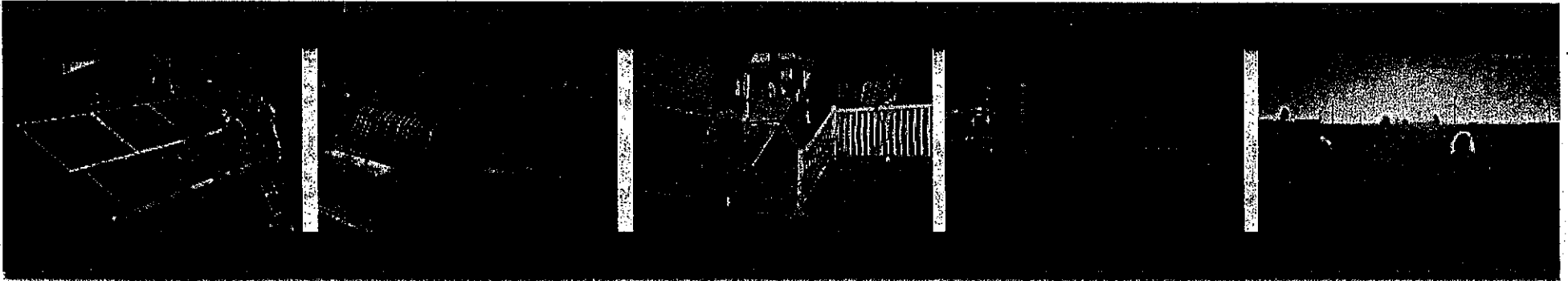
*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

Colin,

Attached is the OGS Contract update presentation for the next Board meeting.

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors

March 16, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

OGS Update

- This presentation is for the Board's information.
- OPA/TransCanada Energy (TCE) negotiating team has met once since February's Board update.
- Discussions continue to be productive with respect to the "winding-up" of the Contract.
- TCE planning to deliver a proposal, implementation agreement and letter to Colin on 7 March 2011.
- MPS has provided its fixed price proposal to TCE for the fast-start GT option, scope of work for the conversion from combined-cycle to simple cycle, and delay/suspension costs. The cost increased by about 10% from \$33M to \$36M (US\$).
- TCE also presented us with commercial parameters for the proposed peaking plant, along with the revisions to the NYR contract that it needs.
- We are continuing to do our due diligence on commercial parameters/contract changes and will be hiring a financial consultant to assist us.
- OPA continues to work with the Ministry of Energy on the drafting of the Directive to authorize negotiations with TCE for the replacement project.

Privileged and Confidential – Prepared in Contemplation of Litigation

Next Steps

- Continue discussions with TCE to achieve the following:
 - An understanding of TCE's commercial position;
 - Finalize technical design requirements;
 - Siting of replacement facility;
 - Negotiation and execution of the Implementation Agreement;
 - TCE plan for handling First Nations issues.

Inform MO/PO and get buy in to disclose and move forward.

Replacement Generation Project

- TCE still leaning toward development of the Boxwood Industrial Park site.
- Colin has indicated that the MO has no issues with TCE approaching the City of Cambridge.
- There was a mention of the OGS contract cancellation in the 3 March 2011 edition of the Toronto Star – **“Oakville wins nearly \$500,000 in legal costs”**

Mitsubishi (MPS) Gas Turbines (GT's)

- GT's originally purchased for OGS were designed for a Combined Cycle generation plant.
- Fall 2010 TCE suspended MPS contract until January 31, 2011.
- January 28, 2011 TCE released MPS from suspension and directed them to commence work on converting the GT's to Fast Start.
- Fast Start option will meet the requirements of a Peaking generation plant in Cambridge.
- Fixed the suspension costs that TCE had been incurring under terms of MPS ESA.

Price of Peaking Plant Conversion

- The incremental estimated price for the conversion was \$33 MM (US) +/- 25%.
- MPS revised the price to convert the GT's to Fast Start from \$3 MM to \$6 MM.
- MPS revised the price to convert from Combined Cycle to Simple Cycle from \$15 MM to \$12 MM.
- Delayed delivery and suspension costs remain \$15 MM.
- TCE received the MPS final price for Peaking plant conversion on February 28, 2011 and price was \$36 MM, which was within the 25% range indicated above by MPS

TCE Commercial Proposal

- TCE has provided the OPA with its proposed costs for the peaking plant, along with a listing of changes it requires to the NYR Peaking Contract.
- TCE indicates that the plant needs to have a NRR of \$16,900/MW-month, which is slightly lower than its NRR for OGS of \$17,277/MW-month.
- Using TCE's CAPEX figure and indicated OGS rate of return we have come up with an NRR that is about \$15,000/MW-month

TCE Commercial Proposal

- We are continuing to review our estimate in light of theirs.
- We have requested more information from TCE to understand how it has arrived at its NRR figure.
- TCE has also asked for a number of changes to the NYR Peaking Contract, the contract upon which we would base the K-W contract.
- We continue to review these proposed changes.

Crystal Pritchard

From: John Zych
Sent: Tuesday, March 08, 2011 1:13 PM
To: Susan Kennedy; Michael Lyle
Subject: FW: OGS Presentation for Board of Directors
Attachments: OGS_BOD_CM_20110316.ppt

FYI.

John Zych
Corporate Secretary
Ontario Power Authority
Suite 1600
120 Adelaide Street West
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416-969-6055
416-967-7474 Main telephone
416-967-1947 OPA Fax
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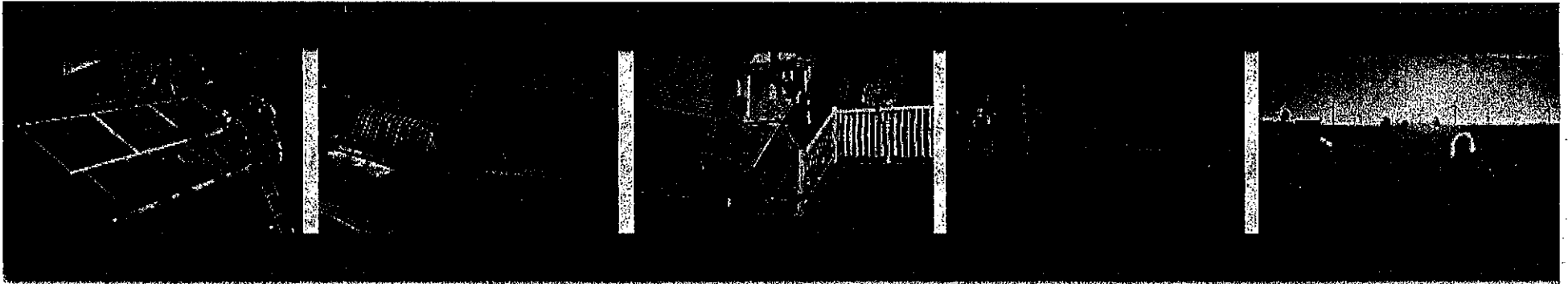
From: Deborah Langelaan
Sent: March 8, 2011 1:02 PM
To: Nimi Visram
Cc: JoAnne Butler; John Zych; Michael Killeavy
Subject: OGS Presentation for Board of Directors

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

Nimi;

Please find attached the Oakville Generating Station presentation for the upcoming Board meeting.

Deb



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors

March 16, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

OGS Update (for information purposes only)

- OPA/TCE negotiating team met once since February's Board update
- OPA awaiting response from the Ministry of Energy on the drafting of the Directive
- February 28th MPS provided its fixed price proposal to TCE for:
 - Fast-start GT option
 - Scope of work for the conversion from combined-cycle to simple cycle
 - Delay/suspension costs
- MPS cost increased by ~10% (US \$33MM to \$36MM)
- March 1st OPA received TCE's Potential Project Pricing and Terms Proposal
 - commercial parameters for the proposed peaking plant along with proposed revisions to the peaking contract
- March 6th OPA received draft letter from Alex Pourbaix, President TCE requesting approval of the Cambridge project under their proposed terms

TCE Potential Project Pricing and Terms Proposal

- TCE provided OPA with its estimated costs for the peaking plant along with a list of suggested changes to the peaking Contract
- TCE's position is they require a \$16,900/MW-month NRR which is slightly lower than the \$17,277/MW-month NRR for OGS
- TCE proposing to pass through majority of risk to Ontario ratepayer
- OPA has requested more information from TCE to understand how it arrived at its NRR

TCE Potential Project Pricing and Terms Proposal

- OPA has retained NERA Economic Consulting as its Financial Consultant
- OPA performing sensitivity analysis to develop matrix of NRR's based on various assumptions for discount rate, CAPEX, O&M contract term, etc.
- OPA continuing its due diligence on commercial parameters and contract changes

Next Steps

- Continue discussions with TCE to achieve the following:
 - An understanding of TCE's commercial position
 - Finalize technical design requirements
 - Siting of replacement facility
 - Negotiation and execution of Implementation Agreement
 - TCE plan for handling First Nations issues
- Inform MO/PO and get buy in to disclose and move forward
- OPA to provide TCE with counter offer before end of March

Crystal Pritchard

From: John Zych
Sent: Tuesday, March 08, 2011 2:02 PM
To: Deborah Langelaan; JoAnne Butler; Michael Killeavy
Cc: Nimi Visram; Michael Lyle; Susan Kennedy
Subject: RE: OGS Presentation for Board of Directors

May I comment? There is no summary page. See my Board call note: Too many unreferenced acronyms: MPS, GT, NRR, CAPEX, O&M, MO, PO. I won't pick on TCE or MM. MW and OPA are obviously okay.

Kevin did a good job on his summary page. See his

John Zych
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From: Deborah Langelaan
Sent: March 8, 2011 1:02 PM
To: Nimi Visram
Cc: JoAnne Butler; John Zych; Michael Killeavy
Subject: OGS Presentation for Board of Directors

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

Nimi;

Please find attached the Oakville Generating Station presentation for the upcoming Board meeting.

Deb

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, March 09, 2011 3:22 PM
To: Susan Kennedy
Subject: Fw: Designation Letter for TCE

This is it.

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

From: Michael Killeavy
Sent: Wednesday, March 09, 2011 02:50 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle
Subject: Fw: Designation Letter for TCE

Osler believes that attaching the materials noted in the letter is a problem vis-a-vis the Confidentiality Agreement the OP and TCE have executed.

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: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Tuesday, March 08, 2011 02:17 PM
To: Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: Designation Letter for TCE

Michael,

We have reviewed the draft letter dated March 4, 2011, from Alex Pourbaix to Colin Andersen, with copies to the Deputy Minister of Energy and Chief of Staff to the Minister of Energy (the "Letter"). Although no attachments were included with the Letter, it is our understanding from the second last paragraph of the Letter that the final version will contain as attachments (i) an implementation agreement summary and (ii) the draft implementation agreement. We have considered the implication of sending this letter in connection with the October 8, 2010 Confidentiality Agreement between the OPA and TCE (the "CA"). The following is a summary of our analysis.

It is likely that the attachments to the Letter will contain "Confidential Information", as such term is defined in the CA. Specifically, we believe that these attachments will contain Mutually Confidential Information, which is defined to include, amongst other things, information "related to or part of the financial parameters for any other project or potential opportunity being discussed between the Parties". There is also the possibility that these attachments will contain the OPA's Confidential Information, if they disclose anything that is derived from confidential information provided by the OPA.

In accordance with the CA, a party is permitted to disclose Confidential Information to their Representatives. The Government of Ontario is included as a Representative of the OPA only, not of TCE, and as a result this exception would not be applicable to TCE's disclosure of the Letter. Consequently, it appears that if TCE transmits the Letter (including its attachments) to the Ministry of Energy, this would be a disclosure of Confidential Information by TCE contrary to the term of the CA. We believe that if TCE were to send the Letter without the attachments to the Ministry, this would be less likely to violate the terms of the CA.

If you have any further questions or would like to discuss, please let me or Rocco know.

