Crystal Pritchard

From: Kristin Jenkins
Sent: Monday, April 11, 2011 9:53 PM
To: Michael Lyle
Subject: Re: Potential Questions for Tomorrow's Meeting

Thanks.

From: Michael Lyle
Sent: Monday, April 11, 2011 09:11 PM
To: Kristin Jenkins
Subject: Fw: Potential Questions for Tomorrow's Meeting

This is all I have seen. We are looping back with external counsel re comments tomorrow morning.

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

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]
Sent: April 11, 2011 6:26 PM
To: Calwell, Carolyn (MEI)
Subject: Re: Potential Questions for Tomorrow's Meeting

Can we loop back together on the reactive communications messaging? I assume that our communications people are acting in tandem but we should make sure.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Monday, April 11, 2011 06:10 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
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: JoAnne Butler
Sent: Tuesday, April 12, 2011 9:12 AM
To: Kristin Jenkins; Colin Andersen; Michael Lyle; Michael Killeavy
Subject: Re: TCE-OGS Key Messages - Revised

Looks good...Point 4 should say "delivery" not deliver...

JCB

From: Kristin Jenkins
Sent: Monday, April 11, 2011 09:46 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy
Subject: Fw: TCE-OGS Key Messages - Revised

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

From: Michael Lyle
Sent: Tuesday, April 12, 2011 9:16 AM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages - Revised
Attachments: TCE-OGS-Key Messages.doc.docx

FYI

From: Kristin Jenkins
Sent: Monday, April 11, 2011 09:46 PM
To: Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy
Subject: Fw: TCE-OGS Key Messages - Revised

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

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.

Crystal Pritchard

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

Litigation Privilege/Solicitor and Client Privilege

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

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

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

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

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

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

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

From: Michael Lyle
Sent: April 11, 2011 4:52 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages

Have we heard back yet? KJ is wondering.

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

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

From: Kristin Jenkins
Sent: Monday, April 11, 2011 10:41 AM
To: Michael Lyle

Subject: TCE-OGS Key Messages

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: Kristin Jenkins
Sent: Tuesday, April 12, 2011 9:24 AM
To: Susan Kennedy
Cc: Michael Lyle
Subject: TCE-OGS-Key Messages - Revised
Attachments: TCE-OGS-Key Messages doc.docx

Reference to mediation has been added to fifth message since yesterday.

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 delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE.

Crystal Pritchard

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

Litigation Privilege/Solicitor and Client Privilege

Sorry – from a lawyer perspective, just to clarify...

Are you saying they would be used generally as follows:

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

In the context of dealing with other communication, etc if TCE files a notice and goes public.

I don't think you're saying that if TCE files a notice and goes public we will release the six points "as is" in a press release or other public document but if that is the case or something similar, that would be relevant for Paul's purposes.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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

---

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

Litigation Privilege/Solicitor and Client Privilege

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

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

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

6. Not released formally.
7. Provide a touch stone for framing other communication pieces – for example, actual press releases, responses to questions, QA's, etc.

8. Form of "executive summary" for communication packages.
9. Touch stones for speakers (for example, Colin) to keep in mind if dealing with the press. To assist in staying "on message".
10. They often go to MEI as part of a communications package.

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

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

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

From: Michael Lyle
Sent: April 11, 2011 4:52 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages

Have we heard back yet? KJ is wondering.

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

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

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

Crystal Pritchard

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

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

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

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

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

Litigation Privilege/Solicitor and Client Privilege

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

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

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

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Counsel
Director, Corporate/Commercial Law Group

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Subject: Fw: TCE-OGS Key Messages

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

Crystal Pritchard

From: Susan Kennedy
Sent: Tuesday, April 12, 2011 9:56 AM
To: Kristin Jenkins
Cc: Michael Lyle
Subject: RE: TCE-OGS Key Messages

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

Press Release:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay ($1 billion) to TCE as compensation for the Oakville Generating Station.

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5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE.

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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

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

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

---

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

Litigation Privilege/Solicitor and Client Privilege

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

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Counsel
Director, Corporate/Commercial Law Group

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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 Killeavy
Sent:	Tuesday, April 12, 2011 1:03 PM
To:	Colin Andersen
Cc:	JoAnne Butler; Kristin Jenkins; Deborah Langelaan; Brett Baker; Susan Kennedy; Michael Lyle
Subject:	TCE Matter - Revised Draft of the Mediation Email ....
Importance:	High

Colin,

Here is the proposed text of the email:

****

"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE"

"After considering where OPA and TCE are at in our negotiations, I believe that we might benefit from having a third-party facilitated discussion by jointly engaging the services of a mediator. In a mediation, we would be able to share information and data with each other and the mediator on a confidential and without prejudice basis. I am recommending this to assist in resolving our differences in a timely manner. If you agree there is merit in entering into a mediation process, we would propose that OPA and TCE take steps to agree on a mediator and proceed with scheduling a mediation session. Please let me know by next week whether TCE is 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: Colin Andersen
Sent: Tuesday, April 12, 2011 2:35 PM
To: JoAnne Butler; Kristin Jenkins; Michael Lyle; Michael Killeavy
Subject: FW: Suggestion

As sent

Colin Andersen
Chief Executive Officer

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

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

"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE"

Hi Alex

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

Colin.

Colin Andersen
Chief Executive Officer

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

Crystal Pritchard

From: Irene Mauricette
Sent: Tuesday, April 12, 2011 3:03 PM
To: JoAnne Butler; Kristin Jenkins; Michael Lyle; Michael Killeavy
Subject: FW: Suggestion

FYI...

From: Linda Lee [mailto:linda_lee@transcanada.com]
Sent: April 12, 2011 3:02 PM
To: Colin Andersen
Subject: Re: Suggestion

Mr Anderson,
This is Linda, Alex's assistant responding to your email.

Alex is out of the office this week but will be checking his email periodically and will respond at his first opportunity.

Thank you.

Kind regards,

Linda.

From: Alex Pourbaix
Sent: Tuesday, April 12, 2011 12:35 PM
To: Linda Lee
Subject: FW: Suggestion

From: Colin Andersen[SMTP:COLIN.ANDERSEN@POWERAUTHORITY.ON.CA]
Sent: Tuesday, April 12, 2011 12:34:35 PM
To: Alex Pourbaix
Subject: Suggestion
Auto forwarded by a Rule

"PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE"

Hi Alex

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

Colin.

Colin Andersen
Chief Executive Officer

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Toronto, Ontario M5H 1T1
T. 416 969 6399
F. 416 969 6380
colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

Crystal Pritchard

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

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

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

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

Thanks, Rocco

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

Paul/Rocco,

We are being asked to:

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

2. Prepare a Notice of Arbitration to TCE.

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

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

Michael

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

Toronto, Ontario, M5H 1T1
416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Wednesday, April 13, 2011 5:44 PM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Arbitration ....

Michael,

On point number 1 regarding the letter requesting mediation (that is to be counsel to counsel), would you like that to be from OPA's in-house counsel or from Osler. Let me know.

Thanks,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

Paul/Rocco,

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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: Michael Killeavy
Sent: Wednesday, April 13, 2011 5:46 PM
To: 'PIvanoff@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Arbitration ....

I'll defer to Mike Lyle on this. Let me touch base with him. There was some further discussion on this after I sent my instruction.

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: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Wednesday, April 13, 2011 05:44 PM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Arbitration ....

Michael,

On point number 1 regarding the letter requesting mediation (that is to be counsel to counsel), would you like that to be from OPA's in-house counsel or from Osler. Let me know.

Thanks,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

Paul/Rocco,

We are being asked to:

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

2. Prepare a Notice of Arbitration to TCE.

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

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

Michael

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

From: Michael Lyle
Sent: Wednesday, April 13, 2011 5:48 PM
To: 'PIvanoff@osler.com'; Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Susan Kennedy; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Arbitration ....

We are going back and forth on that one and also still considering sending it from Colin to Alex again. Please craft it for now as coming from Oslers and we will discuss further when reviewing the draft.

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Partner

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416.862.6666 FACSIMILE
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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

osler.com

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Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
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Sent: Wednesday, April 13, 2011 5:50 PM
To: Michael Lyle; Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Arbitration ....

Will do.

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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From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Wednesday, April 13, 2011 5:48 PM
To: Ivanoff, Paul; Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Susan Kennedy; Sebastiano, Rocco
Subject: Re: TCE Matter - Arbitration ....

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Paul

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

osler.com

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

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

Crystal Pritchard

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

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

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

JCB

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

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

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

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

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

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

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

CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION

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

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

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

JCB

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

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

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

Crystal Pritchard

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

Michael,

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

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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Sent: Wednesday, April 13, 2011 4:50 PM
To: Ivanoff, Paul; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy
Subject: TCE Matter - Arbitration ....

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Michael

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

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Michael.killeavy@powerauthority.on.ca

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

OSLER

Toronto

Montréal

Ottawa

Calgary

New York

April 14, 2011

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

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Sir:

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

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

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

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

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

Draft

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

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

May we please hear from you at your earliest opportunity.

Yours very truly,

Paul Ivanoff
PI:hi

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

Draft

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, April 14, 2011 11:30 AM
To: Robert Godhue
Subject: Fw: TCE Matter - Arbitration and Mediation [Privileged and Confidential]
Attachments: Letter to counsel for TCE 20447708_1.doc

Please print off for me ASAP.

----- Original Message -----
From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Thursday, April 14, 2011 10:53 AM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Arbitration and Mediation [Privileged and Confidential]

Michael,

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

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

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Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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416.362.2111 MAIN
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OSLER

Toronto

Montréal

Ottawa

Calgary

New York

April 14, 2011

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

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Sir:

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Yours very truly,

Paul Ivanoff
PI:hi

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

Crystal Pritchard

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

For discussion at 2:00 pm.

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

Kristin,

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

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

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Yes.

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

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

Press Release:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay ($1 billion) to TCE as compensation for the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE.

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

Susan H. Kennedy

Director, Corporate/Commercial Law Group

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

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

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

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

---

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

Litigation Privilege/Solicitor and Client Privilege

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

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

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

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

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

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

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

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

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

Have we heard back yet? KJ is wondering.

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

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

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

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. TCE is claiming $1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA believes that it is unreasonable for TCE to claim $1B against the Ontario ratepayers in connection with the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. ~~OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.~~TCE is claiming $1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA ~~does not believe it is reasonable or necessary for~~believes that it is unreasonable for TCE to claim $1B against the Ontario ratepayers ~~to pay ($1 billion) to TCE as compensation for~~in connection with the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

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Crystal Pritchard

From:	Michael Lyle
Sent:	Thursday, April 14, 2011 11:56 AM
To:	Susan Kennedy
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Attachments:	#20433686v2_LEGAL_1_ - TCE-OGS-Key Messages doc.doc; WSComparison_#20433686v1_LEGAL_1_ - TCE-OGS-Key Messages doc-#20433686v2_LEGAL_1_ - TCE-OGS-Key Messages doc.pdf

I think it would be very helpful to have you at the 2pm meeting as well if you can make it.

From: Kristin Jenkins
Sent: Thursday, April 14, 2011 11:51 AM
To: Colin Andersen; Brett Baker; Michael Lyle; JoAnne Butler
Subject: FW: TCE-OGS Key Messages - Privileged and Confidential

For discussion at 2:00 pm.

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

Kristin,

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place

Toronto, Ontario, Canada M5X 1B8

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Tuesday, April 12, 2011 11:01 AM
To: Ivanoff, Paul
Subject: FW: TCE-OGS Key Messages

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Yes.

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

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

Press Release:

1. OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA does not believe it is reasonable or necessary for Ontario ratepayers to pay ($1 billion) to TCE as compensation for the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE.

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

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Director, Corporate/Commercial Law Group

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

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

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Litigation Privilege/Solicitor and Client Privilege

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1. Not released formally.
2. Provide a touch stone for framing other communication pieces – for example, actual press releases, responses to questions, QA's, etc.
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With the foregoing in mind, Paul will be providing a mark-up. His specific concerns were items #1 and #5 which reference our attempts to reach/negotiate an agreement. On the premise that TCE would attempt use any available materials against us in litigation, his concern is that this frames the issue as, "well why would you try to negotiate, if you hadn't done anything wrong."

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

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

From: Michael Lyle
Sent: April 11, 2011 4:52 PM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages

Have we heard back yet? KJ is wondering.

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

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

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Sent: Monday, April 11, 2011 10:41 AM
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Subject: TCE-OGS Key Messages

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. TCE is claiming $1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA believes that it is unreasonable for TCE to claim $1B against the Ontario ratepayers in connection with the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.

PRIVILEGED AND CONFIDENTIAL

OPA Key Messages in event TCE Files Notice of Claim

1. ~~OPA and TCE have been unable to reach an agreement that OPA believes is in the best interest of Ontario ratepayers.~~TCE is claiming $1B from the OPA in connection with the Ministry's cancellation of the Oakville Generating Station, a gas-fired power plant which had been blocked by local by-laws and deemed unnecessary by the Ministry.

2. While the provincial government announced the Oakville Generating Station would not proceed, this current issue is a commercial dispute between OPA and TCE.

3. OPA ~~does not believe it is reasonable or necessary for~~believes that it is unreasonable for TCE to claim $1B against the Ontario ratepayers ~~to pay ($1 billion) to TCE as compensation for~~in connection with the Oakville Generating Station.

4. OPA and TCE have a long standing, positive working relationship which has benefited rate payers through the development and delivery of clean, cost effective power. TCE owns and operates Halton Hills Generating Station, has 56% interest in Portlands Generating Station and is a major investor in Bruce Power.

5. ~~OPA's preference continues to be a negotiated agreement that sees TCE developing another needed generation project. This is why OPA has proposed mediation to TCE.~~While it is the OPA's policy not to comment on pending litigation, the OPA intends to vigorously defend itself, and the interests of Ontario's ratepayers, against the allegations in the action.

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, April 14, 2011 11:57 AM
To: Michael Lyle
Subject: RE: TCE-OGS Key Messages - Privileged and Confidential

I will have to blow off a meeting with you to be there ... ☺

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Lyle
Sent: April 14, 2011 11:56 AM
To: Susan Kennedy
Subject: Fw: TCE-OGS Key Messages - Privileged and Confidential

I think it would be very helpful to have you at the 2pm meeting as well if you can make it.

From: Kristin Jenkins
Sent: Thursday, April 14, 2011 11:51 AM
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Subject: FW: TCE-OGS Key Messages - Privileged and Confidential

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Paul Ivanoff
Partner

416.862.4223 DIRECT
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Osler, Hoskin & Harcourt LLP
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Toronto, Ontario, Canada M5X 1B8

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Counsel
Director, Corporate/Commercial Law Group

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Subject: Fw: TCE-OGS Key Messages

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

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

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, April 14, 2011 5:18 PM
To: 'PIvanoff@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Arbitration ....[Privileged and Confidential]

Thanks for the quick turnaround.

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: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Thursday, April 14, 2011 05:17 PM
To: Michael Killeavy
Cc: Deborah Langelaan; JoAnne Butler; Michael Lyle; Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Arbitration ....[Privileged and Confidential]

Michael,

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

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

Dear Alex:

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

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

[Signed Colin Andersen]

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

osler.com

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

Paul/Rocco,

We are being asked to:

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

2. Prepare a Notice of Arbitration to TCE.

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

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

Michael

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

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Thursday, April 14, 2011 7:44 PM
To: Michael Lyle; Susan Kennedy
Cc: JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: v3 Common Interest Privilege Agreement, OPA 20420450_3.DOC

Mike and Susan,

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

Regards,

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the ______ day of ____________, 2011 (the "**Effective Date**"). **[NTD: Consider whether this Agreement should be backdated.]**

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

Draft & Privileged

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

    (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.

    (b) "**Effective Date**" means the effective date as defined above.

    (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, experts and affiliates.

    (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

        (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

        (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

        (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

        (iv) any analyses, document binders, files, compilations or databases;

        (v) the sharing or exchange via any media, including but not limited to electronic media;

        (vi) theories, impressions, analyses, legal research, or legal opinions;

        (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

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

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

    (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

    (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by

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

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

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

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By:__________________________

Name:________________________

Title:_________________________

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

By:__________________________

Name:________________________

Title:_________________________

Crystal Pritchard

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

Crystal Pritchard

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

Mike and Susan,

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

Regards,

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the ______day of ____________, 2011 (the "**Effective Date**"). **[NTD: Consider whether this Agreement should be backdated.]**

BETWEEN:

> **ONTARIO POWER AUTHORITY**
> **("OPA")**
>
> - and -
>
> **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF ENERGY**
> **("ONTARIO")**

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, experts and affiliates.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

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

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

   (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

   (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by

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

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

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

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By:______________________________

Name:___________________________

Title:____________________________

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

By:______________________________

Name:___________________________

Title:____________________________

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, April 14, 2011 8:48 PM
To: 'Ivanoff, Paul'
Cc: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

In 1(d) we just may want to add in the brackets to our list of OPA representatives "directors" as our Chair is likely to be active in strategy discussions with the Crown. Re the Ministry list, I am not sure whether a Minister is considered an employee but that is something we should ask the Government counsel tomorrow.

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

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

Crystal Pritchard

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

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

JCB

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

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

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

Other subtleties, perhaps worth noting:

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Amir Shalaby
Subject: Fw: Arbitration Slides

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

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

JCB

From: Manuela Moellenkamp
Sent: Thursday, April 14, 2011 04:01 PM
To: JoAnne Butler
Subject: Arbitration Slides

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

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

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 8:58 AM
To: Robert Godhue
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: OPA - TCE [Privileged and Confidential]

Can you make 8 copies of the attached document for this afternoon's meeting?

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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Attachments: v3 Common Interest Privilege Agreement, OPA 20420450_3.DOC

Mike and Susan,

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

Regards,

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the ______ day of ____________, 2011 (the "**Effective Date**"). **[NTD: Consider whether this Agreement should be backdated.]**

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, experts and affiliates.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

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

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

   (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

   (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by

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

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

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

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By:______________________________

Name:___________________________

Title:____________________________

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

By:______________________________

Name:___________________________

Title:____________________________

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, April 15, 2011 2:45 PM
To: Michael Lyle; Deborah Langelaan
Cc: Michael Killeavy; Susan Kennedy; Sebastiano, Rocco
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 15, 2011 20455701_1.doc

Mike and Deb,

Attached is the draft letter to Alex Pourbaix. (Sorry for not putting you on the original circulation list.)

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Ivanoff, Paul
Sent: Friday, April 15, 2011 2:30 PM
To: 'Michael Killeavy'; Susan Kennedy
Cc: Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Further to our meetings this morning, attached please find a draft letter to Alex Pourbaix regarding mediation and arbitration.

Regards,

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April 15, 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Alex:

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

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

As you know, the parties entered into an MOU dated December 21, 2010, in which the parties identified that they were working together co-operatively to identify other generation projects that meet Ontario's electricity system needs. The MOU contains obligations requiring both TCE and the OPA to engage in good faith negotiations.

The OPA's request that the parties continue their negotiations in a mediated process is consistent with the parties' obligations under the MOU respecting good faith negotiations. A mediated process would allow the parties to advance negotiations on certain key issues including those respecting CAPEX estimates and TCE's alleged damages. TCE's rejection of the OPA's proposal to continue negotiations in a mediated process forecloses the parties from receiving the benefits of third party facilitation and is not consistent with TCE's obligations under the MOU. These obligations continue through to June 30, 2011.

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

As you know, the Contract provides that any matter in issue between the parties as to their rights under the Contract may be decided by arbitration in accordance with Section 16.2 of the Contract. If you are not prepared to continue negotiations in a mediated process, the OPA requests that the parties meet to discuss an arbitration of the dispute between the parties and

Draft & Privileged

terms of reference of an arbitration. In that case, we would ask you to have your legal counsel contact ours.

May we please hear from you at your earliest opportunity.

Sincerely,

ONTARIO POWER AUTHORITY

Per: _________________________
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: JoAnne Butler
Sent: Friday, April 15, 2011 2:50 PM
To: Irene Mauricette
Cc: Colin Andersen; Amir Shalaby; Brett Baker; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Michael Lyle; Kristin Jenkins; Manuela Moellenkamp; 'jim_hinds@irish-line.com'; 'Dunning, Rebecca (MEI)'
Subject: RE: Monday Morning Phone Call re. TCE

That's fine...just let the MO know...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: Irene Mauricette
Sent: Viernes, 15 de Abril de 2011 02:49 p.m.
To: JoAnne Butler
Cc: Colin Andersen; Amir Shalaby; Brett Baker; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Michael Lyle; Kristin Jenkins; Manuela Moellenkamp; 'jim_hinds@irish-line.com'; 'Dunning, Rebecca (MEI)'
Subject: RE: Monday Morning Phone Call re. TCE

OK – but call needs to be at 8 AM as Colin speaks at Canada Forum at 9

From: JoAnne Butler
Sent: April 15, 2011 2:40 PM
To: Irene Mauricette
Cc: Colin Andersen; Amir Shalaby; Brett Baker; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Michael Lyle; Kristin Jenkins; Manuela Moellenkamp
Subject: Monday Morning Phone Call re. TCE

Irene,

Can you please set up a call on Monday morning with the above group and also include Craig, Deputy Minister Lindsay, Sean Mullin and Jim Hinds. I just spoke with Craig and he suggested at 8:30 AM. We will be reviewing the letter that our legal counsels are working on and that should be completed by the end of the day. Mike and Michael, can you please invite external counsel as you deem appropriate?

Also maybe you could book the Boardroom or a larger room on 18 for all of us to meet there? 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: Michael Lyle
Sent: Friday, April 15, 2011 2:50 PM
To: Susan Kennedy; Michael Killeavy; Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 15, 2011 20455701_1.doc

Can we get together in my office in the next 5 minutes to briefly go over Paul's letter? My proposal would be land with Paul and then quickly loop JoAnne and Kristin in before sending to Colin.

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: April 15, 2011 2:45 PM
To: Michael Lyle; Deborah Langelaan
Cc: Michael Killeavy; Susan Kennedy; Sebastiano, Rocco
Subject: FW: OPA - TCE [Privileged and Confidential]

Mike and Deb,

Attached is the draft letter to Alex Pourbaix. (Sorry for not putting you on the original circulation list.)

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Ivanoff, Paul
Sent: Friday, April 15, 2011 2:30 PM
To: 'Michael Killeavy'; Susan Kennedy
Cc: Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Further to our meetings this morning, attached please find a draft letter to Alex Pourbaix regarding mediation and arbitration.

Regards,

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April 15, 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Alex:

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May we please hear from you at your earliest opportunity.

Sincerely,

ONTARIO POWER AUTHORITY

Per: __________________________
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 2:59 PM
To: Michael Killeavy; Susan Kennedy; Deborah Langelaan
Subject: Re: OPA - TCE [Privileged and Confidential]

Is Deb able to speak for you as we only have about 20 minutes to turn this around?

From: Michael Killeavy
Sent: Friday, April 15, 2011 02:56 PM
To: Michael Lyle; Susan Kennedy; Deborah Langelaan
Subject: Re: OPA - TCE [Privileged and Confidential]

I can't. I'm tied up on another matter.

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: Friday, April 15, 2011 02:50 PM
To: Susan Kennedy; Michael Killeavy; Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]

Can we get together in my office in the next 5 minutes to briefly go over Paul's letter? My proposal would be land with Paul and then quickly loop JoAnne and Kristin in before sending to Colin.

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: April 15, 2011 2:45 PM
To: Michael Lyle; Deborah Langelaan
Cc: Michael Killeavy; Susan Kennedy; Sebastiano, Rocco
Subject: FW: OPA - TCE [Privileged and Confidential]

Mike and Deb,

Attached is the draft letter to Alex Pourbaix. (Sorry for not putting you on the original circulation list.)

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Ivanoff, Paul
Sent: Friday, April 15, 2011 2:30 PM
To: 'Michael Killeavy'; Susan Kennedy
Cc: Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Further to our meetings this morning, attached please find a draft letter to Alex Pourbaix regarding mediation and arbitration.

Regards,

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Partner

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416.862.6666 FACSIMILE
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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, April 15, 2011 3:22 PM
To: Michael Lyle; Susan Kennedy
Cc: Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: 20455701_2.doc

Mike and Susan,

Attached is a second draft of the letter to Alex Pourbaix regarding mediation and arbitration.

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
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[ONTARIO POWER AUTHORITY LETTERHEAD]

April 15, 2011

SENT BY FACSIMILE AND EMAIL

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

May we please hear from you at your earliest opportunity.

Sincerely,

ONTARIO POWER AUTHORITY

Per: ______________________
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 3:31 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: Draft letter

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

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

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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message

Crystal Pritchard

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

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

JCB

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

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

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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

Crystal Pritchard

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

SOLICITOR/CLIENT PRIVILEGE

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

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April 15, 2011

SENT BY FACSIMILE AND EMAIL

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

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Sincerely,

ONTARIO POWER AUTHORITY

Per: ___________________________
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 4:20 PM
To: 'Perun, Halyna N. (MEI)'
Subject: FW: TCE
Attachments: 20455701_2.doc

Sorry. This also should have been sent to you.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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

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Sincerely,

ONTARIO POWER AUTHORITY

Per: ____________________________
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 4:21 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: Draft letter

I spoke with Jim by phone and he was ok with sending it unread by him.

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

From: Colin Andersen
Sent: April 15, 2011 4:06 PM
To: Michael Lyle; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: Re: Draft letter

I'm fine with this, ok to send to jim and govt as far as I am concerned(how did you leave it with jim did he want to see first?). Tks JoAnne, Mike et al for looking after things today.

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

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

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

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

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

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

May we please hear from you at your earliest opportunity.

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

Crystal Pritchard

From: Michael Lyle
Sent: Friday, April 15, 2011 4:51 PM
To: 'Halyna.Perun2@ontario.ca'
Subject: Fw: OGS Cancellation - Media Scan
Attachments: OGS Media Scan 110412 TPB.doc

From: Kristin Jenkins
Sent: Friday, April 15, 2011 04:07 PM
To: 'pivanoff@osler.com' <pivanoff@osler.com>
Cc: Susan Kennedy; Michael Lyle
Subject: FW: OGS Cancellation - Media Scan

As discussed.

From: Tim Butters
Sent: April 12, 2011 12:59 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Mary Bernard
Subject: OGS Cancellation - Media Scan

Kristin,

Per your request, attached is the media monitoring report pertaining to public references on compensation for the cancellation of the OGS project.

The media scan includes the following sections:

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Regards,

Tim Butters

ONTARIO POWER AUTHORITY

Tim Butters | Media Relations Specialist
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6249 | Fax: 416.967.1947 | Email: **tim.butters@powerauthority.on.ca**

OGS Media Scan – April 12, 2011

Prepared for: Kristin Jenkins

In this report:

1) Recent reports (2011) with reference to OPA compensation
2) News reports with reference to compensation 2010
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Recent Stories | 2011 (reference to OPA compensation)

March 4, 2011
Oakville wins nearly $500,000 in legal costs
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- The Town of Oakville announced Thursday that it has received $493,100 in compensation from TransCanada for legal costs the Town incurred during its fight against the energy company's proposed 900-megawatt gas-fired power plant.