Thanks,
Elliot

Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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

osler.com

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

From: Sebastiano, Rocco
Sent: Tuesday, March 08, 2011 1:22 PM
To: Smith, Elliot
Subject: FW: Designation Letter for TCE

Can you respond to this? I have a meeting out the GTAA all afternoon that I have to leave for soon. Thanks, Rocco

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, March 08, 2011 12:35 PM
To: Sebastiano, Rocco
Subject: FW: Designation Letter for TCE

Can you provide me with some advice on this please?

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

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

From: JoAnne Butler
Sent: Tuesday, March 08, 2011 12:14 PM
To: Michael Killeavy; Susan Kennedy
Subject: RE: Designation Letter for TCE

I talked to Terry Bennett about this....he says that they had it checked out and didn't feel that they were in violation. Please confirm that we remain clear that it is a violation and I will get back to him again. 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

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

From: Michael Killeavy
Sent: Lunes, 07 de Marzo de 2011 03:41 p.m.
To: Susan Kennedy
Cc: JoAnne Butler
Subject: Designation Letter for TCE

Susan,

Please do not send the Designation Letter to TCE. They are copying the Ministry on the Alex Pourbaix letter, which violates our confidentiality agreement. The Ministry is not a party to the confidentiality agreement.

Michael

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

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Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, March 15, 2011 1:50 PM
To: Michael Lyle
Attachments: Let_OPA.Colin Anderson_Mar 10 v2.pdf; IA Schedule B NRR (Feb 24 11)_OPA.doc; IA Schedule C NRR (Feb 24 11)_OPA.doc; IA Cambridge (draft Jan 24, 2011 v3).doc; TCE Value Proposition Analysis 12 Mar 2011.doc

As requested.

Michael Killeavy, LL.B., MBA, P.Eng.
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Alex Pourbaix
President, Energy & Oil Pipelines

March 10, 2011

CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Anderson:

Re: Negotiations with TransCanada Energy Ltd.

First, please accept my appreciation for your recent time taken to discuss our opportunity. As Ontario's largest private power investor, TransCanada continues to value its relationship with the Ontario Power Authority (OPA) and electricity ratepayers it serves.

As you are aware, we successfully responded to your SWGTA RFP and executed a contract with you to build, own and operate a 900MW combined cycle natural gas power plant. During the development and permitting phase of that project, the Minister of Energy announced that the project would not proceed due to significant changes in projected power system needs.

In your letter dated October 7th, 2010 you confirmed that the OPA would not proceed with the contract, acknowledged our entitlement to reasonable damages from the OPA and expressed your desire to identify other projects which could compensate us for the termination of the contract. While initially disappointed, we focused on the changing needs of the OPA as our customer and welcomed the opportunity to meet those needs.

Since last October our respective teams have been seeking a mutually satisfactory solution. The basis for these discussions was the desire of both sides to find an arrangement which ensured value to Ontario electricity rate payers and fairness to TransCanada shareholders. The purpose of this letter is for me to formally convey such a solution.

Ontario's Long Term Energy Plan states "As indicated in 2007 Plan, the procurement of a peaking natural gas fired plant in the Kitchener-Waterloo-Cambridge (KWC) area is still necessary. In that region, demand is growing at more than twice the provincial rate." This clear and consistent expression of electricity need became a natural focal point in our discussions. The plant we propose will meet the timing and reliability requirements of the KWC area as identified by the OPA and the Independent Electricity System Operator. We have identified potential sites more than 500 meters from residential neighborhoods and schools. The plant will of course meet or exceed all environmental standards related to emissions and noise.

Simply put, this plant is a smaller, less expensive and more responsive plant than the one originally contracted for in the SWGTA RFP. Its capacity of 515 megawatts compared to the SWGTA at 900 megawatts reflects today's demand forecasts and is the basis for tremendous savings to Ontario's electricity ratepayers. The capital cost is estimated at \$540 million where the SWGTA capital cost was \$1.2 billion, representing a \$660 million reduction. Acting now will allow us to use the \$200 million gas turbines purchased for the SWGTA plant, thus turning an OPA liability into a valuable asset. By switching from combined cycle to

simple cycle the plant will be able to respond faster and more efficiently to sudden increases in regional power demand.

Our respective teams have worked diligently for five months to identify an efficient and cost effective project. The anticipated contingency support payment necessary to support this project is now actually lower than that which was contracted for in the SWGTA Clean Energy Supply contract. We have capped the anticipated NRR and offered shared savings in event cost efficiencies are identified prior to signing the CES contract.

TransCanada is confident it can develop, construct and operate a successful power project. Having built and operated power facilities across Ontario for over twenty years, TransCanada is deeply committed to consulting local stakeholders including First Nations, municipalities, local neighbors and environmental groups. We have had preliminary conversations with the Mayor and local First Nations and have committed to treating them as critical stakeholders in our development efforts.

In closing, I believe this project is an excellent alternative that will provide great value for Ontario electricity ratepayers and fairness to TransCanada shareholders. However, time is of the essence if we are to realize this potential value. In order to ensure the successful implementation of this project, including the technical scope, stakeholder outreach and permitting process, work needs to begin within the next several weeks.

I therefore request that the OPA seek formal approval and direction from its Board and the Minister of Energy to proceed with this project by March 31st on the terms outlined in the Implementation Agreement and schedules that have previously been provided to the OPA. Once that agreement is executed, we can begin the development work necessary to complete the CES contract in a timely manner.

I look forward to your earliest response and to concluding contractual arrangements on this great opportunity.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Pourbaix', with a stylized, flowing script.

Alex Pourbaix
President, Energy & Oil Pipelines

c.c. David Lindsay, Deputy Minister of Energy
Craig MacLennan, Chief of Staff to the Minister of Energy

CONFIDENTIALFebruary 24th, 2011**SCHEDULE B1****PRICING**

Net Revenue Requirement	\$ 16,900 / MW-month
Net Revenue Requirement Indexing Factor	50 %
Annual Average Contract Capacity (from and after the Contract Facility COD)	* MW
Nameplate Capacity	* MW
Start-Up Gas for the Contract Facility	1,500 MMBTU/start-up
Start-Up Maintenance Cost	\$ 51,000 / start-up
O&M Costs	\$ 5.75 / MWh
OR Cost	\$ 0.50 / MWh

	<u>Season 1</u>	<u>Season 2</u>	<u>Season 3</u>	<u>Season 4</u>
<u>Contract Heat Rate</u>	10,420 MMBTU/MWh (HHV)	10,550 MMBTU/MWh (HHV)	10,660 MMBTU/MWh (HHV)	10,580 MMBTU/MWh (HHV)
<u>Contract Capacity</u>	510.0 MW	481.5 MW	455.9 MW	475.0 MW
<u>10%ORCC</u>	0 MW	0 MW	0 MW	0 MW

**SCHEDULE B2
VALUE PROPOSITIONS**

VP#1 - Permits and Approvals

In light of the cancellation of the Facility and the Original Contract, and the change in risk profile that this has created for developers since that decision, the Contract will provide that if TCE is unable to secure a permit or approval for the construction or operation of the Potential Project or any level of government otherwise prevents the construction or operation of the Potential Project then TCE will be able to terminate the Contract and, upon such termination, recover from the OPA its reasonable costs incurred with respect to the Facility and the Potential Project and TCE's anticipated financial value of the Original Contract [Defined as a Number for the IA]. In addition to TCE's relief from Force Majeure, TCE would also recover from the OPA its reasonable costs as a result of delays arising from Force Majeure relating to permitting.

VP#2 – Oakville Sunk Costs

The Contract will provide that sunk costs associated the development of the Facility totaling [\$37 million] will be paid immediately to TCE at time of executing the Contract. These sunk costs [have/have not] been reviewed by the OPA and further due diligence and review [will/will not] be required.

VP#3 – Interconnection Costs

As a result of the compressed time for development of the Potential Project TCE will be unable to determine the costs associated with electrical and natural gas interconnections to the same level of detail as associated with the Facility. Accordingly, the Contract will provide a mechanism whereby the OPA will directly pay for all costs associated with the electrical and natural gas interconnections in a manner that will not subject TCE to carrying costs. For the gas connection this will include all costs paid to the local gas distribution company ("LDC") that is associated with the connection to the Potential Project from the LDC including a contribution in aid to construction ("CIAC") and terminating at the demarcation between the Potential Project and the LDC on the Potential Project site. For the electrical connection this will include all costs associated with the design engineering, construction and commissioning of the electrical facilities between the high voltage side of the Potential Project switchyard and the point of connection to the Hydro One transmission system including land and easements if applicable.

VP#4 - Gas Delivery and Management Services Costs

The Contract will provide that all gas delivery and management services costs will be excluded from the NRR and that such costs will be paid for by the OPA in a manner consistent with the Portlands ACES and Halton Hills CES Contracts.

VP#5 – Net Revenue Requirement Indexing Factor ("NRRIF") set at 50%

As a result of utilizing the MPS gas turbines in this Potential Project service, operating cost is a materially larger part of the economic picture and accordingly significantly more of TCE's costs are escalating. The portion of TCE's costs subject to escalation is approximately 50% as opposed to the current maximum of 20%. Accordingly the Contract will be modified to reflect this higher proportion subject to escalation by incorporating a NRRIF of 50%. Specifically in Section 1.1 of Exhibit J of the Contract the NRRIF definition will be modified to remove the words "between 0.00 and 0.20".

VP#6 - Option to Extend Term

As a mechanism for recovery of Potential Project costs, the costs incurred by TCE with respect to the Facility and TCE's anticipated financial value of the Original Contract, the Contract will be premised on a 30 year term or premised on a 20 year term with a unilateral option for TCE to extend the term of the Contract, on the same terms, conditions and prices, for an additional 10 years.

VP#7 - Capacity Check Test

In an effort to more accurately reflect the actual capacity delivered to the Province of Ontario Section 15.6 (b) of the Contract will be modified to reflect average ambient temperatures during each season. Specifically in Section 15.6 (b) (i) replace "7.0" with "-5.8", in Section 15.6 (b) (ii) replace "21.0" with "5.7", in Section 15.6 (b) (iii) replace "30.0" with "18.6", and in Section 15.6 (b) (iv) replace "24.0" with "8.3".

VP#8 - Potential One Hour Run

Maintenance costs associated with the Mitsubishi Heavy Industries M501GAC Fast Start engine are significant and predominantly driven by number of starts. The logic contained Section 3 of Exhibit J to the NYR Contract can result in Imputed Production Intervals one hour in duration whereas the associated recovery of start costs is assumed to be over two hours. In an effort to recognize the unique attributes of these engines the Contract will be modified to ensure the plant is only deemed on when power prices provide for full recovery of start charges within an hour. Specifically Section 3.1.1 (ii) (a) A of Exhibit J of the Contract will be modified to remove the words "50% of".

SCHEDULE B3
NYR CONTRACT CLEAN UP

Value Proposition Incorporation

The Value Propositions outlined in Schedule B2 will be incorporated.

GD&M Partial Recovery

The NYR Contract included a provision for a portion of the Gas Distribution and Management costs to be recovered via NRR and the rest to be recovered via a side agreement. The contract for the Potential Project will be premised on all costs being recovered via the side agreement as per VP# 4. There are references throughout the NYR Contract that will require clean up to reflect this situation.

Schedule A

There may be items in Schedule A of this Implementation Agreement that need to be incorporated into the NYR Contract including, but not limited to, the Emissions Limits and Emission Measurement Methodology.

**SCHEDULE C
PROCESS.**

Schedule B1 provides TCE's currently proposed contract parameters for eventual incorporation into the Contract. This Schedule C describes the mechanism by which the NRR set out in Schedule B1 will be adjusted between the effective date of this Agreement and the execution and delivery by the Parties of the Contract.