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Focus is on Cambridge site for power plant
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- TransCanada is now negotiating with the Ontario Power Authority for compensation, which could come in the form of a power plant in a different location.
- Colin Andersen, chief executive of the power authority, said in an interview earlier this week that talks with TransCanada are "going well," but wouldn't comment specifically on the Kitchener-Cambridge area plant.
- "One of the discussions with TransCanada has to be about what kind of alternatives would be available with regards to the termination," he said. "It could be that project, it could be other projects that are under discussion.
- "I'm not going to rule out anything. I'm necessarily not going to point to one particular alternative either."

News Reports with reference to compensation | 2010

November 4, 2010

Bruce nuclear refit $2 billion over budget

http://www.thestar.com/business/article/885072--bruce-nuclear-refit-more-than-1b-over-budget

- TransCanada also said yesterday that it is also negotiating with the Ontario Power Authority about compensation for the province's decision to cancel a gas-fired generator in Oakville that met fervent local opposition.
- "The contract is very clear. There is no right for the OPA to cancel the contract," he said, but added that talks so far have been "very reasonable."
- He said other potential investors will be watching what happens in the aftermath of the Oakville cancellation.

October 10, 2010

Oakville power plant reversal means future trouble

http://www.thestar.com/article/873038--oakville-power-plant-reversal-means-future-trouble

- In an interview last week, Andersen said circumstances had changed and an Oakville plant is no longer the best option. But he was unable to point to any single report that prompted the change of plans. Rather, he said the reversal came gradually, thorough an ongoing process of analysis and planning. Pity it didn't dawn earlier, before September 2009, when the Ontario Power Authority announced it was awarding a contract to build and run the Oakville plant to TransCanada Corporation. Now, barely a year later, the Calgary company is preparing to discuss what "reasonable payments" it might receive as compensation for the broken contract

- The size of that compensation is now in the hands of lawyers; it is expected to be many millions. But it is no mystery who will pay - Ontario's already-burdened energy consumers.

October 9, 2010

Ontario cancels plans for Oakville gas-powered electricity plant

http://www.digitaljournal.com/article/298712

- Ontario will have to pay TransCanada something for the cancellation of the contract.
- However, the government does not know how much Ontarians will be paying for cancelling the project.

October 8, 2010
CBC Radio Metro Morning (transcript follows)

Matt Galloway:
The estimate is that it's going to cost about 1 billion dollars to cancel this deal, does that seem reasonable to you?

Ben Chin:
A billion dollars or more was the cost of the plant, and of course we honour our contracts, and it's important that we do that, because there are investors that come into the province, and they have to have a certain amount of certainty that when they commit to something, that contract is going to be honoured. TransCanada plays a very important role in this province, we have a long-standing relationship with them, and we do know that going forward, other assets will be needed to meet other system needs.

Matt Galloway:
So how much is it going to cost to cancel the contract?

Ben Chin:
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Matt Galloway:
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Matt Galloway:
What does it say to investors who might be considering doing some work here in Ontario when you have a plan that's underway and maybe that plan gets yanked?

Ben Chin:
I think we always have to be very careful about that. The recent past is a good indication of that. In the 1990s and the early 2000s there were drastic changes made in the electricity policy in Ontario. We had an open market and we suddenly reversed on that, and that made investors very jittery and I think we can only speak about the five years that the OPA came into existence but during that time there has been renewed stability and people know that they can make

commitments and that we will be committed to them. And I think that's what we're saying here too, is that responsibly the OPA cannot advise the government and say this plant is not needed but we must build it, and at the same time, we have a commitment to the contractor so we are going to work with them to make sure that they're not out on their investment in this province and that we can work together on future projects.

October 8, 2010
Cancelling Oakville plant will cost, McGuinty says
http://toronto.ctv.ca/servlet/an/local/CTVNews/20101008/cost-oakville-101008/20101008/?hub=TorontoNewHome

- McGuinty said he's not aware of the specifics of the contract with TransCanada Corp., which won the bid last year to build the $1.2-billion plant, and can't say how much the government will have to shell out to break the deal.
- "I'm just saying that we have a very good, ongoing, working relationship with them, and I think there's a lot of goodwill on both sides to address this development," McGuinty said after touring a new school in London, Ont.
- TransCanada (TSX:TRP) and the Ontario Power Authority are to discuss "reasonable payments" the company is entitled to, TransCanada said in a release.
- One analyst said taxpayers could be on the hook for several million dollars.

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Cost of breaking Oakville contract unknown, McGuinty says
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- "I know that we're going to be able to find a way for both sides to sit down and determine what the best path is going forward," McGuinty said after touring a new school with full-day kindergarten.
- The government's Ontario Power Authority will handle the negotiations with TransCanada and balance "value for ratepayers with fairness for investors," said spokesperson Ben Chin.
  "They're being very flexible."
- TransCanada has said it is entitled to "reasonable payments" but has declined further comment, including how much it has spent over the years trying to get the Oakville project up and running by 2014.
- Chin said the amount spent is a "small percentage" of the overall cost.

October 7, 2010
Worried Liberals pull plug on Oakville gas plant
http://www.thestar.com/news/canada/article/872042

- "If the government or OPA (Ontario Power Authority) kills the project they will be on the hook for hundreds of millions of dollars for incurred expenses and lost profits," warned one insider.
- Duguid wouldn't say if there was a fee to cancel the project. "Discussions are continuing," he said. "They are aware of this decision and the reasons for it."

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Ontario government cancels plans for power plant amid public outcry
http://petertabuns.ca/news-and-press/293-ontario-government-cancels-plans-for-power-plant-amid-public-outcry.html
(Original link to story not available)

- "We have a very positive relationship with TransCanada," Energy Minister Brad Duguid said. ``We continue to discuss these issues with them, but the relationship is very positive and I expect those discussions will be positive."

News Releases

October 7, 2010
TransCanada Responds to Oakville Generating Station Decision
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Oakville Power Plant Not Moving Forward
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OTHER

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Russ Girling, CEO:

On October 7, the Ontario government announced that it would not proceed with the Oakville generating station. TransCanada has begun to negotiate with the Ontario Power Authority on a settlement, which would terminate the contract and

compensate TransCanada for the economic consequences associated with the contracts termination.

Ontario is a large province and we know that there is a need for power and infrastructure. TransCanada can help meet that need as it is done with projects such as Portlands Energy Centre and Halton Hills generating station. As the government develop its long-term energy plan we would hope to play a significant role in the development of safe and reliable and efficient power for the province.

Analysis also captured in this Toronto Star story: http://www.thestar.com/business/earnings/article/885150--transcanada-reports-higher-profits

Hansard Transcripts

November 4, 2010
POWER PLANT

Mr. Peter Tabuns: For the Minister of Energy: When the Liberals proposed the Oakville gas-fired power plant, the NDP said that this plant wasn't necessary. At that time, the Minister of Energy made an argument along the lines of, "The energy fairy says we don't need a plant here." The energy fairy has landed. The energy fairy is bringing a big bill.

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Will the minister reveal to Ontario families how big a bill they're stuck with?

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But it also came about because of the hard work done by this government over the last seven years that has created 8,000 new megawatts of power, a 20% increase in the power capacity of this province. That is what enabled us to have some more flexibility. That is what enabled us to move towards a transmission solution for the Oakville area and the southwest GTA rather than have to pursue a 950-megawatt gas plant.

I'll speak more in the supplementary about the discussions going on with TransCanada, but this is a good-news story for the people of—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

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Right at the beginning, the NDP said this plant was not needed. You didn't have to be a genius to figure that out. The reality is that they went ahead with a mistake. They have incurred a liability. The ratepayers of this province are going to pay for it. What is this bungle going to cost us?

Hon. Brad Duguid: The NDP clearly don't think anything is needed when it comes to power. They don't support nuclear. They clearly no longer support renewable energy. Although I know the critic supports it, it's his leader who stands up day after day and opposes it. They don't support our investments in conservation. They don't support the efforts we're making to rebuild the energy generation in this province.

We're building a stronger, more reliable and cleaner system of energy. There was a time when the NDP may have supported that, but they apparently have lost their principles. Instead of being in favour of cleaner air and a brighter future for our kids and grandkids, they're standing clearly in the way of that. Man, they've moved a long way from their previous positions.

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From: Kristin Jenkins
Sent: Friday, April 15, 2011 4:08 PM
To: 'pivanoff@osler.com'
Cc: Susan Kennedy; Michael Lyle
Subject: FW: OGS Cancellation - Media Scan
Attachments: OGS Media Scan 110412 TPB.doc

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Regards,

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ONTARIO POWER AUTHORITY

Tim Butters | Media Relations Specialist
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6249 | Fax: 416.967.1947 | Email: tim.butters@powerauthority.on.ca
Please consider your environmental responsibility before printing this email

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Prepared for: Kristin Jenkins

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Crystal Pritchard

From: Susan Kennedy
Sent: Monday, April 18, 2011 4:24 PM
To: Michael Lyle
Subject: FW: TCE Matter - OPA Second Counter-Proposal ....

This just in.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: April 18, 2011 4:24 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - OPA Second Counter-Proposal ....

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

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

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

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

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

Thank you,

Michael

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

Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

Crystal Pritchard

From: Irene Mauricette
Sent: Tuesday, April 19, 2011 1:27 PM
To: Kristin Jenkins; Michael Lyle; JoAnne Butler; Michael Killeavy; 'jim_hinds@irish-line.com'
Subject: FW: TransCanada Energy Ltd. and Ontario Power Authority
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF

From Colin fyi. Clare for Irene x 6010

From: Sharonlee Gorgichuk [mailto:SGorgichuk@tgf.ca]
Sent: April 19, 2011 11:02 AM
To: Colin Andersen; brad.duguid@ontario.ca
Cc: craig.maclennan@ontario.ca; jamison.steve@ontario.ca; sean.mullin@ontario.ca
Subject: TransCanada Energy Ltd. and Ontario Power Authority

Dear Sirs,

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee Gorgichuk

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

TGF

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Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Attn: Colin Andersen
Chief Executive Officer

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Attn: The Honourable Brad Duguid
Minister of Energy

Dear Sirs:

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

We have been retained by TCE to represent its interests in connection with the termination of the Contract by letter dated October 7, 2010. That termination occurred following a public announcement by Minister Duguid. We are uncertain whether the Minister issued a directive to the OPA regarding the termination.

In the termination letter, the OPA stated to TCE, "the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated value of the Contract." The letter also identified the OPA's "wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers."

We have been briefed on the unsuccessful attempts to resolve this matter on the basis suggested in the termination letter, despite several months of negotiations. Our instructions are to commence the formal legal process of identifying the appropriate mechanism to determine the reasonable damages, including the anticipated value of the Contract and an appropriate mechanism for transferring that value from the OPA and the Province of Ontario to TCE. In order to facilitate this process, we would request that you have your legal counsel contact us in order to discuss the manner of proceeding.

We would be available to meet with counsel to begin this process this week. We would request that your counsel contact us no later than Tuesday, April 26, 2011. Our client has instructed us to move forward with reasonable expedition. We understand that a counterproposal will be delivered to TCE by the close of business on Wednesday, April 20, 2011 as part of the informal settlement discussions. While this formal process of dispute resolution moves forward, our client remains willing to discuss alternatives, but is not willing to suspend the formal process.

We look forward to hearing from your counsel.

Yours very truly,

Thornton Grout Finnigan LLP

MBarrack

Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
Jamison Steve, Principal Secretary to the Premier
Sean Mullin, Director of Policy, Office of the Premier

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, April 19, 2011 2:17 PM
To: Susan Kennedy
Subject: FW: TransCanada Energy Ltd. and Ontario Power Authority
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF

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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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Attn: Colin Andersen
Chief Executive Officer

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

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Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
Jamison Steve, Principal Secretary to the Premier
Sean Mullin, Director of Policy, Office of the Premier

Crystal Pritchard

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

John,

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

JCB

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

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

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

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

2 typos p 3 – "Extention" row 3, col2, and "howp ever" row 7, col 5
Add the share over/under to the $475m cap ex box
How are we addressing the Boards confusion from strategy day?
What about "Sean's way" – I'm guessing Jim will ask – variation on "walkaway" (sunk cost +turbines+lost profit = money for nothing) vs "all in for ratepayer" (same but adds in KW as still have to do a KW plant eventually) – noting that in both cases the turbine cost will be < 215 since they will be sold/repurposed for something on the dollar

Colin Andersen
Chief Executive Officer

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

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

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

JCB

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

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

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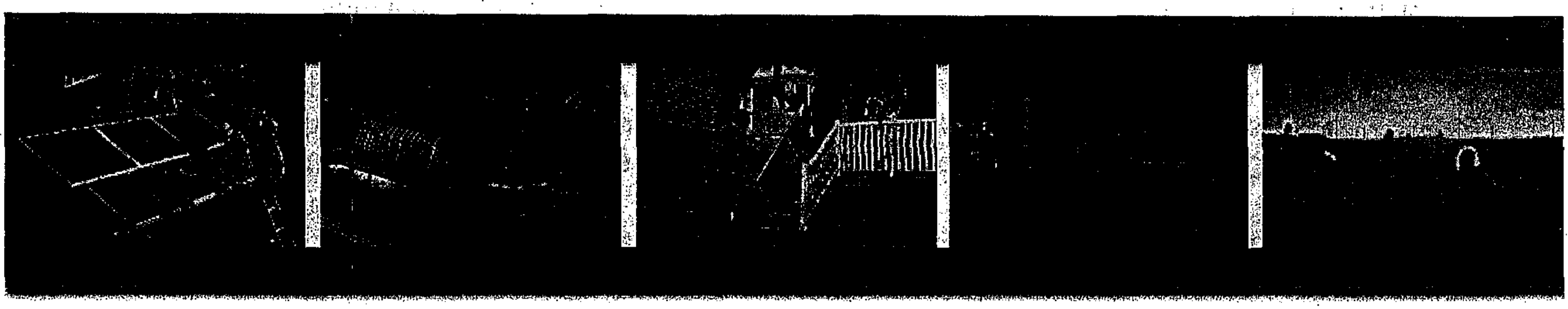

Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 20, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

- TCE rejected OPA counter-proposal via telephone on April 1.
- Email exchange between Colin (asking for more information and proposing mediation) and Alex Pourbaix (strongly rejecting mediation proposal, imposing deadline for us to agree to their proposal or threat of litigation).
- Due diligence performed by our external and internal counsel regarding pros/cons of arbitration/litigation. Prepared letter from Colin to Alex to propose sitting down to agree to terms of reference for arbitration. Letter not sent.
- Meanwhile, TCE met with Government to express concerns over our proposal and more threat of litigation.
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- We believe that this proposal closes the value gap enough on the lost profits from OGS to prevent litigation without putting further undue obligation on the ratepayer because of not having a competitive procurement. TCE may think otherwise.
- TCE has sent letter from their litigation counsel on April 19 asking to sit down with our internal counsel to determine the appropriate dispute mechanism for resolving the matter. TCE remains willing to discuss alternatives, but not willing to suspend the formal process.

OPA Second Counter-Proposal

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	OPA Second Counter Proposal April21, 2011	Comments
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Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	TCE can finance/leverage how they want to increase NPV of project.. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10 Year Exemption	25 Years	25 Years .	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for 25 year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre , Halton Hills ,and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ±20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	$475 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by $100mm; however, cannot really substantiate why. We are still proposing a target cost on CAPEX where there is a $25 upper/lower band and then increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
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Quantum Comparison

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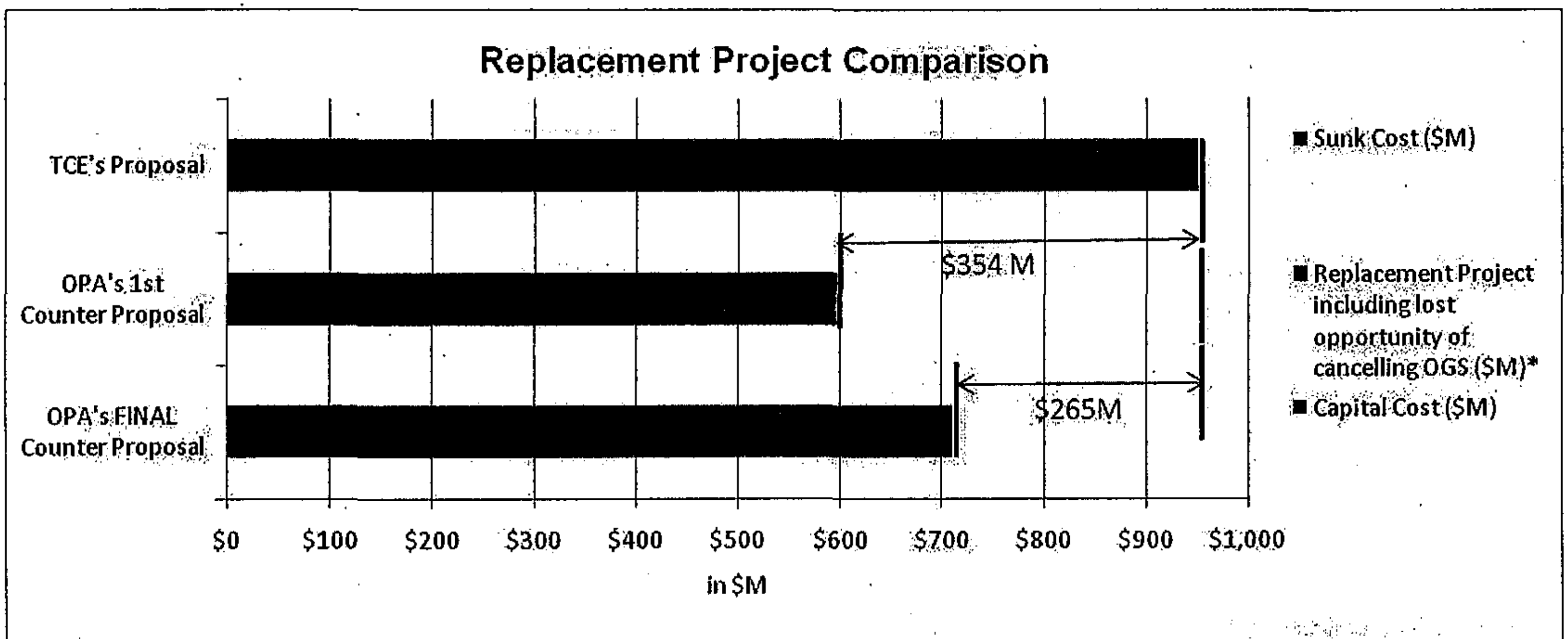

Financing Assumptions updated to reflect what we "think" that TCE would be using, ie. WACC – 5.25%

Proposal covers OGS and KWCG profits, no double dipping

ONTARIO POWER AUTHORITY

Next Steps

- Send out new counter proposal.
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- Send out strongly worded letter (prepared) to TCE indicating that they have breached their terms of the confidentiality agreement with us and are not negotiating in good faith.

ONTARIO POWER AUTHORITY

Crystal Pritchard

From:	Susan Kennedy
Sent:	Tuesday, April 19, 2011 8:20 PM
To:	Michael Lyle
Subject:	FW: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes ....
Attachments:	SWGTA Contract Potential Outcomes 19 Apr 2011.ppt; SWGTA Scenarios 19 Apr 2011.xlsx
Importance:	High

FYI. Also, if you get this, can you give me a call - I have something I want to float for your consideration before the board meeting and given your meeting schedule (and the fact that I have a physio appointment from 8 - 9 tomorrow, we probably won't see each other. 905-640-5894.

-----Original Message-----
From: Michael Killeavy
Sent: Tue 4/19/2011 8:18 PM
To: Susan Kennedy; pivanoff@osler.com; Sebastiano, Rocco; Smith, Elliot
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes ....

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

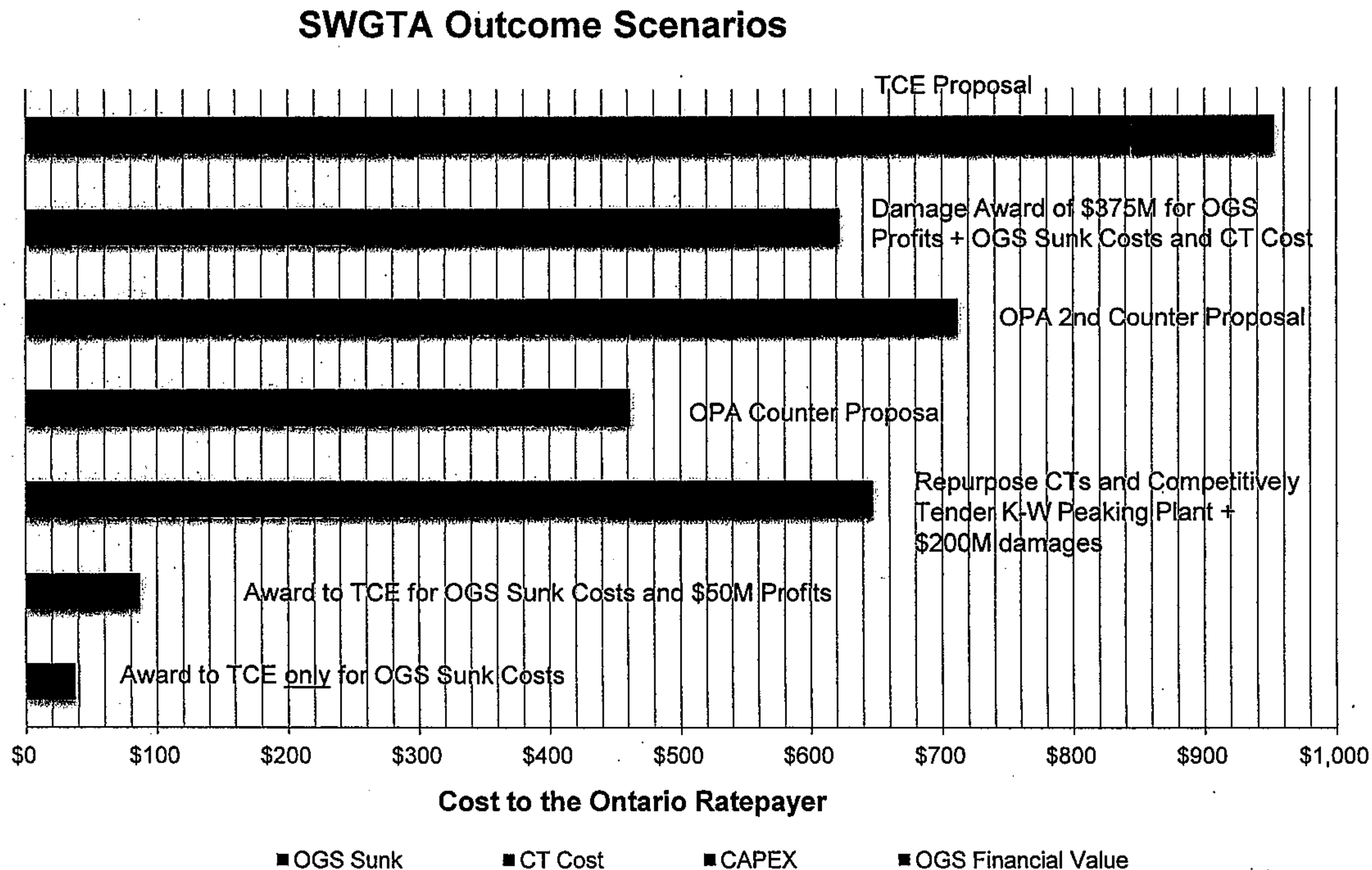
There has been a lot of discussion about the possible outcomes of the settlement discussions with TCE by certain persons not directly involved in these settlement discussions. Sadly, most of this discussion has been uninformed. I have prepared the attached slide that sets out a few different scenarios along with their approximate cost to the ratepayer. This graphical depiction is only intended to show the relative magnitude of the impact for each outcome to the ratepayer. Furthermore, it is not an exhaustive listing of the potential outcomes.

What might not be obvious to those not involved directly in the discussions is that acceptance of TCE's original proposal to settle is the worst possible outcome for the ratepayer. It appears that our second counter-proposal is the next worst outcome for the ratepayer. This slide might help the Board and other decision-makers in their deliberations with regard to their decision on sending TCE the second counter-proposal.

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

Potential Outcomes



ONTARIO POWER AUTHORITY

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

VGTA Potential Outcomes

	OGS Sunk	CTs	CAPEX	OGS Profits	
›st Outcome	$37	0	0	0	$37
›cond Best Outcome	$37			$50	$87
›purpose CTs	$37	$210	$200	$200	$647
›A Counter-Proposal	$37		$375	$50	$462
›A 2nd Counter-Proposal	$37	$0	$475	$200	$712
ınnot Repurpose CTs	$37	$210	$0	$375	$622
:E Proposal	$37	0	$540	$375	$952

Crystal Pritchard

From:	John Zych
Sent:	Tuesday, April 19, 2011 8:22 PM
To:	Colin Andersen; ceb1618@aol.com; jim.hinds@irish-line.com; jmichaelcostello@hotmail.com; rfitzgerald7@sympatico.ca; rfitzgerald7@sympatico.ca; ferrari@execulink.com; blourie@ivey.org; pjmon@yorku.ca; lynandneil@sympatico.ca
Cc:	JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Irene Mauricette; Nimi Visram
Subject:	BOARD TELECONFERENCE MEETING - WEDNESDAY, APRIL 20, 2010 AT 5:30 P.M., TORONTO TIME
Attachments:	OGS_BOD_CM_20110420 v1.pptx

I wish to confirm that we will hold a Board teleconference meeting on Wednesday, April 20, 2010 at 5:30 p.m., Toronto time, on the subject of the Oakville generating station matter. It is expected to last about 45 minutes.

A slide deck is attached.

All Board members other than Lyn McLeod are expected to participate. (Lyn is away until April 26th and does not have access to e-mail, so I do not expect her to participate.)

This is an information matter, so there is no resolution. (If an OPA counter-offer to TransCanada Energy is agreed to by the Board and accepted by TransCanada Energy, an implementation agreement will be drafted by the parties, which our Board will be asked to approve before signing.)