The following contract parameters outlined in Schedule B1 will not be adjusted from the values contained in Schedule B1 (the "Fixed Parameters"): the Contract Heat Rates (MMBTU/MWh HHV) for Seasons 1, 2, 3 and 4; the Contract Capacities (MW) for Seasons 1, 2, 3 and 4; the Annual Average Contract Capacity (MW); Start-Up Gas for the Contract Facility (MMBTU/start-up); Nameplate Capacity (MW) and Net Revenue Requirement Indexing Factor ("NRRIF")(%); Start-Up Maintenance Costs (\$/start-up); O&M Costs (\$/MWh), and OR Cost (\$/MWh).

The only parameter in Schedule B1 that may be adjusted prior to being incorporated into the Contract is Net Revenue Requirement ("NRR").

Upon execution of this Agreement, TCE will begin development work on the Potential Project including siting, stakeholder outreach, engineering design, contracts for equipment procurement, and contracts for construction. The development work will be undertaken in order to ascertain final estimates of capital costs, operating costs, plant performance and schedule prior to execution of the Contract.

Adjustments to NRR will be based on changes in the following capital cost elements (the "Adjustment Capital Cost Elements"):

Adjustment Capital Cost Elements	Value at Time of Implementation Agreement Execution	Category
Gas Turbine Fast Start (Additional Scope, stacks, coolers)	\$12,600,000	Soft
Gas Turbine Technical Assistance	\$3,622,500	Estimated
Gas Turbine Transportation	\$7,380,680	Estimated
Engineering	\$20,738,776	Soft
Major Equipment	\$24,349,133	Soft
Construction	\$89,927,715	Hard
Engineering and Construction Risk	\$6,552,116	Soft
IBL Allowances (EPC, CTG, Noise, Grounding)	\$18,607,205	Soft
Landscaping	\$2,000,000	Estimated
HV Switching Station / Tap Station	\$1,850,000	Estimated
Interconnects Excluding gas and electrical (Potable Water Supply, Waste Water Discharge / Sewer, Construction Power, Telco Interconnects)	\$700,000	Estimated
Storm Water Pond	\$4,394,750	Estimated
Net Start-Up Energy (Fuel Cost + Back Feed Power - Power Revenue)	\$6,234,172	Estimated
Fuel Gas Delivery & Mgmt Charges for start-up and commissioning	\$3,000,000	Estimated
Capital & Operational Spares (excluding MPS GT Spares)	\$1,824,375	Soft

CONFIDENTIAL

February 24th, 2011

- 2 -

Land Purchase	\$29,250,000	Hard
Community Benefits and Contribution	\$20,000,000	Soft
Development Charges, Park's Fee, Permit & Development Fee (Site Plan Approval), Aboriginal Community Contribution	\$2,990,000	Estimated
Escalation	\$9,372,568	Estimated
TOTAL	\$265,393,990	

OPA Review

Once the development work is complete TCE will provide the OPA with a final estimate for the Adjustment Capital Cost Elements and associated supporting documentation.

Costs for which TCE will obtain contracts, binding quotes or other firm commitments prior to execution of the Contract (the "Hard Capital Costs") are categorized as such in the table above. TCE will provide the OPA, on a confidential basis, with copies of the contracts, binding quotes or other firm commitments as supporting documentation for the Hard Capital Costs. The OPA's review will be limited to ensuring TCE's final estimate is congruent with the supporting documentation.

Costs that will be based on non-binding estimates, discussions or agreements with third parties at the time of execution of the Contract (the "Soft Capital Costs") are categorized as such in the table above. TCE will provide the OPA with copies or summaries of the non-binding estimates, discussions or agreements. The OPA's review will be limited to ensuring TCE's final estimate is congruent with the supporting documentation.

Costs that are estimated, built-up or provided as allowances for development and risk at the time of execution of the Contract (the "Estimated Capital Costs") are categorized as such in the table above. TCE will provide the OPA a break down of such estimates and the OPA's review will be limited to ensuring such estimates are in line with good utility practice.

It is possible that some costs may not fall into the predicted categories (Hard, Soft or Estimated) by the end of the development work. TCE will indicate to the OPA any changes in category and be held to the due diligence standard of the new category.

Once the Parties have completed the above review the final estimate for the Adjustment Capital Cost Elements shall used to modify the NRR for inclusion in the Contract.

Conversion Mechanism

The final estimates for the Adjustment Capital Cost Elements will be used to adjust NRR, provided that the adjusted NRR incorporated in the Contract will not exceed \$17,277/MW-Month, as follows:

- For each Adjustment Capital Cost Element there is an estimated value at the time of executing this agreement, which is contained in the table above (the "ACCE IA Value")
- For each Adjustment Capital Cost Element there will be a final estimated value provided by TCE to the OPA and agreed to through the OPA Review described above (the "ACCE

CONFIDENTIAL

February 24th, 2011

- 3 -

Final Value")

- For each Adjustment Capital Cost Element there will be a difference between the ACCE IA Value and the ACCE Final Value determined as the arithmetic difference between the ACCE IA Value and the ACCE Final Value (the "ACCE Difference"). For clarity the ACCE Difference will be the ACCE Final Value minus the ACCE IA Value. By way of example, if the ACCE Final Value for a given element is higher than the ACCE IA Value then the ACCE Difference will be a positive number, demonstrating an increase in that element.
- These differences will be summed for all Adjustment Capital Cost Elements (the "Total ACCE Difference")
- The Total ACCE Difference will be multiplied by 0.0000126813 (the "NRR Conversion Rate") to give the adjustment to the NRR (the "NRR Adjustment Value").
- The NRR that will be entered into the Contract will be the NRR indicated in Schedule B1 plus the NRR Adjustment Value (the "Final NRR").

The development of this Schedule C is constructed on the basis of a set of assumptions and engineering at a very preliminary stage of the development process. For example, there were no technical design criteria available (Schedule A) at the time of this work and TCE was not able to determine the availability or suitability of the proposed site for the Potential Project. As such there is a risk that the more detailed engineering and development identifies issues or costs that may impact this Schedule C.

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, March 15, 2011 4:54 PM
To: 'Stewart, Michael (MEI)'
Cc: 'Shear, Dan (MEI)'; 'Schultz, Daniel (MEI)'
Subject: RE: Directives to be Revoked

Sorry to report back but there are a number of issues:

With respect to the October 20, 2005, both March 10, 2006 and the July 13, 2006 as amended by December 8, 2009 conservation directives, there continue to be payments being made under the contracts authorized by these directives and these payments could extend well past March 31. With respect to the March 31, 2006 directive, you may wish to consider timing issues as the LTEP contemplates that the OPA will be issued a new directive on this matter in the near future. The August 18, 2008 directive also presents issues. Negotiations with TCE are at a delicate point. Revoking the directive now may complicate these discussions unnecessarily. Timing of such a revocation should also be reviewed in light of the expected new directive on a KWCG plant.

I would be happy to discuss these matters further.

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: Stewart, Michael (MEI) [<mailto:Michael.Stewart@ontario.ca>]
Sent: March 14, 2011 10:44 AM
To: Michael Lyle
Cc: Shear, Dan (MEI); Schultz, Daniel (MEI)
Subject: Re: Directives to be Revoked

Thanks Mike. That would be great.

Mike

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Stewart, Michael (MEI)
Cc: Shear, Dan (MEI); Schultz, Daniel (MEI)
Sent: Mon Mar 14 09:49:44 2011
Subject: RE: Directives to be Revoked

I will get back to you this evening if that works.

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: Stewart, Michael (MEI) [<mailto:Michael.Stewart@ontario.ca>]
Sent: March 10, 2011 4:29 PM
To: Michael Lyle
Cc: Shear, Dan (MEI); Schultz, Daniel (MEI)
Subject: FW: Directives to be Revoked

Hi Mike,

Attached is a list of directives from the Minister of Energy to the OPA that we understand to be 'spent'. The list is based on the discussion we had at the end of September 2010 with you and ENE LSB and follow-up emails with Dan Schultz.

Our intention is to reduce our Open for Business count of ENE regulatory requirements by the number of requirements imposed by these directives if in fact these directives are spent. Spent, as our legal branch defines it, means that the OPA's obligations under the directives have been fully performed, and that there are no outstanding contracts still in force that were entered into pursuant to the directives.

Would it be possible to complete a review of the attached list and confirm by email by March 17 that these directives are spent? Please copy Dan Schultz and Dan Shear on any emails.

Thanks very much.
Regards,

Mike Stewart
212-7489

Crystal Pritchard

From: John Zych
Sent: Thursday, March 17, 2011 9:31 AM
To: Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan; 'rsebastiano@osler.com'
Subject: TCE Board Resolution - Osler Review and Comment
Attachments: Minutes of Board of Directors Meeting - October 7, 2010 - Draft.doc

Last week, we had a meeting with Rocco Sebastiano on this matter and we (Michael Killeavy, Deborah Langelaan, Rocco Sebastiano and I) agreed to delete the word "reasonable" in front of the word "compensation" (see third page).

These minutes are now good to go to the Board for approval. Efficiency and practicality suggest that we take these minutes to the Board for approval at the same time that we approve any agreement with TCE, and that is what I will do.

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

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: February 23, 2011 5:13 PM
To: Deborah Langelaan
Cc: John Zych; Michael Killeavy; Ivanoff, Paul; Smith, Elliot
Subject: RE: TCE Board Resolution - Osler Review and Comment

We have reviewed the minutes, but am not sure what comments we would provide. One observation I would make is that the minutes state that the Board members reviewed the terms of a draft letter to TCE that instructed TCE to "cease all further work in connection with the Oakville gas plant and acknowledged that [TCE] was entitled to reasonable compensation". Did the Board members see the final draft of the letter which was sent to TCE which includes the reference to the "financial value" of the contract? I wouldn't want anyone to draw the inference that the language contained in the letter sent to TCE is the Board's view of what is reasonable compensation. Perhaps we can discuss further this in person when we next get together.

Thanks, Rocco

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Wednesday, February 23, 2011 10:48 AM
To: Sebastiano, Rocco
Cc: John Zych; Michael Killeavy
Subject: FW: TCE Board Resolution - Osler Review and Comment

Rocco;

Would you please review the attached Board meeting minutes and provide your comments?

Thanks,
Deb

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

From: John Zych
Sent: February 23, 2011 10:17 AM
To: Deborah Langelaan
Cc: Susan Kennedy
Subject: RE: TCE Board Resolution - Osler Review and Comment

Deborah,

The minutes of the October 7, 2010 mtg (attached).

John Zych
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From: Susan Kennedy
Sent: February 23, 2011 9:26 AM
To: John Zych
Cc: Deborah Langelaan
Subject: FW: TCE Board Resolution - Osler Review and Comment

John,

Would you deal directly with Deb on this. I believe I can attest that it will be faster if I am not in the middle.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: February 23, 2011 9:08 AM
To: Susan Kennedy
Subject: RE: TCE Board Resolution - Osler Review and Comment

Susan;

What minutes are you referring to?

Deb

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

From: Susan Kennedy
Sent: February 23, 2011 8:58 AM
To: Michael Killeavy; Deborah Langelaan
Cc: John Zych
Subject: TCE Board Resolution - Osler Review and Comment

I thought I'd seen Osler comments on the draft minutes; however, John says he hasn't seen anything and I can't seem to find a record of same. Am I imagining things?

If Osler hasn't completed its review, could we get them to do so as it ideally should be finalized at next board meeting.

Thanks,

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

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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 Thursday, October 7, 2010, at 10:18 a.m., by teleconference

PRESENT

Colin Andersen
John Beck
Michael Costello
Rick Fitzgerald
Adèle Hurley
Ron Jamieson
Bruce Lourie

MEMBERS OF STAFF IN ATTENDANCE

Amir Shalaby, Vice President, Power System Planning
Michael Lyle, General Counsel and Vice President, Legal, Aboriginal and Regulatory Affairs
JoAnne Butler, Vice President, Electricity Resources
Kimberly Marshall, Vice President, Business Strategies and Solutions
Ben Chin, Vice President, Communications
Michael Killeavy, Director, Contract Management, Electricity Resources
John Zych, Corporate Secretary

1. Constitution of the Meeting

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

Mr. Zych advised that, with notice having been given and a quorum of members being present, the meeting was properly called and duly constituted for the transaction of business. He also indicated that the absent members – Charles Bayless, Lyn McLeod and Patrick Monahan – had advised him in writing that they waived lack of sufficient notice of the meeting.