The call-in number particulars are as follows:

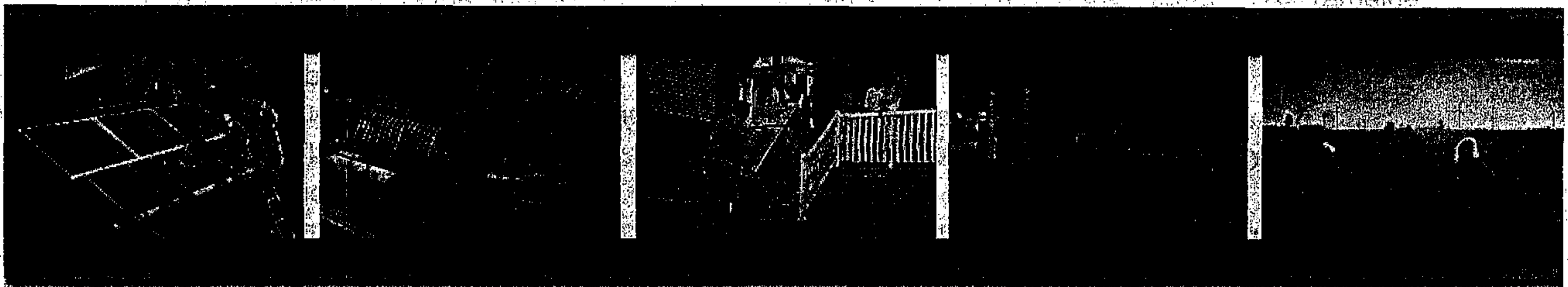
Toll Free: 1-877-320-7617

OPA Board Members' Access Code: 6802847

If any of our Board members are in downtown Toronto at the time of the meeting, they should feel free to attend in person in the 16th Floor Boardroom, if they wish to do so.

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

ONTARIO POWER AUTHORITY



Winding Up of the Oakville Generating Station (OGS) Contract

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April 20, 2011

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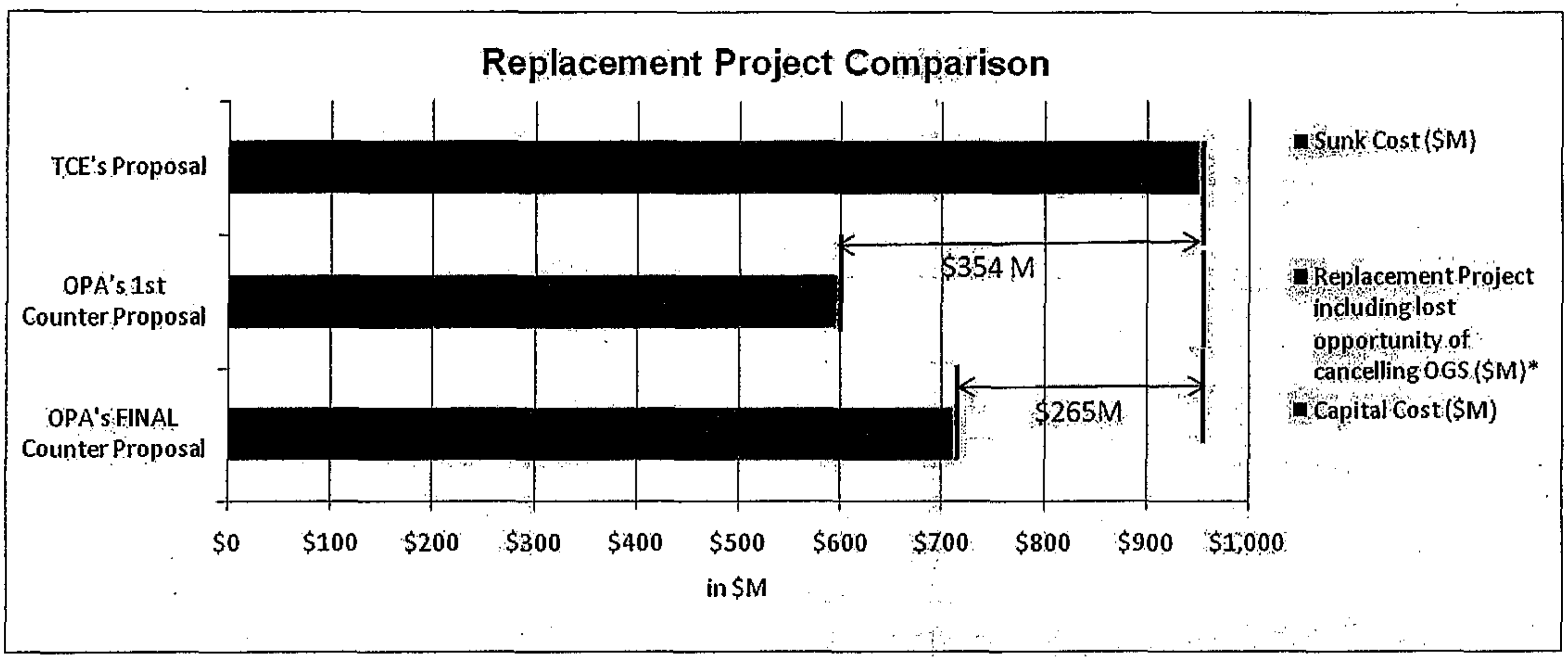

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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

Crystal Pritchard

From: Susan Kennedy
Sent: Wednesday, April 20, 2011 9:55 AM
To: Michael Lyle
Subject: FW: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - SECOND REVISION ....
Attachments: SWGTA Contract Potential Outcomes 20 Apr 2011.ppt; SWGTA Contract Potential Outcomes 19 Apr 2011.ppt

Importance: High

FYI

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: April 20, 2011 7:25 AM
To: Susan Kennedy; Sebastiano, Rocco; Smith, Elliot; pivanoff@osler.com
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - Potential SWGTA Contract Settlement Discussion Outcomes - SECOND REVISION ....
Importance: High

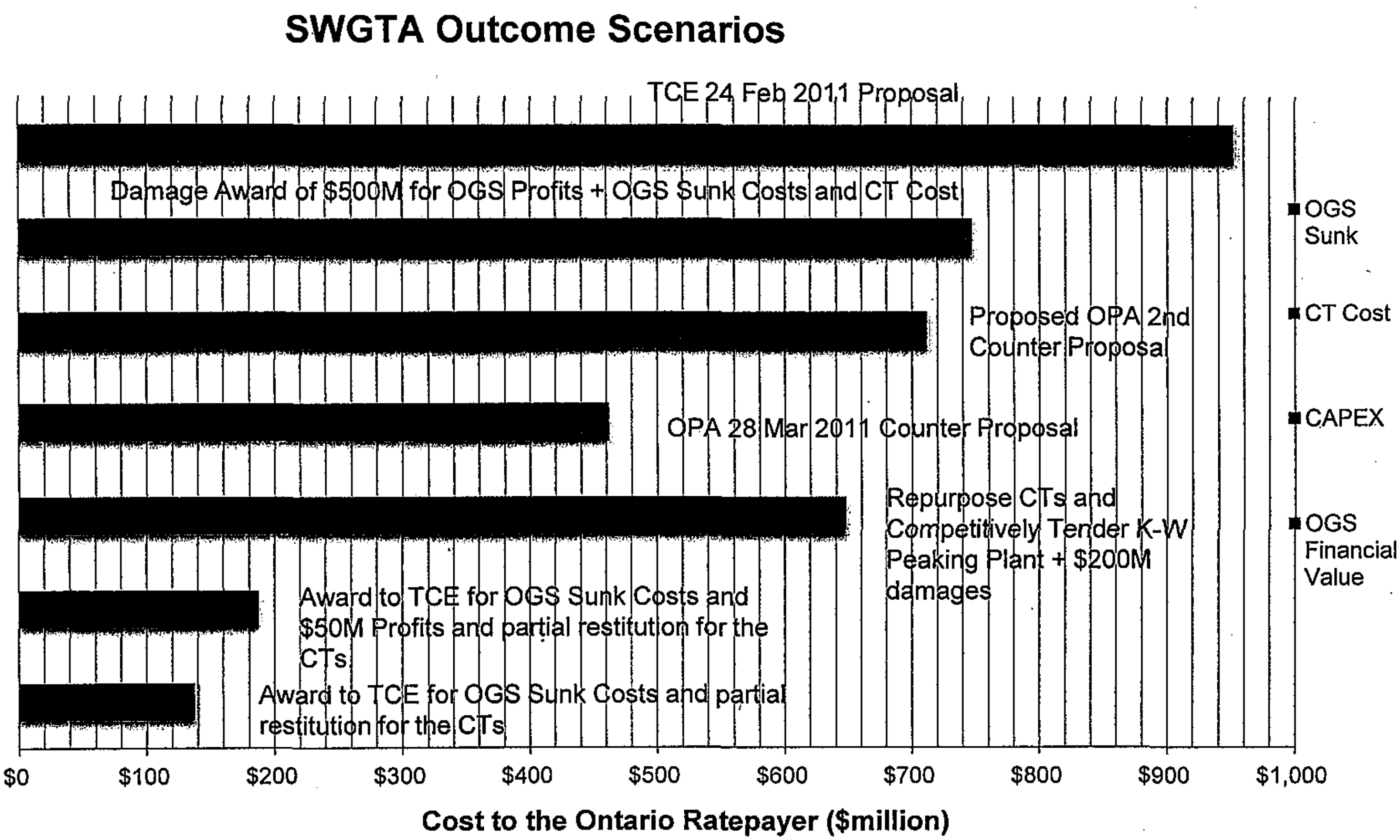
*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***

I reviewed what I did last night and I made a revision to the second scenario from the top - TCE is successful at litigation or arbitration and receives a damage award for the OGS sunk costs, including the CTs, and financial value of the OGS contract ("worse case damage award"). I had estimated the financial value of the OGS contract at the proposed $375M settlement from TCE. This likely isn't the worse case, so I re-did the graphic with the alleged financial value of the OGS contract (so far anyway) at $500M. This means that the proposed second OPA counter-proposal is actually slightly better for the ratepayer than a worse case damage award if TCE were to agree with our proposed settlement.

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

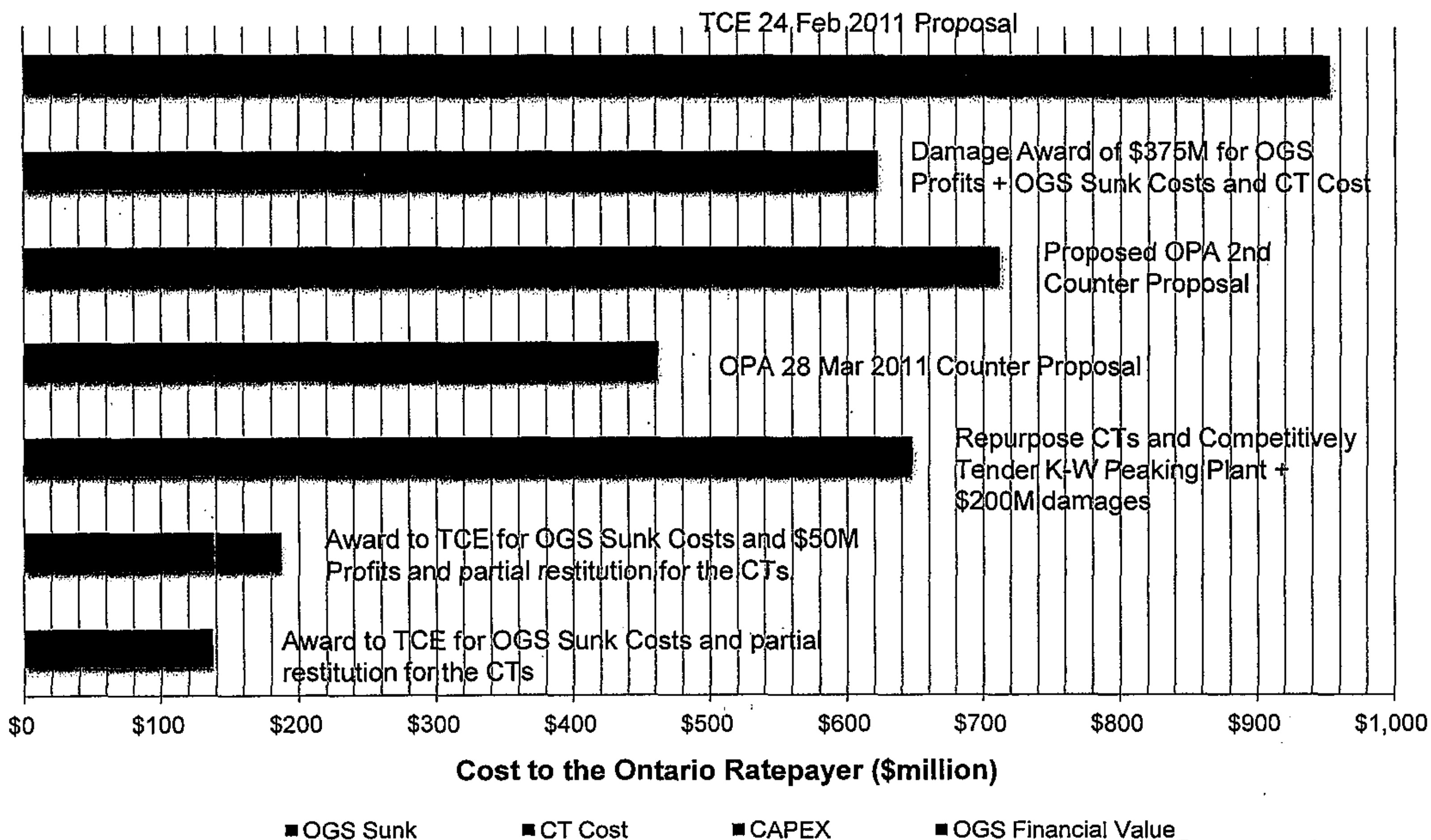
Potential Outcomes



ONTARIO POWER AUTHORITY

Potential Outcomes

SWGTA Outcome Scenarios



Privileged and Confidential – Prepared in Contemplation of Litigation

ONTARIO POWER AUTHORITY

Crystal Pritchard

From: JoAnne Butler
Sent: Wednesday, April 20, 2011 3:32 PM
To: OPA Executive
Cc: John Zych
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

This is the letter that I referred to this morning and was noted as the last bullet in the slide deck. I think that it is worth a conversation at the Board tonight, although it does not have to be sent to the Board.