2. Southwest Greater Toronto Area project

Mr. Andersen advised the Board members that the government of Ontario had made the decision that a gas plant in Oakville was no longer needed and, as a result, the plant would not proceed. The announcement was planned to be made by Minister of Energy Brad Duguid in Oakville at 1:00 p.m. that day.

Mr. Andersen further advised that the Ontario Power Authority had concluded that the latest information gathered on the current status of the electricity system supported the decision. When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the province. Since then, changes in demand and supply, including successful conservation efforts and more than 8,000 megawatts of new, cleaner power, had made it clear that the plant was no longer required. Local reliability remained a need and a transmission solution was required to address the need.

The Board members reviewed the terms of a draft letter to TransCanada Energy Ltd. that instructed TransCanada Energy Ltd. to cease all further work in connection with the Oakville gas plant and acknowledged that TransCanada Energy Ltd. was entitled to reasonable compensation. The letter also indicated the OPA's intention to enter into good faith negotiations with TransCanada Energy Ltd. to reach an agreement to terminate the contract.

On motion duly made, seconded and unanimously carried, it was RESOLVED THAT the Board of Directors approve the sending of a letter to TransCanada Energy Ltd. pertaining to the termination of plans to proceed with the Oakville gas plant and granting authority to the Chief Executive Officer to sign and send such a letter.

3. Termination

There being no further business to be brought before the meeting, the meeting terminated at 10:45 a.m.

Approved by the Board of Directors on
the 21st day of October, 2010

John Beck
Chair of the meeting

John Zych
Secretary of the meeting

Crystal Pritchard

From: John Zych
Sent: Tuesday, April 05, 2011 3:45 PM
To: Michael Lyle; Susan Kennedy
Subject: FW: BOD Presentation - TCE Matter Status Update
Attachments: OGS_BOD_CM_20110406 v5 R2.ppt

FYI.

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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From: John Zych
Sent: April 5, 2011 3:20 PM
To: James Hinds
Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
Subject: BOD Presentation - TCE Matter Status Update

Management feels that it will be useful to brief the Board on this matter this week. There is no opening to do so on Thursday, but on Wednesday, after the Board stakeholders meeting ends at about 5:00 p.m. we can fit it in. Electricity Resources has prepared a slide deck on this topic.

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

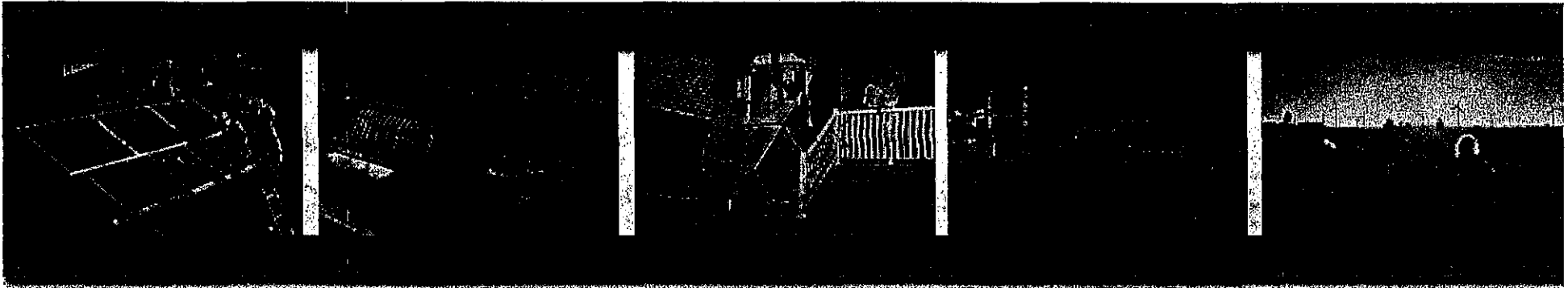
The dinner for John Beck commences at 6:00 p.m.

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

Please advise.

John Zych
Corporate Secretary
Ontario Power Authority
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120 Adelaide Street West
Toronto, ON M5H 1T1
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416-967-7474 Main telephone
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Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

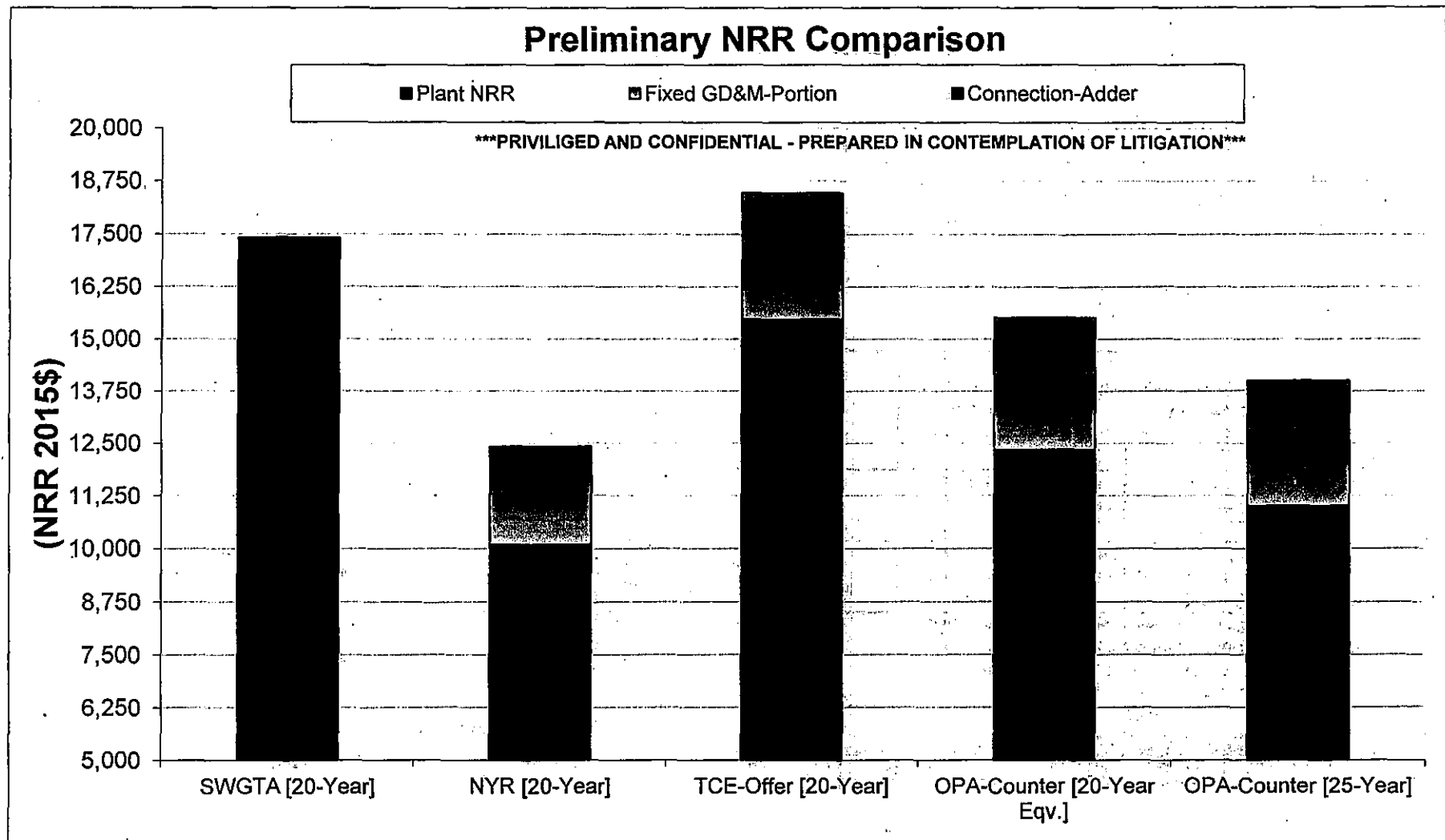
Status

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

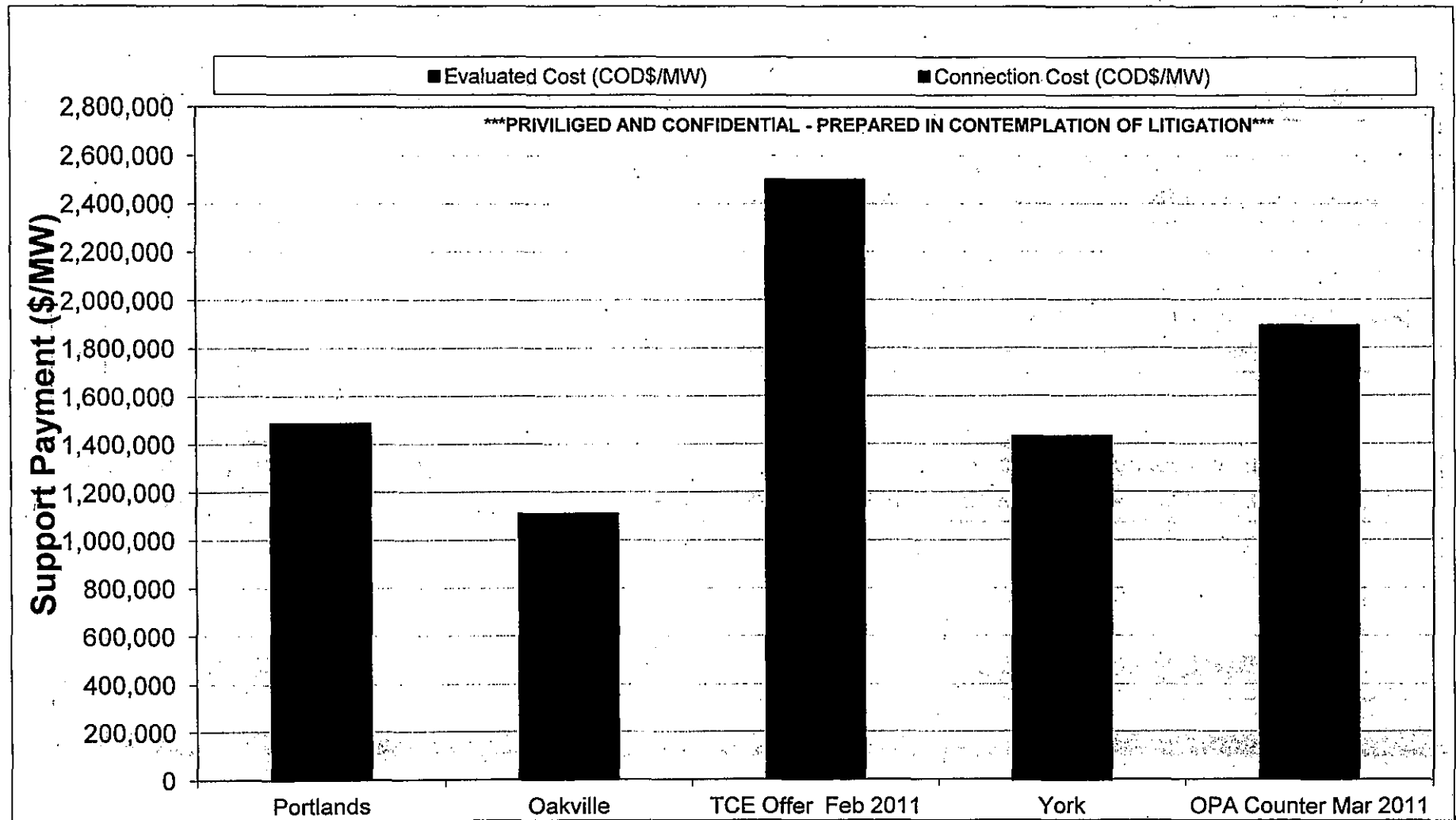
OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years	25 Years	Precedent - Portland Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portland's Energy Centre and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on any CAPEX increase.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

Net Revenue Requirement



Annual Payments Based on NRR



Approvals and Permitting Risk Mitigation

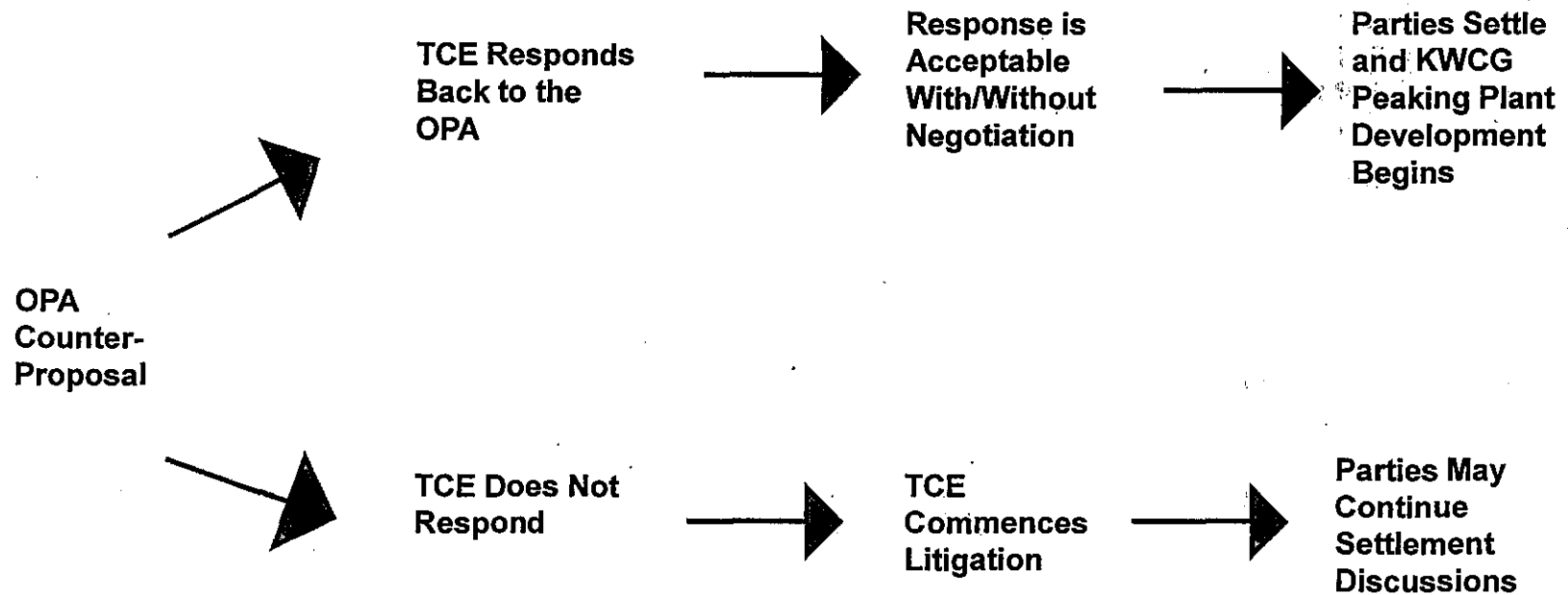
Risk Description	Owner	Mitigation Strategies
Planning Act Approvals , e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc.	Ministry of Municipal Affairs and Housing	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of the Act.
Development Charges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

Approvals and Permitting Risk Mitigation

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



Possible Outcomes



Crystal Pritchard

From: John Zych
Sent: Tuesday, April 05, 2011 4:05 PM
To: Michael Lyle; Susan Kennedy
Subject: FW: BOD Presentation - TCE Matter Status Update

FYI:

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

From: James Hinds [<mailto:jim.hinds@irish-line.com>]
Sent: April 5, 2011 4:03 PM
To: John Zych
Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
Subject: Re: BOD Presentation - TCE Matter Status Update

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

Agree that discussion should happen tomorrow after stakeholders before dinner.

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

Regards,

Jim Hinds
(416) 524-6949

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

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

Management feels that it will be useful to brief the Board on this matter this week. There is no opening to do so on Thursday, but on Wednesday, after the Board stakeholders meeting ends at about 5:00 p.m. we can fit it in. Electricity Resources has prepared a slide deck on this topic.

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

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

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

Please advise.

John Zych
Corporate Secretary
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Crystal Pritchard

From: John Zych
Sent: Wednesday, April 06, 2011 7:27 AM
To: Michael Killeavy; JoAnne Butler
Cc: Michael Lyle
Subject: FW: Updated BOD Presentation ...
Attachments: OGS_BOD_CM_20110406 v6.pptx; OGS_BOD_CM_20110406 v6.pdf

Importance: High

May I have 12 copies of this latest version delivered to the Boardroom this morning so that the Board members may glance at it during today's meeting and be ready for our 5:00 p.m. or so discussion of this subject.

I am just totally out of resources (Nimi is ill) and no one else is in yet.

By 8:30 is best; later if needed.

John Zych
Corporate Secretary
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-----Original Message-----

From: Michael Killeavy
Sent: April 5, 2011 9:21 PM
To: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Cc: John Zych
Subject: Updated BOD Presentation ...
Importance: High

Attached is both a .pptx and .pdf of the presentation. The colours in the bar chart is fixed and in the very first table some of the text in the cells was cut-off, so I fixed that, too.

I am using MS-Office 2010 on my notebook and have been saving it as a MS-Office 2003 .ppt for compatibility reasons, but when you do this it doesn't allow you to edit chart objects for some reason. This is what was causing the problem with the chart legend. I solved the problem by using MS-Office 2011 on my MacBook at home.

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

120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

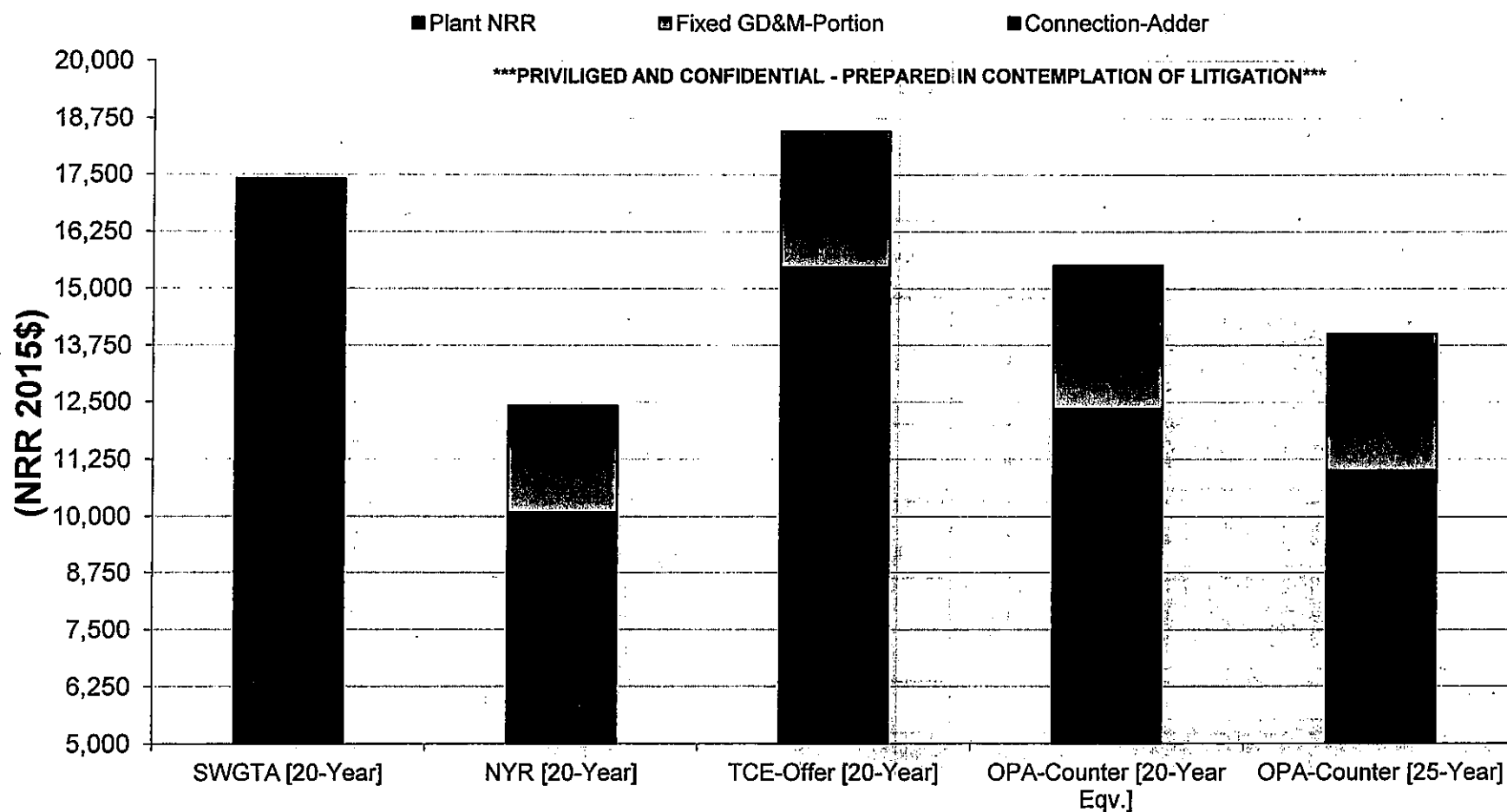
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OPA Counter-Proposal

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Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