JCB

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

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

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement") and a letter agreement dated December 21, 2010 (the "MOU"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario's electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU states that "[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the "Definitive Agreement") in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE." The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE's acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

Draft & Privileged

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 7:42 PM
To: Michael Lyle
Subject: Fw: OPA - TCE [Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc

Was this your understanding?

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, April 20, 2011 07:34 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]

I think that we got from the Board meeting to fold in elements of this letter, into a letter from counsel to counsel...can you please talk to Paul about this?

JCB

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

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

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

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Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, April 20, 2011 7:45 PM
To: Michael Killeavy
Subject: Re: OPA - TCE [Privileged and Confidential]

No but I think we got that from the call with Craig. We are still going to have to loop back with Colin.

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 07:42 PM
To: Michael Lyle
Subject: Fw: OPA - TCE [Privileged and Confidential]

Was this your understanding?

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, April 20, 2011 07:34 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: FW: OPA - TCE [Privileged and Confidential]

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JCB

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

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 20 de Abril de 2011 03:23 p.m.
To: JoAnne Butler; Michael Killeavy

Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
Subject: OPA - TCE [Privileged and Confidential]

Further to our meeting of yesterday afternoon, attached is the draft letter to TCE that we discussed.

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 7:46 PM
To: JoAnne Butler
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Could we discuss this with Colin tomorrow?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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Cc: Sebastiano, Rocco; Smith, Elliot; Deborah Langelaan; Susan Kennedy
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Regards,
Paul

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

Crystal Pritchard

From: JoAnne Butler
Sent: Wednesday, April 20, 2011 7:48 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Sure...

From: Michael Killeavy
Sent: Wednesday, April 20, 2011 07:46 PM
To: JoAnne Butler
Cc: Deborah Langelaan; Michael Lyle
Subject: Re: OPA - TCE [Privileged and Confidential]

Could we discuss this with Colin tomorrow?

Michael Killeavy, LL.B., MBA, P.Eng.
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Paul Ivanoff
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pivanoff@osler.com

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, April 20, 2011 8:06 PM
To: 'Halyna.Perun2@ontario.ca'
Subject: Re: TCE

Ok. Let's try for that.

From: Perun, Halyna N. (MEI) [mailto:Halyna.Perun2@ontario.ca]
Sent: Wednesday, April 20, 2011 08:00 PM
To: Michael Lyle
Subject: Re: TCE

Yes I'd like that - I am in meetings a large part of the day though tomorrow - possible at 1?

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Perun, Halyna N. (MEI)
Sent: Wed Apr 20 19:52:18 2011
Subject: Re: TCE

Perhaps we can talk first.

From: Perun, Halyna N. (MEI) [mailto:Halyna.Perun2@ontario.ca]
Sent: Wednesday, April 20, 2011 07:48 PM
To: Michael Lyle
Subject: Re: TCE

Hi Mike - as both counsel for the opa and minister have been asked to contact the tce counsel we should arrange a call tomorrow with Rocco/Ivan and John to discuss next steps - I will endeavour to seek instructions on my end. Thanks for sending

Halyna Perun
A\Director
Ph: 416 325 6681
BB: 416 671 2607

Sent using BlackBerry

From: Nimi Visram <Nimi.Visram@powerauthority.on.ca>
To: Perun, Halyna N. (MEI)
Cc: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
Sent: Wed Apr 20 15:45:38 2011
Subject: TCE

Please find attached correspondence from Thornton Grout Finnigan LLP dated April 19, 2011.

Nimi Visram| Ontario Power Authority |Executive Assistant & Board Coordinator, to General Counsel & Vice President, Legal, Aboriginal and Regulatory Affairs
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6027 | Fax: 416.967.3683| Email: nimi.visram@powerauthority.on.ca

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, April 21, 2011 9:55 AM
To: JoAnne Butler; Colin Andersen; Brett Baker; Michael Lyle
Cc: Deborah Langelaan
Subject: TCE Matter - Government-Instructed Counter-Proposal to TCE ....
Attachments: #20465379v3_LEGAL_1_ - Draft Second Project Proposal to TCE.doc

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

Attached is an updated version of the counter-proposal with the revisions discussed last evening incorporated into the draft. Please note that this updated document has not yet been reviewed by our litigation counsel.

Michael

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

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

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

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

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

   In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed $37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to $37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all ~~out-of-pocket~~reasonabe costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

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

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

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

Yours very truly,

~~JoAnne Butler~~Colin Andersen

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

Draft & Privileged

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

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

(a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**

(b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**

(c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

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

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

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

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 14,922** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**481** MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

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

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within $25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

   (a) If the Actual Capex is more than $25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex – $25,000,000) × 0.50, provided that the OPA Share shall not exceed $25,000,000

   (b) If the Actual Capex is less than $25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex + $25,000,000) × 0.50

   (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

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

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	Fixed Price
Main Turbine Original Costs (excluding change orders)	USD$**[144,900,000]**
Main Turbine Additional Scope (excluding change orders)	USD$**[36,295,000]**
Costs of Hedging USD to CAD	CAD$**[13,500,000]**

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, April 21, 2011 12:12 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....
Attachments: Letter to Alex Pourbaix (OPA letterhead) April 20 2011 20472672_3.doc
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

1. We would like this to be a letter from you as our counsel, to TCE's litigation counsel;
2. Please include a request that TCE refrain from further discussing the matter between us with the government; and
3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments of concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

Thanks,
Michael

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

[ONTARIO POWER AUTHORITY LETTERHEAD]

April [●], 2011

SENT BY FACSIMILE AND EMAIL

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Dear Mr. Pourbaix:

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

As you know, the OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement") and a letter agreement dated December 21, 2010 (the "MOU"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under these two agreements.

We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, your counsel, Thornton Grout Finnigan LLP, sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement.

Regarding the MOU, the parties acknowledged in that agreement that they were working together cooperatively to identify other generation projects that meet Ontario's electricity system needs. The MOU contains express obligations requiring both TCE and the OPA to engage in good faith negotiations. In that regard, the MOU states that "[T]he OPA and TCE agree to work together in good faith to negotiate the definitive form of an agreement (the "Definitive Agreement") in respect of the Potential Project, or an alternative project agreed to by the OPA and TCE." The OPA maintains that the delivery by TCE of its presentation to the Government is not only a breach by TCE of the Confidentiality Agreement, but it also constitutes a failure to negotiate with the OPA in good faith as required by the MOU. To be clear, the OPA views TCE's acts as a tactic made in bad faith in an attempt to advance its negotiating position as against the OPA. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and the MOU and hereby puts TCE on notice that it reserves all of its rights and remedies against TCE respecting the actions referred to above.

As for communications from your external counsel to the OPA, I would request that you have your external counsel direct any future correspondence to Rocco Sebastiano and Paul Ivanoff at Osler, Hoskin & Harcourt LLP, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Lastly, in an effort to move forward with good faith negotiations, we are preparing a revised draft proposal and will be sending it to TCE shortly.

Yours truly,

JoAnne Butler
Vice President, Electricity Resources

cc. Colin Andersen, OPA
Michael Killeavy, OPA
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP
Paul Ivanoff, Osler, Hoskin & Harcourt LLP

Crystal Pritchard

From: Deborah Langelaan
Sent: Thursday, April 21, 2011 12:19 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Cc: 'Smith, Elliot'; Michael Killeavy; JoAnne Butler; Cathy Schell; Michael Lyle
Subject: Revised Final - Gov't Instructed Counter Proposal to TCE
Attachments: OPA_Ltr_TCE_Govt_Proposal_20110421 (w schedules).doc

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

Rocco and Paul;

The wrong contract capacity was used in the 2nd table on Schedule B. It has been corrected and the revised letter is attached.

Deb

ONTARIO POWER AUTHORITY

120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T 416-967-7474
F 416-967-1947
www.powerauthority.on.ca

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. Pourbaix:

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

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

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

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

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

   In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed $37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to $37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all reasonable, out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

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

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

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

Yours very truly,

Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

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

(a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**

(b) be able to provide a minimum of [● MW] at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**

(c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

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

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

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

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

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The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

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(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

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(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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SCHEDULE "B" – FINANCIAL PARAMETERS

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Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 481 MW	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
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Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within $25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

   (a) If the Actual Capex is more than $25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex – $25,000,000) × 0.50, provided that the OPA Share shall not exceed $25,000,000

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   (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

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5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Crystal Pritchard

From: Kristin Jenkins
Sent: Thursday, April 21, 2011 4:06 PM
To: Michael Lyle
Subject: FW: TCE Contract
Attachments: TCE Contract (April 21, 2011).pdf

From: Irene Mauricette **On Behalf Of** Colin Andersen
Sent: April 21, 2011 12:51 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com)
Cc: Colin Andersen; Irene Mauricette; JoAnne Butler; Michael Killeavy
Subject: TCE Contract

Please see attached.

Colin Andersen
Chief Executive Officer

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

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

VIA E-MAIL

April 21, 2011

Alex Pourbaix
President, Energy & Oil Pipelines
TransCanada Energy Inc.
450 - 1st Street S.W.
Calgary, Alberta
T2P 5H1

Dear Mr. ~~Pourbaix~~: Alex

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

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner.

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

   In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination payment which the Parties would negotiate in good faith and would compensate TCE for reasonable damages associated with (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed \$37,000,000, (ii) the total amount of the verified, non-recoverable sunk costs (net of any residual value) prudently incurred in the development of the Replacement Project, and (iii) the anticipated financial value of the Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to \$37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than \$37,000,000, the NRR shall be reduced by 0.000 015 213 3 multiplied by the amount by which such costs are less than \$37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all reasonable, out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

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

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

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

Yours very truly,

Colin Andersen

cc: JoAnne Butler, Ontario Power Authority
Michael Killeavy, Ontario Power Authority
Rocco Sebastiano, Osler, Hoskin & Harcourt LLP

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

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

(a) be able to provide a minimum of [● MW] at 30°C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times; **[NTD: Planning studies used 35 °C. Contract Force Majeure temperature is 30°C and consequently the equivalent capacity at 30°C should be used instead.]**

(b) be able to provide a minimum of **[● MW]** at 30°C under N-2 System Conditions; **[NTD: Based on peak load planning studies at 35°C, the total planned generation capacity should be at least 500 MW. The Replacement Project may not be able to achieve such capacity at the above mentioned ambient condition. The Replacement Project's maximum capacity at 30°C should therefore be used instead.]**

(c) have a Season 3 Contract Capacity of not less than **[480 MW]**; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

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

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

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

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the

OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 14,922** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**481** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 481 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $475,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within $25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

   (a) If the Actual Capex is more than $25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex – $25,000,000) × 0.50, provided that the OPA Share shall not exceed $25,000,000

   (b) If the Actual Capex is less than $25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex + $25,000,000) × 0.50

   (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 015 213 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

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

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	USD$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	USD$[36,295,000]
Costs of Hedging USD to CAD	CAD$[13,500,000]

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

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Crystal Pritchard

From:	Ivanoff, Paul [PIvanoff@osler.com]
Sent:	Thursday, April 21, 2011 5:17 PM
To:	Michael Killeavy; Susan Kennedy; Michael Lyle
Cc:	Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject:	RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]
Attachments:	Letter to Alex Pourbaix (Osler letterhead) April 21 2011 20472672_5.doc

Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....
Importance: High

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Michael

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OSLER

Toronto
Montréal
Ottawa
Calgary
New York

April 21, 2011

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

SENT BY FACSIMILE

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

Dear Mr. Barrack:

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

We are in receipt of your letter dated April 19, 2011, which the OPA forwarded to us.

The OPA and TCE entered into a Confidentiality Agreement dated October 8, 2010 (the "Confidentiality Agreement"). We are writing to you at this time to advise you of our concerns regarding TCE's failure to comply with its obligations under the Confidentiality Agreement. We understand that on April 12, 2011, TCE delivered a presentation to the Government of Ontario entitled "SW-GTA Update". Contained within this presentation were excerpts from confidential correspondence sent to TCE by the OPA, as well as confidential details of proposals relating to the Contract. Moreover, on April 19, 2011, you sent a letter to the Minister of Energy, the Office of the Premier and the OPA, which described confidential negotiations between the OPA and TCE. Each of these actions constitutes a breach by TCE of the Confidentiality Agreement. The OPA requires that TCE cease and desist from further breaches of the Confidentiality Agreement and refrain from any further discussions with the Government of Ontario or others on matters that are the subject of the Confidentiality Agreement. We are hereby putting TCE on notice that the OPA reserves all of its rights and remedies against TCE respecting the actions referred to above.

Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Crystal Pritchard

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Sent: Thursday, April 21, 2011 5:21 PM
To: 'PIvanoff@osler.com'; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Thursday, April 21, 2011 05:16 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

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Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
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Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

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From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Thursday, April 21, 2011 5:31 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

Okay, thanks Mike. We'll wait to hear from you.

Regards,

Paul Ivanoff
Partner

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3. Please remove the content related to any breach by TCE of the MOU good faith obligation. We would rather that you convey these same sentiments to TCE's counsel during a telephone conversation.

Please let me know if you have any comments of concerns with these changes.

We plan to sent the government-instructed counter-proposal to TCE today. We will not be engaging TCE in a parallel track of discussion on arbitration or mediation until we hear back from TCE on this counter-proposal.

Thanks,
Michael

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

From: Michael Lyle
Sent: Monday, April 25, 2011 8:48 AM
To: Michael Killeavy
Subject: FW: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]
Attachments: Letter to Alex Pourbaix (Osler letterhead) April 21 2011 20472672_5.doc

Can you meet with Colin and I re this letter in my office at 11 this morning?