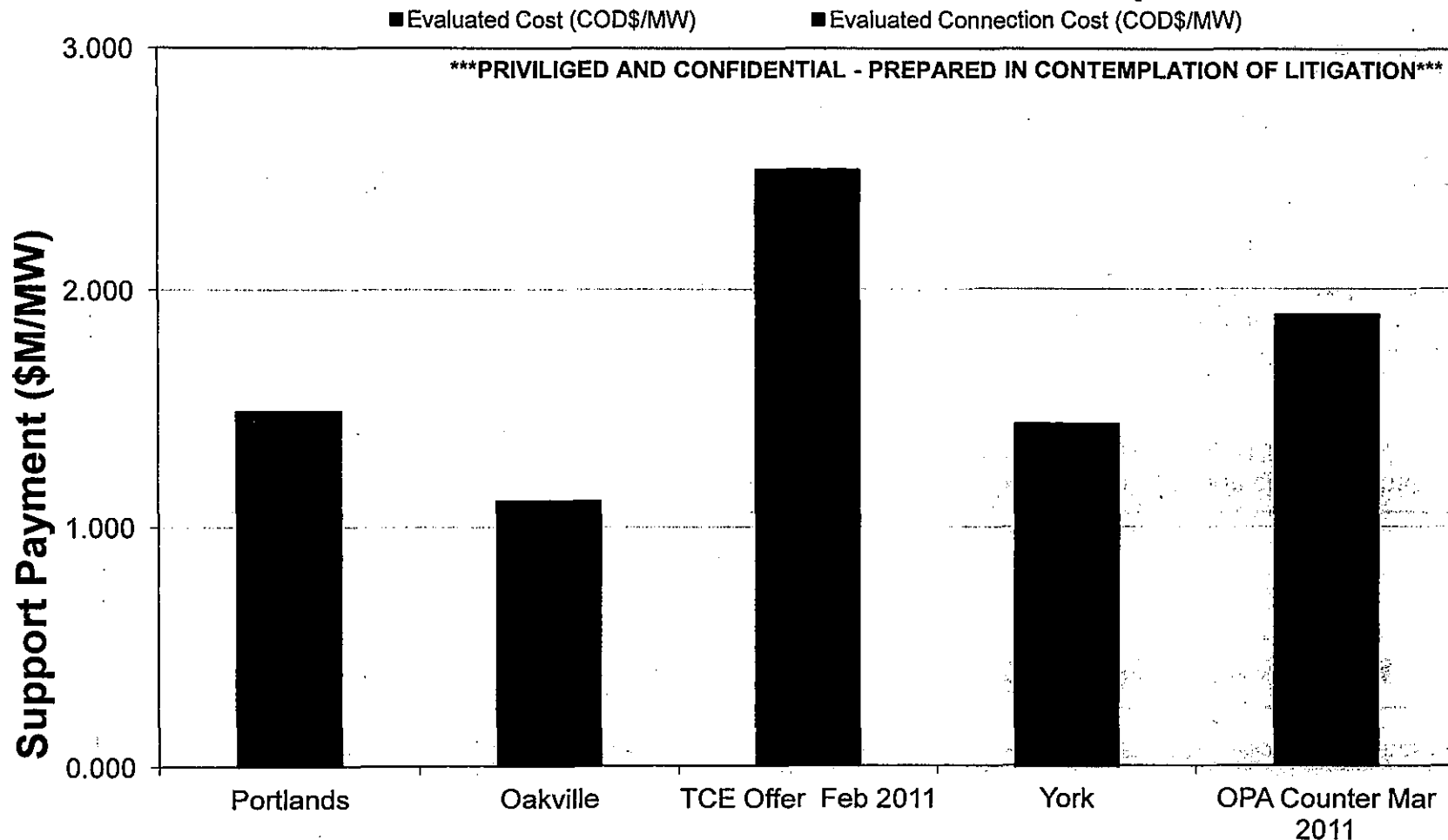
Net Revenue Requirement

Preliminary NRR Comparison



PV of Annual Payments Based on NRR

OPA Contracts Evaluated Cost Comparison



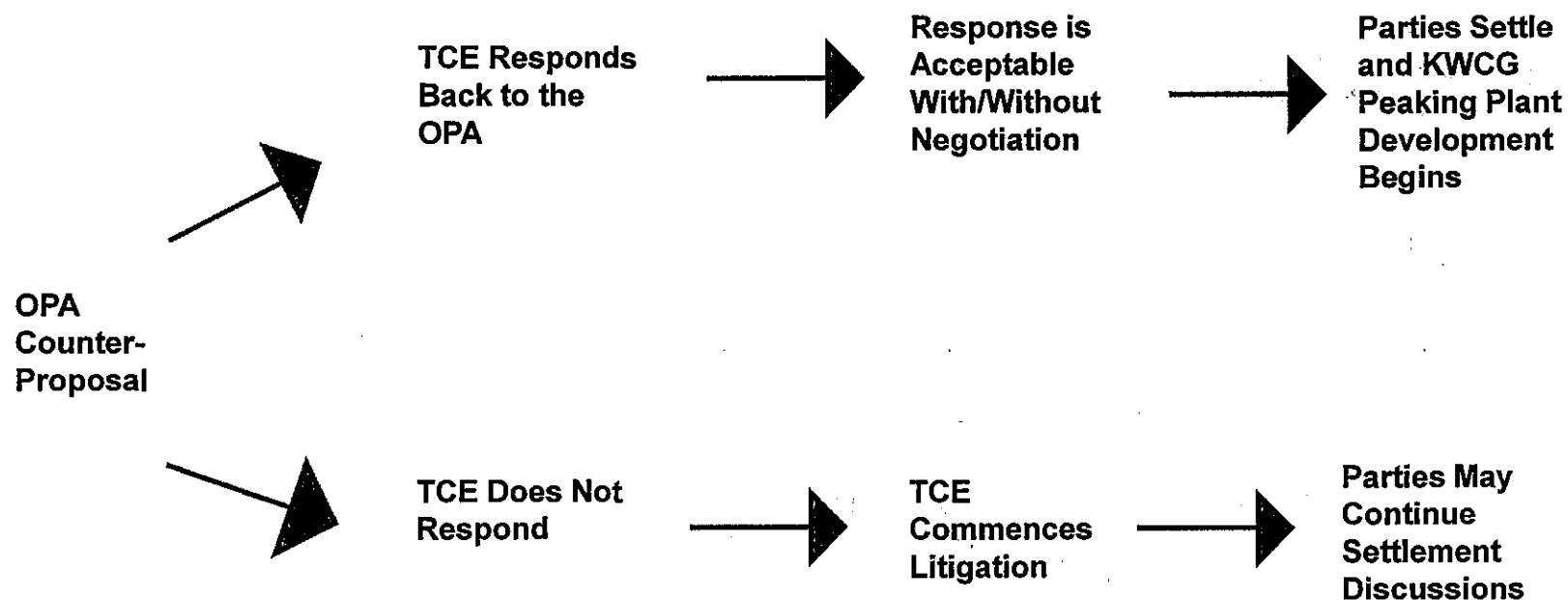
Approvals and Permitting Risk Mitigation

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

Approvals and Permitting Risk Mitigation

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

Possible Outcomes



Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, April 06, 2011 11:56 AM
To: 'rsebastiano@osler.com'
Cc: Michael Killeavy; Deborah Langelaan; Michael Lyle
Subject: Per my voicemail - call with litigation specialist

Importance: High

Rocco,

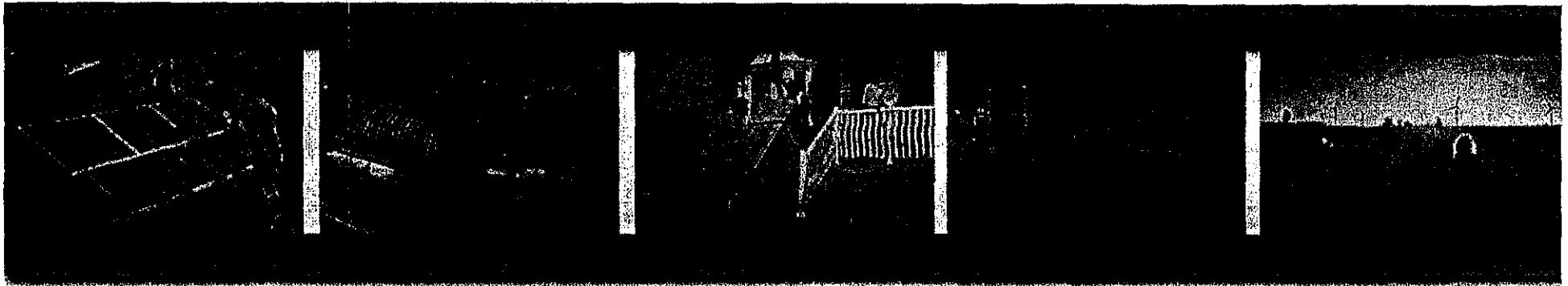
Per my voicemail, Mike Lyle would like to have a call [re TCE] with a litigation specialist by 4:00 pm today in order to brief on process in the event that we TCE takes action [for example, delivers statement of claim ...]

I understand from Deb that Paul is currently on vacation; however, the nature of the advice sought is not really TCE specific but more general litigation process focused, so while a litigation specialist is needed, I don't think you need to hunt Paul down (just another one of your colleagues).

My understanding is that Mike's schedule is quite flexible today.

Thanks,

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

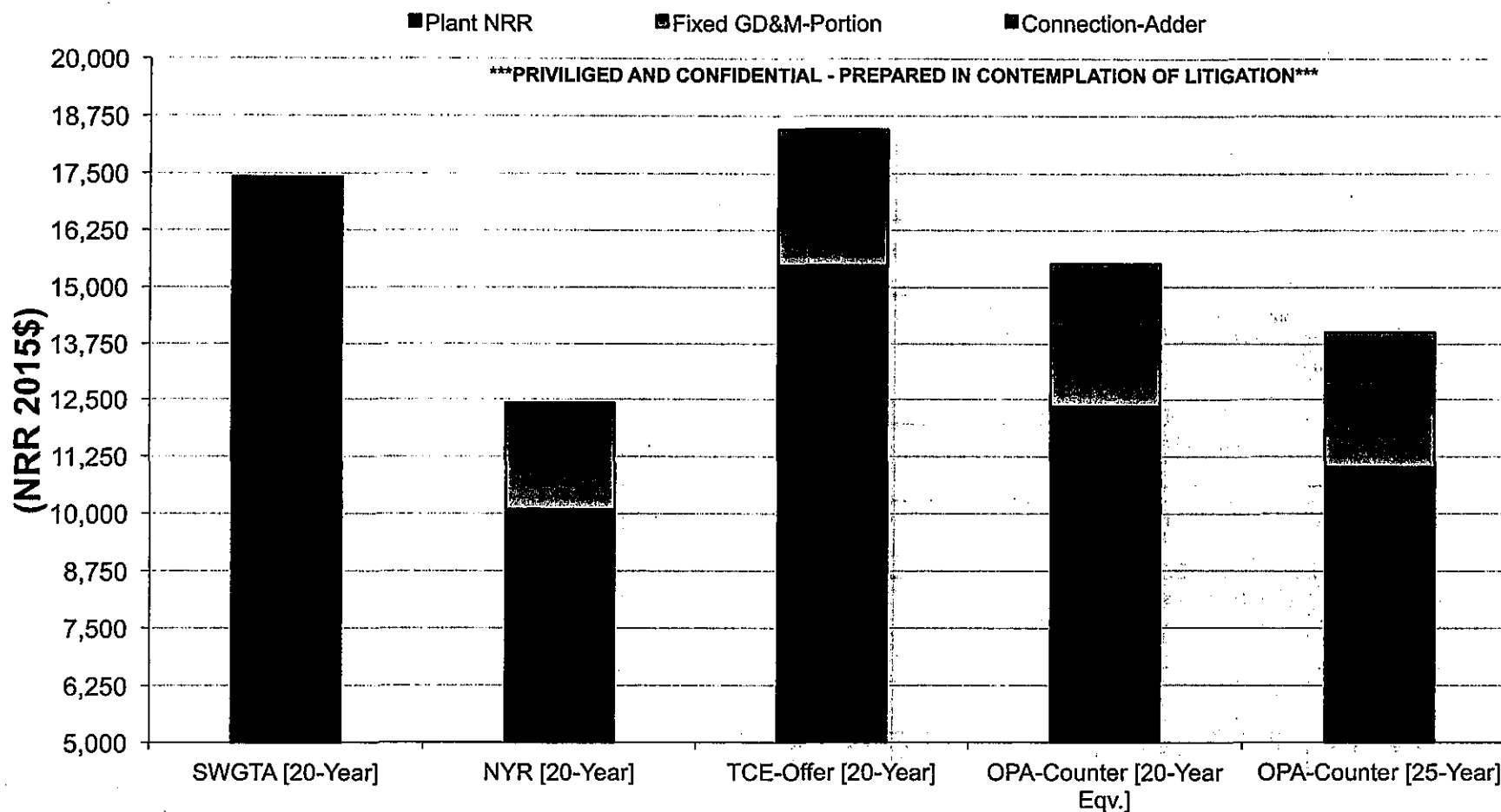
- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.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

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	\$16,900/MW-month	\$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years	25 Years	Precedent - Portland Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of \$37mm	Amortize over 25 years – no returns	\$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is \$100mm, ± 20%.
Capital Expenditures (CAPEX)	\$540mm	\$400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