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: April 21, 2011 5:17 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot

Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....
Importance: High

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

Rocco, Paul, and Elliot,

We would like the attached letter revised as follows:

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Osler, Hoskin & Harcourt LLP
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416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Ottawa
Calgary
New York

April 21, 2011

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

SENT BY FACSIMILE

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

Dear Mr. Barrack:

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

We are in receipt of your letter dated April 19, 2011, which the OPA forwarded to us.

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Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Crystal Pritchard

From: Michael Killeavy
Sent: Monday, April 25, 2011 8:50 AM
To: Michael Lyle
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

I'm off today. I can dial in, though. I don't have my telephone directory handy - what's your office telephone number please?

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

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Sent: Monday, April 25, 2011 08:48 AM
To: Michael Killeavy
Subject: FW: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

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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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: April 21, 2011 5:17 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot

Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

Attached is the draft letter to TCE. Let us know if you are content with it and we'll send it out. We think that the sooner it goes out, the more impact it will have.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Thursday, April 21, 2011 12:12 PM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....
Importance: High

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

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Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600

Toronto, Ontario
M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Monday, April 25, 2011 2:08 PM
To: Michael Lyle; Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]
Attachments: Letter to Michael Barrack April 25, 2011 20041578_1.pdf

Attached is a copy of the letter sent this afternoon to counsel for TCE.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, April 21, 2011 5:23 PM
To: Michael Killeavy; Ivanoff, Paul; Susan Kennedy
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco; Smith, Elliot
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

Ok with content. Want before it goes out to loop back with Colin on Monday morning re his discussion with Minister's Office on their role going forward.

From: Michael Killeavy
Sent: Thursday, April 21, 2011 05:21 PM
To: 'PIvanoff@osler.com' <PIvanoff@osler.com>; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; 'RSebastiano@osler.com' <RSebastiano@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>
Subject: Re: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

I am fine with this. Susan and Mike are alright with it?

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

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Thursday, April 21, 2011 05:16 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle
Cc: Deborah Langelaan; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: RE: TCE Matter - Letter Re: Breach of the Confidentiality Agreement and MOU AND Next Steps ....[Privileged and Confidential]

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

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OSLER

Toronto
Montréal
Ottawa
Calgary
New York

April 25, 2011

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

SENT BY FACSIMILE

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Mr. Michael E. Barrack
Thornton Grout Finnigan LLP
Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto ON M5K 1K7

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Lastly, I would request that you direct any of your future correspondence to me, in accordance with the Law Society of Upper Canada's Rules of Professional Conduct.

Yours truly,

ORIGINAL SIGNED BY
PAUL A. IVANOFF

Paul A. Ivanoff
PI:es

c: Colin Andersen, *OPA*
JoAnne Butler, *OPA*
Michael Killeavy, *OPA*
Michael Lyle, *OPA*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Tuesday, April 26, 2011 7:44 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco; Smith, Elliot
Subject: FW: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

In our discussions with TCE's counsel, as requested, we raised the good faith negotiations issue in connection with the terms of the MOU. Michael Barrick restated the assertion in his letter that his client embarked on these discussions with the Province at the urging of "senior representatives of the OPA". He suggested that TCE does not view their discussions with the Province as an attempt to circumvent the terms of the MOU.

It also appears from the letter that TCE wants to try to stop Osler from representing the OPA in any potential litigation or arbitration. They have alleged (without providing any specifics) that Osler has a conflict of interest that TCE is not willing to waive as it relates to litigation or arbitration. When we spoke to TCE's counsel, we asked him what he is referring to when he claims Osler has a "conflict of interest" in representing the OPA. He said he didn't have any specifics regarding this and would ask his client. For your information, TCE is not a client of the firm, and therefore Osler does not have a conflict in representing the OPA in this dispute, irrespective of whether it ends up in litigation or arbitration. It is our view that this is a baseless assertion on TCE's part and an attempt to frustrate the OPA.

Regards,

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Sharonlee Gorgichuk [mailto:SGorgichuk@tgf.ca]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul

Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | **Direct Line: 416-304-1152** | **Thornton Grout Finnigan LLP** | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | **www.tgf.ca**

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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

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

We are in receipt of your letter of April 25, 2011.

The Confidentiality Agreement dated October 8, 2010 does not prevent TCE from communicating with the Government of Ontario. A review of the Confidentiality Agreement, the relevant legislation, and the actions of the parties all support an intention that the Government of Ontario would have full access to all relevant information. The definition of "Confidential Information" included in that Agreement means "all information that has been identified as confidential and which is disclosed by the Disclosing Party and its Representatives to the Receiving Party **and its Representatives...**" As you are aware, the Government of Ontario is a Representative of the OPA. This provision is consistent with subsection 25.26 of the *Electricity Act, 1998* which provides, "The OPA shall submit to the Minister such reports and information as the Minister may require from time to time."

You are also aware that the genesis of this entire matter is the announcement by the Minister of Energy that the Province would not be proceeding with the construction of the Oakville Generating Station. As Mr. Andersen, Chief Executive Officer of OPA, wrote to TCE in his letter of October 7, 2010, "As you are no doubt aware, **the Minister of Energy** today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in the southwest GTA. The OPA will not proceed with the Contract..."

In subsequent discussions between senior representatives of the OPA and TCE, the senior officials of OPA have directly and forcefully urged representatives of TCE to deal directly with the Government of Ontario in order to resolve the issue of the entitlement of TCE to "reasonable

damages from the OPA, including the anticipated value of the Contract." In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA "upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario)."

While there exists no legal impediment to TCE sharing information with the Government of Ontario, no "Confidential Information" as defined in the Confidentiality Agreement is identified in your letter.

Perhaps most fundamentally, the position taken in your letter does not promote the efforts of the relevant parties to engage in a meaningful, constructive dialogue aimed at determining whether there is a mutually beneficial solution to the entire matter or significant steps which can be taken to mitigate the damage suffered by TCE. There is absolutely no harm suffered by OPA by sharing information which the Government of Ontario has a right to obtain.

With respect to the matter of representation, we have been informed by TCE that Osler is subject to a conflict of interest with respect to its representation of the OPA in any litigation or dispute resolution process which may ensue. TCE is not willing to waive that conflict.

We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP

MBarrack

Michael E. Barrack
MEB/slg

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, April 26, 2011 7:49 PM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Fw: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

I suggest that we bring this to ETM tomorrow.

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

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Regards,

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

Osler, Hoskin & Harcourt LLP
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RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

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Perhaps most fundamentally, the position taken in your letter does not promote the efforts of the relevant parties to engage in a meaningful, constructive dialogue aimed at determining whether there is a mutually beneficial solution to the entire matter or significant steps which can be taken to mitigate the damage suffered by TCE. There is absolutely no harm suffered by OPA by sharing information which the Government of Ontario has a right to obtain.

With respect to the matter of representation, we have been informed by TCE that Osler is subject to a conflict of interest with respect to its representation of the OPA in any litigation or dispute resolution process which may ensue. TCE is not willing to waive that conflict.

We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP

MBarrack

Michael E. Barrack
MEB/slg

Crystal Pritchard

From: JoAnne Butler
Sent: Tuesday, April 26, 2011 8:25 PM
To: Michael Lyle
Cc: Michael Killeavy
Subject: Re: TransCanada and Ontario Power Authority

Sure...

JCB

From: Michael Lyle
Sent: Tuesday, April 26, 2011 07:48 PM
To: JoAnne Butler
Cc: Michael Killeavy
Subject: Fw: TransCanada and Ontario Power Authority

I suggest that we bring this to ETM tomorrow.

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

Attached is a letter from counsel for TCE in response to our letter that expressed our concerns about their disclosure of confidential information. Not surprisingly, TCE denies that they have breached the CA. Their analysis is based on the role of the Government of Ontario as the OPA's Representative, but it fails to take into consideration the fact that as the Government is the OPA's Representative (and not TCE's), it is therefore the OPA's prerogative to disclose information to the Government, not TCE. The letter from TCE's counsel also makes reference to the OPA's October 7, 2010 letter and the MOU, neither of which have any bearing on the correct interpretation of the CA.

In our discussions with TCE's counsel, as requested, we raised the good faith negotiations issue in connection with the terms of the MOU. Michael Barrick restated the assertion in his letter that his client embarked on these discussions with the Province at the urging of "senior representatives of the OPA". He suggested that TCE does not view their discussions with the Province as an attempt to circumvent the terms of the MOU.

It also appears from the letter that TCE wants to try to stop Osler from representing the OPA in any potential litigation or arbitration. They have alleged (without providing any specifics) that Osler has a conflict of interest that TCE is not willing to waive as it relates to litigation or arbitration. When we spoke to TCE's counsel, we asked him what he is referring to when he claims Osler has a "conflict of interest" in representing the OPA. He said he didn't have any specifics regarding this and would ask his client. For your information, TCE is not a client of the firm, and therefore Osler does not have a conflict in representing the OPA in this dispute, irrespective of whether it ends up in litigation or arbitration. It is our view that this is a baseless assertion on TCE's part and an attempt to frustrate the OPA.

Regards,

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Sharonlee Gorgichuk [mailto:SGorgichuk@tgf.ca]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca **| Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 |** 416-304-1616 | Fax: 416-304-1313 | **www.tgf.ca**

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, April 27, 2011 9:02 AM
To: Nimi Visram
Subject: Fw: TransCanada and Ontario Power Authority
Attachments: Letter to P. Ivanoff from M. Barrack dated April 26, 2011.PDF

Please make 12 copies for ETM of attachment

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Tuesday, April 26, 2011 07:43 PM
To: Michael Lyle; JoAnne Butler; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: FW: TransCanada and Ontario Power Authority

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Regards,

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Sharonlee Gorgichuk [mailto:SGorgichuk@tgf.ca]
Sent: Tuesday, April 26, 2011 5:02 PM
To: Ivanoff, Paul
Cc: Michael Barrack
Subject: TransCanada and Ontario Power Authority

Please see attached correspondence of today's date from Michael Barrack.

Regards,
Sharonlee

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Sharonlee Gorgichuk | Assistant to Michael E. Barrack | sgorgichuk@tgf.ca | Direct Line: 416-304-1152 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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Canadian Pacific Tower
Toronto-Dominion Centre
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Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca
File No. 1435-001

April 26, 2011

WITHOUT PREJUDICE

VIA FACSIMILE

Paul A. Ivanoff
Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario
M5X 1B8

Dear Mr. Ivanoff:

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

We are in receipt of your letter of April 25, 2011.

The Confidentiality Agreement dated October 8, 2010 does not prevent TCE from communicating with the Government of Ontario. A review of the Confidentiality Agreement, the relevant legislation, and the actions of the parties all support an intention that the Government of Ontario would have full access to all relevant information. The definition of "Confidential Information" included in that Agreement means "all information that has been identified as confidential and which is disclosed by the Disclosing Party and its Representatives to the Receiving Party **and its Representatives...**" As you are aware, the Government of Ontario is a Representative of the OPA. This provision is consistent with subsection 25.26 of the *Electricity Act, 1998* which provides, "The OPA shall submit to the Minister such reports and information as the Minister may require from time to time."

You are also aware that the genesis of this entire matter is the announcement by the Minister of Energy that the Province would not be proceeding with the construction of the Oakville Generating Station. As Mr. Andersen, Chief Executive Officer of OPA, wrote to TCE in his letter of October 7, 2010, "As you are no doubt aware, **the Minister of Energy** today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in the southwest GTA. The OPA will not proceed with the Contract..."

In subsequent discussions between senior representatives of the OPA and TCE, the senior officials of OPA have directly and forcefully urged representatives of TCE to deal directly with the Government of Ontario in order to resolve the issue of the entitlement of TCE to "reasonable

damages from the OPA, including the anticipated value of the Contract." In both the written and oral communication, the OPA has taken the position that the mechanism of settlement would have to involve a directive issued to the OPA by the Minister of Energy. Specifically, the MOU dated December 21, 2010 contemplates that the cooperative solution proposed in the MOU as partial compensation for the termination of the Contract will be implemented by the OPA "upon receipt of a directive from the Minister pursuant to section 25.32 of the *Electricity Act, 1998* (Ontario)."

While there exists no legal impediment to TCE sharing information with the Government of Ontario, no "Confidential Information" as defined in the Confidentiality Agreement is identified in your letter.

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We would be willing to discuss all of these matters with you in order that the dispute resolution aspect of this matter may move forward in parallel with the continuing negotiations to resolve it.

Yours very truly,

Thornton Grout Finnigan LLP

MBarrack

Michael E. Barrack
MEB/slg

Crystal Pritchard

From: Brett Baker
Sent: Wednesday, April 27, 2011 6:08 PM
To: Michael Lyle
Subject: RE: TCE

Thanks for your note Michael.

From: Michael Lyle
Sent: April 27, 2011 6:04 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Brett Baker
Cc: Susan Kennedy
Subject: TCE

CONFIDENTIAL: SOLICITOR/CLIENT PRIVILEGE
PREPARED IN CONTEMPLATION OF LITIGATION

I just received word from Ministry Legal that they are expecting to receive the notice of proceedings against the Crown very shortly. This is consistent with the parallel streams that their counsel has suggested. As we have speculated before, the three tracks may be:

1. Get the 60 day clock re ability to commence litigation against the Crown running
2. Enter into discussions with OPA about the terms of reference of an arbitration
3. Seek to continue settlement negotiations with OPA – OPA latest counter offer to serve as basis for settlement negotiations.