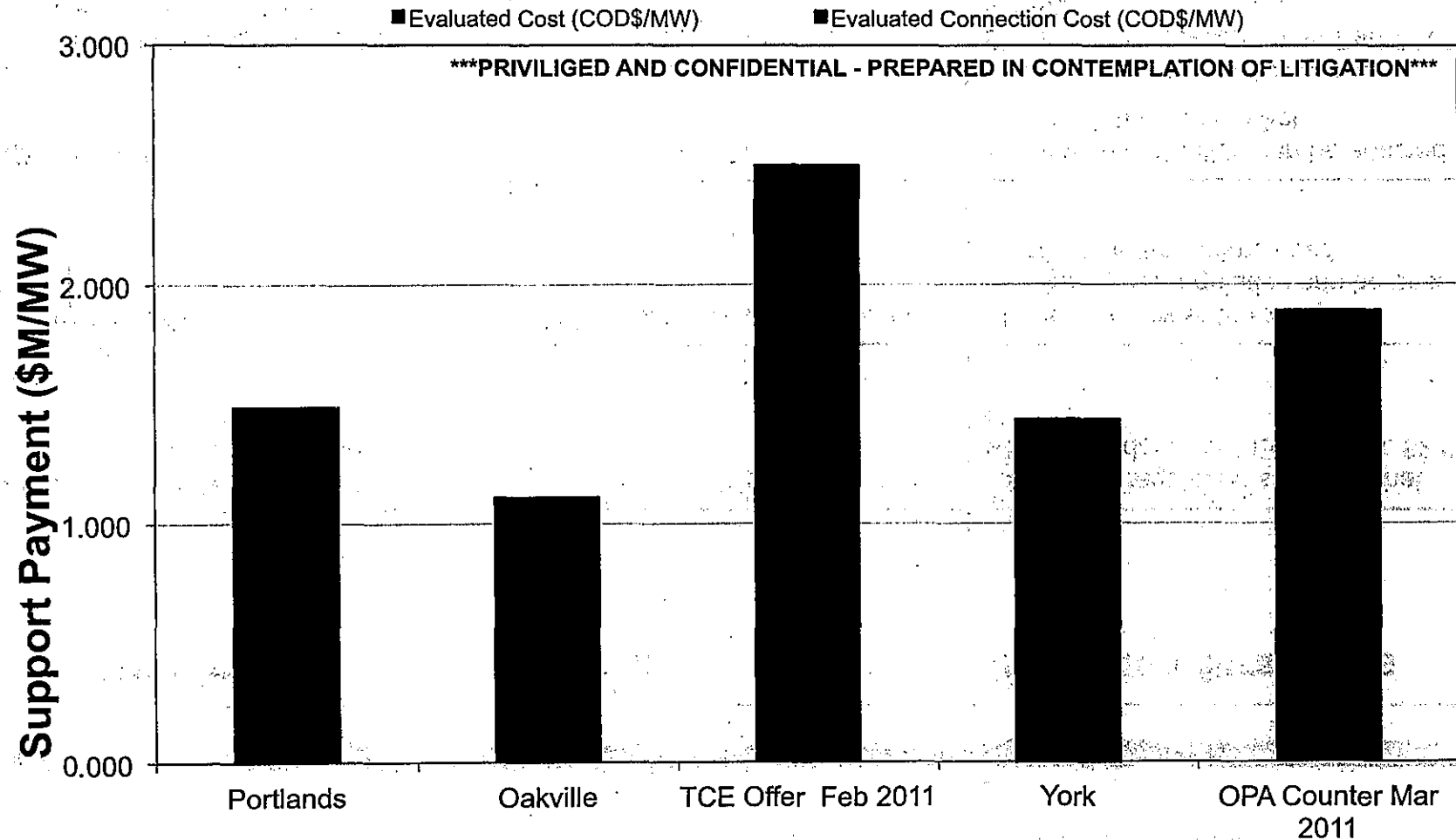
Net Revenue Requirement

Preliminary NRR Comparison



PV of Annual Payments Based on NRR

OPA Contracts Evaluated Cost Comparison



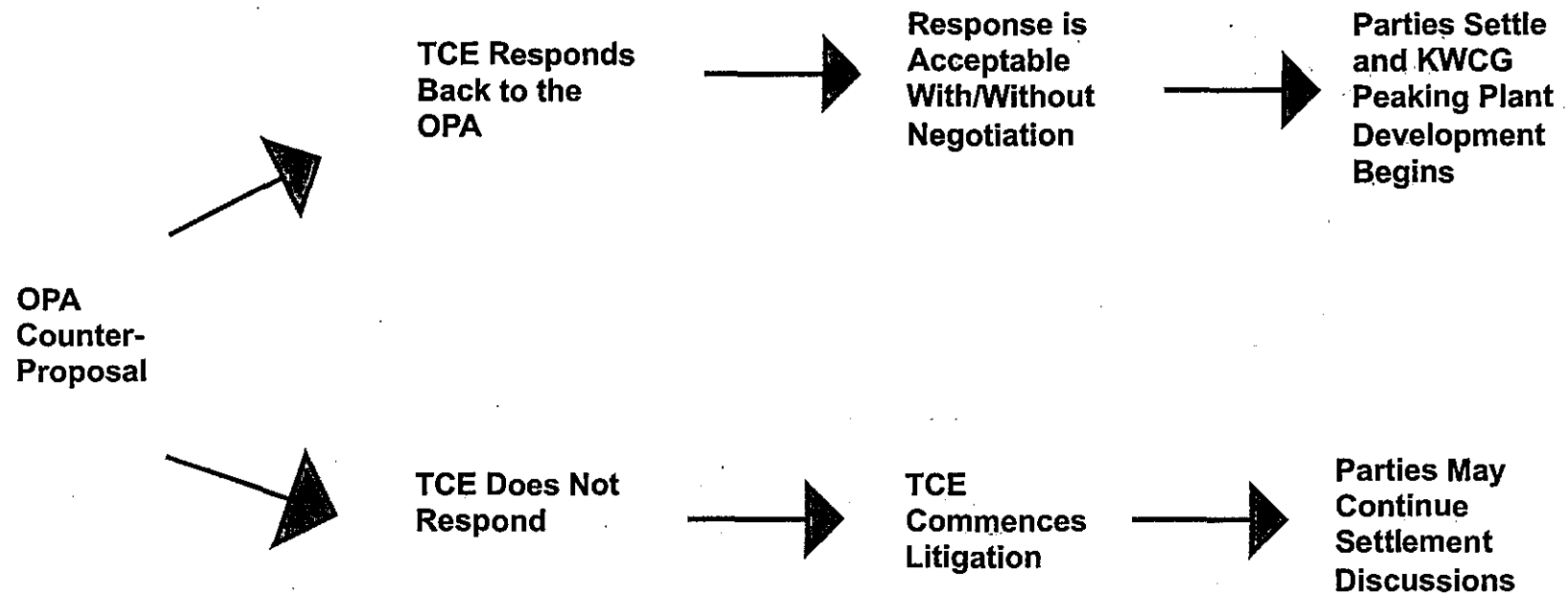
Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
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Building Code Act Permits	Ministry of Municipal Affairs and Housing	Exempting regulation can be enacted under s. 34(19) of the Act.
Environmental Assessment Act Environmental Screening Process	Ministry of the Environment	Exempting regulation under Part IV of the Act.
Environmental Protection Act Certificates of Approval	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act

Approvals and Permitting Risk Mitigation

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

Possible Outcomes



Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, April 06, 2011 12:27 PM
To: Michael Lyle
Subject: RE: One other thing
Attachments: Re: Opinion on Residual Value

Memos to follow – I only seem to have paper.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Lyle
Sent: April 6, 2011 12:23 PM
To: Susan Kennedy
Subject: One other thing

The litigation opinion on TCE. Could you send it as well please?

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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Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, February 03, 2011 7:18 PM
To: 'ESmith@osler.com'; Deborah Langelaan
Cc: 'PIvanoff@osler.com'; 'RSebastiano@osler.com'; Michael Lyle; Susan Kennedy
Subject: Re: Opinion on Residual Value

Thank you Elliot. Your analysis is very helpful.

As a follow up, if the OPA were to be found by a court to have repudiated the contract, would the OPA be able to rely on the exclusion clause related to consequential damages?

Thanks again for this.

Michael

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

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, February 03, 2011 07:04 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: Opinion on Residual Value

Michael/Deb,

As discussed, we have had a lawyer in our research group look into the question of whether the salvage value of TCE's facility is encompassed by the words of the OPA's October 7 letter to TCE. I've set out below his preliminary findings.

Based on the standard principal of damages at common law, if we look at the benefit of the contract to TCE, it includes both the 20-year revenue stream from the OPA and whatever TCE is left with at the end of the term. In other words, on an assessment of the expectation value of damages of the contract, we would typically expect the residual value would factor in. This result is more intuitive if you look to an analogy that goes the other way. For example, if this were a nuclear power plant rather than a gas-fired power plant, we would expect to discount the significant decommissioning costs from any lost profits in calculating the damages for breach of contract.

That said, although we would expect the residual value of the facility to factor into an assessment of damages, it is necessary to take into account a significant contingency in the residual value to reflect the possibility that the facility either does not exist or does not function in 20 years. In this particular case, that contingency would also need to take into account the considerable uncertainty around both the price of gas and the price of electricity in 20 years.

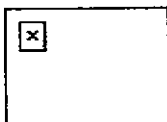
There was very little case law on point, but we did find one case that considered the concept of salvage value. It was a dispute between Air Canada and Ticketnet, who were partnering to develop an e-ticketing application. When the application was partially complete, Air Canada was to finish it and share the final product with Ticketnet. A dispute arose and Air Canada refused to finish the application or permit Ticketnet to finish the application. Ticketnet sued Air Canada for loss of profits. In calculating its lost profits, Ticketnet did not include any residual value for the software. The trial judge found that the lack of residual value constituted a conservative assumption by Ticketnet, and in part used this to draw his conclusion that the valuation was a reasonable one. This analysis was affirmed by the Ontario Court of Appeal. From this point, it can be inferred that the court considered residual value to be a valid head of damage since if the court did not, it would not have seen the exclusion of residual value as a conservative assumption.

With respect to the words of the October 7 letter, it references "reasonable damages...*including* the anticipated financial value of the Contract." As written, the words "anticipated financial value of the Contract" are encompassed as part of the "reasonable damages" and not a stand-alone or separate head of damages. From this we would tend to draw the conclusion that the words of the letter do not change the analysis of the damages resulting from a breach of the contract since the letter itself only promises "reasonable damages".

Lastly, as you know there is an exclusion of consequential damages (including loss of profits) set out in the agreement, so to the extent that was applicable, it would considerably change the overall analysis of the damages for breach of contract.

I hope this has been helpful. Please let us know if you have any follow-up questions or comments.

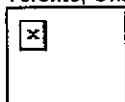
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 5:17 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan; Smith, Elliot; Ivanoff, Paul
Subject: Re: Opinion on Residual Value

We need this as soon as you can provide it and no later than Monday afternoon. Sorry to jam you.

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

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, February 03, 2011 04:58 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>
Subject: RE: Opinion on Residual Value

We have one of our lawyers in our research group doing some research on the issue to see if there has been any case law on this as it is a bit of an esoteric point. We'll try to get our memo revised in the next couple of days to consider this issue.

Given that this is also a commercial/business point as opposed to simply a legal interpretation issue, I wonder whether it would make sense to get someone at a financial advisory firm like Macquarie's (for example, Paul Bradley) or someone like Rob Cary to weigh in on this point. The benefit of this is that if we end up having to negotiate the issue "anticipated financial value of the Contract" someone with Paul's or Rob's background on project financing and financial modelling would be able to assist us in ways that Safouh cannot given that his background is more on the technical aspects of the project.

Regards, Rocco

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, February 03, 2011 4:25 PM
To: Sebastiano, Rocco
Cc: Deborah Langelaan
Subject: Opinion on Residual Value

Rocco,

When might we get your opinion on whether residual value of a project might reasonably be considered as damages for a breach of contract?

We need to meet with TCE next week to "negotiate" alleged loss of profit on OGS and it would be helpful to have your opinion before we meet.

Thanks,
Michael

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

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Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, April 06, 2011 12:34 PM
To: Michael Lyle
Cc: Susan Kennedy
Subject: FW: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE
Attachments: RE: TCE Matter - Email Response to Alex Pourbaix ...
Importance: High

Here is the original email response that I drafted. Attached is litigation counsel's edits.

Colin made a couple of minor changes, which I will forward to you under separate cover.

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

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

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

.....
CONFIDENTIAL & WITHOUT PREJUDICE

Alex,

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

We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX

build up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around \$750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.

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

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

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

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

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

Colin

.....

I appreciate your comments on this proposed response back.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-520-9788 (CELL)
416-967-1947 (FAX)

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

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

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

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

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

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

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and resolve the issues between us.

Sincerely,

Colin

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

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

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

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

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

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. This ~~is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR for the K-W plant. Our position is that, as with the~~ We worked with our advisors to determine the appropriate NPV of the OGS contract, taking into account the applicable risks and appropriate discount rates and built this into the NRR in our proposal. As with OGS, the residual value of the K-W peaking facility is would be to TCE's account. TCE can make of it what it wishes and value

~~it as it wishes.~~ We think that a plant with peaking capability affords the system with a great deal of flexibility, which will continue to have real value in the future.

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

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

Sincerely,

Colin

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, April 06, 2011 12:35 PM
To: Michael Lyle
Cc: Susan Kennedy
Subject: FW: as sent

Here is the version Colin sent this past Monday.

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

Minor tweaks to first and last para

Colin Andersen
Chief Executive Officer

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

Please consider your environmental responsibility before printing this email

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you

raised a number of matters to which I said I would get back to you about today and would like to respond to directly.

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

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

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

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

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

Happy to chat further,

Colin

Colin Andersen
Chief Executive Officer

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

Please consider your environmental responsibility before printing this email

Crystal Pritchard

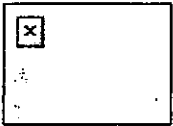
From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, April 08, 2011 12:44 PM
To: Michael Lyle
Cc: Sebastiano, Rocco; Susan Kennedy; Deborah Langelaan
Subject: OPA - TCE
Attachments: OPA Litigation hold letter 20418319_1.DOC

Mike,

Attached is a draft memorandum prepared in connection with the retention of documents by the OPA respecting the Oakville Generating Station matter. The memo references the obligation to retain documents and the importance of preserving documents and records in light of anticipated legal proceedings. The memo is drafted in a way that it can be copied to OPA letterhead and distributed by you internally within the OPA.

If you have any questions, please let me know.

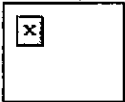
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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Memorandum

Privileged & Confidential

To: Michael Lyle
General Counsel
Ontario Power Authority

Date: April 8, 2011

c: Rocco Sebastiano

From: Paul A. Ivanoff

Tel: (416) 862-4223

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

Matter No: 1126205

Note: The following memorandum should be copied onto Ontario Power Authority law group letterhead before dissemination and should include a banner stating "Privileged and Confidential".

PLEASE READ THIS MEMORANDUM CAREFULLY

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

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

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

Preservation of Records Relating to Litigation

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

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

Draft & Privileged

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

Documents Which Must Be Disclosed – “Relevance”

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

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

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

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

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

IT Personnel

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

The General Issues

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

1. the procurement and administration of the CES Contract between the OPA and TCE;

2. the OPA's planning analysis of the needs in Southwest GTA;
3. the communications between the OPA and the Government relating to the OGS;
4. the Minister of Energy's decision and announcement that the OGS will not proceed;

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

If you have any questions or concerns, please contact the OPA law group at (416) 969-6035.

Draft & Privileged

Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Friday, April 08, 2011 6:17 PM
To: Michael Lyle
Subject: Re: TCE

Thanks for the update. Have a good weekend.

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Friday, April 08, 2011 05:33 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; Sarah Diebel <Sarah.Diebel@powerauthority.on.ca>
Subject: TCE

I have spoken with Ministry counsel on this matter and we will try to arrange a time for middle of next week when you can sit down with Counsel from MAG Civil and Ministry Legal and ourselves to discuss coordination. Re the notice that was being discussed, under the Proceedings Against the Crown Act, they must give the Crown 60 days written notice before issuing a Statement of Claim against the Crown.

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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Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, April 08, 2011 7:01 PM
To: Michael Lyle; Sebastiano, Rocco
Cc: JoAnne Butler; Michael Killeavy; Susan Kennedy; Deborah Langelaan; Sarah Diebel
Subject: Re: TCE

Thanks Mike. Mid-week works for me except that I have a brief matter with an arbitrator that I have to attend to Wednesday morning.

Regards,
Paul

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Friday, April 08, 2011 05:33 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: JoAnne Butler <joanne.butler@powerauthority.on.ca>; Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; Sarah Diebel <Sarah.Diebel@powerauthority.on.ca>
Subject: TCE

I have spoken with Ministry counsel on this matter and we will try to arrange a time for middle of next week when you can sit down with Counsel from MAG Civil and Ministry Legal and ourselves to discuss coordination. Re the notice that was being discussed, under the Proceedings Against the Crown Act; they must give the Crown 60 days written notice before issuing a Statement of Claim against the Crown.

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

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Crystal Pritchard

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

OPA Key Messages in event TCE Files Notice of Claim

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay (\$1 billion) to TCE as compensation for the Oakville Generating Station.
4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and deliver of clean, cost effective power.
 - 100% own and operate Halton Hills
 - 56% PEC
 - Major investor in Bruce Power
5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project.

Crystal Pritchard

From: Susan Kennedy
Sent: Monday, April 11, 2011 12:40 PM
To: Michael Lyle
Subject: FW: OPA - TCE (Request for Mediation)

fyi

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: April 11, 2011 12:16 PM
To: Michael Killeavy; Susan Kennedy; Deborah Langelaan; Sarah Diebel
Cc: Sebastiano, Rocco
Subject: OPA - TCE (Request for Mediation)

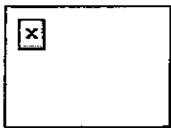
Below is the text of the draft email to Alex Pourbaix requesting mediation.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

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

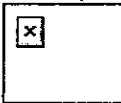
Please let me know within the next two days as to whether you are agreeable to mediation.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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Crystal Pritchard

From: Michael Lyle
Sent: Monday, April 11, 2011 12:51 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages
Attachments: TCE-OGS Key Messages.docx

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

OPA Key Messages in event TCE Files Notice of Claim

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.
2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.
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 - 56% PEC
 - Major investor in Bruce Power
5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project.

Crystal Pritchard

From: Michael Killeavy
Sent: Monday, April 11, 2011 3:57 PM
To: Colin Andersen
Cc: JoAnne Butler; Susan Kennedy; Michael Lyle; Deborah Langelaan; Sarah Diebel
Subject: TCE Matter - DRAFT Email - Mediation ...

Colin,

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

.....

"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

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

.....

Michael

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

Crystal Pritchard

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

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

JCB

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

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

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

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

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

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

Crystal Pritchard

From: Kristin Jenkins
Sent: Monday, April 11, 2011 4:34 PM
To: JoAnne Butler; Colin Andersen; Michael Lyle
Cc: Michael Killeavy; Deborah Langelaan
Subject: Re: Potential Questions for Tomorrow's Meeting

Understood. Mike-did external counsel have comments on the key messages?

From: JoAnne Butler
Sent: Monday, April 11, 2011 03:56 PM
To: Kristin Jenkins; Colin Andersen; Michael Lyle
Cc: Michael Killeavy; Deborah Langelaan
Subject: RE: Potential Questions for Tomorrow's Meeting

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

2, 3 and 4 look good...

JCB

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

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

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

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

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

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

Crystal Pritchard

From: Michael Lyle
Sent: Monday, April 11, 2011 4:52 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages
Attachments: TCE-OGS Key Messages.docx

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

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.
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 - 100% own and operate Halton Hills
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5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project.

Crystal Pritchard

From: Susan Kennedy
Sent: Monday, April 11, 2011 5:08 PM
To: Michael Lyle
Subject: Re: TCE-OGS Key Messages

Got a v-m from Paul just as I was shutting off computer. I think it will be tomorrow morning before I can touch base with him - I'll try him from home but don't want to call from train as it is too crowded for any hope of confidentiality. His v-m said he wanted to make sure we were on "same page" before he commented. If you're in a position to try him now, his work number is 416 862 4223. I'll not be home until about 6:15.

From: Michael Lyle
Sent: Monday, April 11, 2011 04:52 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

Crystal Pritchard

From: Michael Lyle
Sent: Monday, April 11, 2011 5:45 PM
To: 'carolyn.calwell@ontario.ca'
Subject: Fw: Potential Questions for Tomorrow's Meeting

From: JoAnne Butler
Sent: Monday, April 11, 2011 04:16 PM
To: 'david.lindsay@ontario.ca' <david.lindsay@ontario.ca>; 'MacLennan, Craig (MEI)' <Craig.MacLennan@ontario.ca>; 'sean.mullin@ontario.ca' <sean.mullin@ontario.ca>
Cc: Kristin Jenkins; Michael Lyle; Colin Andersen; Irene Mauricette
Subject: FW: Potential Questions for Tomorrow's Meeting

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

JCB

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

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

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

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

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Crystal Pritchard

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Monday, April 11, 2011 6:10 PM
To: Michael Lyle
Subject: RE: Potential Questions for Tomorrow's Meeting

Thank you.

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: April 11, 2011 5:45 PM
To: Calwell, Carolyn (MEI)
Subject: Fw: Potential Questions for Tomorrow's Meeting

From: JoAnne Butler
Sent: Monday, April 11, 2011 04:16 PM
To: 'david.lindsay@ontario.ca' <david.lindsay@ontario.ca>; 'MacLennan, Craig (MEI)' <Craig.MacLennan@ontario.ca>; 'sean.mullin@ontario.ca' <sean.mullin@ontario.ca>
Cc: Kristin Jenkins; Michael Lyle; Colin Andersen; Irene Mauricette
Subject: FW: Potential Questions for Tomorrow's Meeting

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

JCB

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

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

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

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

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Crystal Pritchard

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Monday, April 11, 2011 6:45 PM
To: Michael Lyle
Cc: Perun, Halyna N. (MEI)
Subject: RE: Potential Questions for Tomorrow's Meeting

Follow Up Flag: Follow up
Flag Status: Flagged

This is what the MO sent me this afternoon. I wrestled with the first point a bit, but ultimately didn't change it.

- We have always said that we would work to ensure the best possible deal for Ontario ratepayers
- Disappointed that TC have chosen this avenue instead of continuing discussions with the OPA to find a mutually agreeable solution
- As this is now a legal matter that will be before the courts, I can't comment further

Halyna is on point from here.

Carolyn

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
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Crystal Pritchard

From: Michael Lyle
Sent: Monday, April 11, 2011 6:48 PM
To: 'Carolyn.Calwell@ontario.ca'
Cc: 'Halyna.Perun2@ontario.ca'
Subject: Re: Potential Questions for Tomorrow's Meeting

Ok thanks.

From: Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]
Sent: Monday, April 11, 2011 06:45 PM
To: Michael Lyle
Cc: Perun, Halyna N. (MEI) <Halyna.Perun2@ontario.ca>
Subject: RE: Potential Questions for Tomorrow's Meeting

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Crystal Pritchard

From: Kristin Jenkins
Sent: Monday, April 11, 2011 7:07 PM
To: Michael Lyle
Subject: Re: TCE Comms

Nope. Have not heard from them. Can you send whatever you have to me? Did our litigation lawyers have any comments on our messaging?

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

From: Michael Lyle
Sent: Monday, April 11, 2011 06:49 PM
To: Kristin Jenkins
Subject: TCE Comms

I take it that you are looped in with Ministry Comms. Ministry Legal shared Ministry Comms message with me.

Crystal Pritchard

From: Kristin Jenkins
Sent: Monday, April 11, 2011 9:47 PM
To: Colin Andersen; JoAnne Butfer; Michael Lyle; Michael Killeavy
Subject: Fw: TCE-OGS Key Messages - Revised
Attachments: TCE-OGS-Key Messages.doc.docx

I revised to include mediation in last message.

From: Kristin Jenkins [<mailto:kmjkristin@gmail.com>]
Sent: Monday, April 11, 2011 08:55 PM
To: Kristin Jenkins
Subject: TCE-OGS Key Messages - Revised

Crystal Pritchard

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OPA Key Messages in event TCE Files Notice of Claim

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