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

Crystal Pritchard

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Thursday, April 28, 2011 4:22 PM
To: Susan Kennedy
Cc: Michael Lyle; Perun, Halyna N. (MEI)
Subject: TransCanada Energy Limited v. Her Majesty in right of Ontario
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF; PAC s. 7 Notice April 27.PDF; Letter to Pourbaix from OPA dated October 7, 2010.PDF; Oct..7, 2010 Press Release.PDF

Susan – thanks for your message. The attached reached us through MAG.

Also, I took a look at the Cooperation and Common Interest Privilege Agreement. I will call you about the one change that I propose and we can discuss the best approach to the effective date.

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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T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Attn: Colin Andersen
Chief Executive Officer

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Attn: The Honourable Brad Duguid
Minister of Energy

Dear Sirs:

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

We have been retained by TCE to represent its interests in connection with the termination of the Contract by letter dated October 7, 2010. That termination occurred following a public announcement by Minister Duguid. We are uncertain whether the Minister issued a directive to the OPA regarding the termination.

In the termination letter, the OPA stated to TCE, "the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated value of the Contract." The letter also identified the OPA's "wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers."

We have been briefed on the unsuccessful attempts to resolve this matter on the basis suggested in the termination letter, despite several months of negotiations. Our instructions are to commence the formal legal process of identifying the appropriate mechanism to determine the reasonable damages, including the anticipated value of the Contract and an appropriate mechanism for transferring that value from the OPA and the Province of Ontario to TCE. In order to facilitate this process, we would request that you have your legal counsel contact us in order to discuss the manner of proceeding.

We would be available to meet with counsel to begin this process this week. We would request that your counsel contact us no later than Tuesday, April 26, 2011. Our client has instructed us to move forward with reasonable expedition. We understand that a counterproposal will be delivered to TCE by the close of business on Wednesday, April 20, 2011 as part of the informal settlement discussions. While this formal process of dispute resolution moves forward, our client remains willing to discuss alternatives, but is not willing to suspend the formal process.

We look forward to hearing from your counsel.

Yours very truly,

Thornton Grout Finnigan LLP

Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
Jamison Steve, Principal Secretary to the Premier
Sean Mullin, Director of Policy, Office of the Premier

Ontario

- Facebook
-

Oakville Power Plant Not Moving Forward

October 7, 2010 1:15 AM

McGuinty Government to Invest in Transmission to Meet Local Power Demands

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

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

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

QUICK FACTS

- The need for additional generation in Southwest GTA was first identified in 2006. Since then, additional supply has come online and the demand picture has changed in the region.
- Ontario permanently closed four more units of dirty, smog-producing,

coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

- Read about the update to Ontario's Long-Term Energy Plan and how to offer your views.
- Learn more about renewable energy in Ontario.
- Find out about how Ontario is phasing out coal-fired generation.

CONTACTS

- Andrew Block
  Minister's Office
  416-327-6747
- Anne Smith
  Communications Branch
  416-327-7226

Ministry of Energy
ontario.ca/energy

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

– Hon. Brad Duguid
Minister of Energy

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

– Kevin Flynn
MPP, Oakville

Site Help

Notices

LAST MODIFIED: FEBRUARY 14, 2011

ONTARIO POWER AUTHORITY

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

T 416-967-7474
F 416 967-1947
www.powerauthority.on.ca

October 7, 2010

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

Attn: Alex Pourbaix,
President,
Energy and Oil Pipelines

Dear Mr Pourbaix :

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

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in southwest GTA.

The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract. We would like to begin negotiations with you to reach mutual agreement to terminate the Contract.

Given Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers.

You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

We undertake that we will not disclose this letter without giving you prior notice and we request that you do the same.

Sincerely,

ONTARIO POWER AUTHORITY

Per: Colin And

Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, April 28, 2011 4:36 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Lyle; Michael Killeavy
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario
Attachments: Letter to C. Andersen_B. Duguid from M. Barrack dated April 19, 2011.PDF; PAC s. 7 Notice April 27.PDF; Letter to Pourbaix from OPA dated October 7, 2010.PDF; Oct. 7, 2010 Press Release.PDF

They've been served, so to speak.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Michael E. Barrack
T: 416-304-1109
E: mbarrack@tgf.ca

April 19, 2011

VIA EMAIL

WITHOUT PREJUDICE

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

Attn: Colin Andersen
Chief Executive Officer

Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Attn: The Honourable Brad Duguid
Minister of Energy

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We look forward to hearing from your counsel.

Yours very truly,

Thornton Grout Finnigan LLP

Michael E. Barrack
MEB/slg

Cc *Craig MacLennan, Chief of Staff to the Minister of Energy*
Jamison Steve, Principal Secretary to the Premier
Sean Mullin, Director of Policy, Office of the Premier

Notice Pursuant to Section 7 of the *Proceedings Against the Crown Act*

TransCanada Energy Limited hereby provides notice to Her Majesty the Queen in right of Ontario of its claim for damages arising out of the termination on October 7, 2010 of the Southwest GTA Clean Energy Supply Contract between TransCanada Energy Ltd. ("TransCanada") and the Ontario Power Authority ("OPA") dated October 9, 2009 (the "Contract"). On October 7,2010 the Minister of Energy, the Honourable Brad Duguid publicly announced that the Province would not proceed with the construction of the power plant that was the subject matter of the Contract . Subsequently, by letter also dated October 7, 2010, the OPA informed TransCanada that it would not complete the Contract. TransCanada accepted the OPA's repudiation of the Contract. As a result of the termination of the Contract, TransCanada has suffered damages including the anticipated financial value of the Contract.

Please find attached the following documents dated October 7, 2010: (a) the press release from the Ministry of Energy; and (b) the letter from the OPA to TransCanada repudiating the Contract.

Ontario

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-

Oakville Power Plant Not Moving Forward

October 7, 2010 1:15 AM

McGuinty Government to Invest in Transmission to Meet Local Power Demands

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coal-fired generation on October 1, 2010, four years ahead of schedule.
- In 2009, more than 80 per cent of our generation came from emissions-free sources.

LEARN MORE

- Read about the update to Ontario's Long-Term Energy Plan and how to offer your views.
- Learn more about renewable energy in Ontario.
- Find out about how Ontario is phasing out coal-fired generation.

CONTACTS

- Andrew Block
  Minister's Office
  416-327-6747
- Anne Smith
  Communications Branch
  416-327-7226

Ministry of Energy
ontario.ca/energy

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

– Hon. Brad Duguid
Minister of Energy

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– Kevin Flynn
MPP, Oakville

Site Help

Notices

ONTARIO POWER AUTHORITY

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

T 416-967-7474
F 416 967-1947
www.powerauthority.on.ca

October 7, 2010

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

Attn: Alex Pourbaix,
President,
Energy and Oil Pipelines

Dear Mr Pourbaix :

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

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Sincerely,

ONTARIO POWER AUTHORITY

Per: Colin Andersen
Name: Colin Andersen
Title: Chief Executive Officer

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, April 28, 2011 4:46 PM
To: Michael Killeavy
Cc: Michael Lyle; Kristin Jenkins
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

Privileged and Confidential (In Contemplation of Litigation)

MK,

Please see below.

I believe the answer to KJ's question is "no" but wanted to confirm.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Kristin Jenkins
Sent: April 28, 2011 4:43 PM
To: Susan Kennedy
Subject: RE: TransCanada Energy Limited v. Her Majesty in right of Ontario

Did we respond to the April 19, beyond the letter about violating the confidentiality agreement.

From: Susan Kennedy
Sent: April 28, 2011 4:36 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Lyle; Michael Killeavy
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

They've been served, so to speak.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, April 28, 2011 5:00 PM
To: Susan Kennedy
Cc: Michael Lyle; Kristin Jenkins
Subject: RE: TransCanada Energy Limited v. Her Majesty in right of Ontario

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

Correct. Our response back went from our counsel to their counsel and address the Confidentiality Agreement issues we identified.

There was a telephone call from our counsel to their counsel were our counsel raised the issue of the TCE not negotiating in good faith.

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: Susan Kennedy
Sent: April 28, 2011 4:46 PM
To: Michael Killeavy
Cc: Michael Lyle; Kristin Jenkins
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

Privileged and Confidential (In Contemplation of Litigation)

MK,

Please see below.

I believe the answer to KJ's question is "no" but wanted to confirm.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Kristin Jenkins
Sent: April 28, 2011 4:43 PM
To: Susan Kennedy
Subject: RE: TransCanada Energy Limited v. Her Majesty in right of Ontario

Did we respond to the April 19, beyond the letter about violating the confidentiality agreement.

From: Susan Kennedy
Sent: April 28, 2011 4:36 PM
To: Colin Andersen; JoAnne Butler; Kristin Jenkins; Brett Baker
Cc: Michael Lyle; Michael Killeavy
Subject: FW: TransCanada Energy Limited v. Her Majesty in right of Ontario

They've been served, so to speak.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

Crystal Pritchard

From: JoAnne Butler
Sent: Friday, April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

Let's meet internally first... I am ready whenever everyone else is...

JCB

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

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

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

From: Brett Baker
Sent: Viernes, 29 de Abril de 2011 02:03 p.m.
To: Colin Andersen
Cc: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: TCE

Hi Colin,

The rejection has come ... Michael L is suggesting a short meeting later this afternoon to discuss ... might you be available to participate? Also, you will note, I have copied folks here, but wonder about broader distribution to the DMO, MO, other? Your thoughts?

B.

Crystal Pritchard

From: Brett Baker
Sent: Friday, April 29, 2011 2:12 PM
To: JoAnne Butler; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Irene Mauricette; Nimi Visram
Subject: RE: TCE

Might 2:45 work??

From: JoAnne Butler
Sent: April 29, 2011 2:10 PM
To: Brett Baker; Colin Andersen
Cc: Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: RE: TCE

Let's meet internally first...I am ready whenever everyone else is...

JCB

JoAnne C. Butler
Vice President, Electricity Resources
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B.

Crystal Pritchard

From: Nimi Visram
Sent: Friday, April 29, 2011 2:41 PM
To: Nimi Visram; JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Amir Shalaby; Brett Baker; Irene Mauricette
Cc: Jacquie Davidson
Subject: RE: TCE

We're ready for the TCE meeting in 1702.

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

-----Original Appointment-----
From: Nimi Visram
Sent: April 29, 2011 2:18 PM
To: JoAnne Butler; Michael Lyle; Kristin Jenkins; Michael Killeavy; Deborah Langelaan; Susan Kennedy; Amir Shalaby; Brett Baker; Irene Mauricette
Cc: Jacquie Davidson
Subject: TCE
When: April 29, 2011 2:45 PM-3:15 PM (GMT-05:00) Eastern Time (US & Canada).
Where: 1702

Dial In number :

Dial In: 1.877.320.7617
Conference code: 4067658 (Amir – you will already be on this call for the 2:15 [p.m., we're keeping the same conference call going – all other participants will join this call)

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, April 29, 2011 4:54 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: Sebastiano, Rocco; Smith, Elliot
Subject: OPA - TCE

I received a call this afternoon from TCE's counsel, Michael Barrack. He wanted us to know that he has served a notice on the Crown; that he would like to get together with counsel for the Crown and the OPA at some point to discuss a dispute resolution mechanism; and, that he is thinking about a private arbitration process that would involve the OPA, TCE and the Crown. The reference to a private arbitration process is an interesting development from the TCE side. He said that he is considering this as he knows that a private process may be preferable to the Crown. He also said that the Osler "conflict" issue will no longer be pursued by TCE, and that TCE wants to keep the arbitration/litigation process moving forward in parallel with the OPA/TCE negotiations.

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

Crystal Pritchard

From: JoAnne Butler
Sent: Friday, April 29, 2011 5:10 PM
To: 'PIvanoff@osler.com'; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Re: OPA - TCE

Very interesting...I continue to believe that arbitration is in the best interests of all of us, now and in the future. We already have many long terms relationships with TCE and jamming us will not make us very happy.

JCB

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Friday, April 29, 2011 04:53 PM
To: JoAnne Butler; Michael Lyle; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Cc: Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Subject: OPA - TCE

I received a call this afternoon from TCE's counsel, Michael Barrack. He wanted us to know that he has served a notice on the Crown; that he would like to get together with counsel for the Crown and the OPA at some point to discuss a dispute resolution mechanism; and, that he is thinking about a private arbitration process that would involve the OPA, TCE and the Crown. The reference to a private arbitration process is an interesting development from the TCE side. He said that he is considering this as he knows that a private process may be preferable to the Crown. He also said that the Osler "conflict" issue will no longer be pursued by TCE, and that TCE wants to keep the arbitration/litigation process moving forward in parallel with the OPA/TCE negotiations.

Regards,
Paul

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

Crystal Pritchard

From: JoAnne Butler
Sent: Sunday, May 01, 2011 5:19 PM
To: Michael Killeavy; 'rsebastiano@osler.com'; 'pivanoff@osler.com'; 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan; Ronak Mozayyan; Brett Baker; Michael Lyle; Amir Shalaby
Subject: Re: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011 ....

Michael,

Thanks for spending your Sunday afternoon on this. Great observations and suggestions. I look forward to a good strategy session tomorrow at our three o'clock.

JCB

----- Original Message -----
From: Michael Killeavy
Sent: Sunday, May 01, 2011 04:08 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; pivanoff@osler.com <pivanoff@osler.com>; Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - Review of TCE 29 April 2011 Response to OPA Letter of 21 April 2011 ....

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

I have reviewed the 29 April 2011 letter from TCE ("TCE letter"), which responds to our letter of 21 April 2011 ("OPA letter"). Here are some observations and suggestions:

1. The TCE letter and it doesn't, in my opinion, propose any alternative or revised settlement terms. It merely reiterates that which we've all heard for the past several months.

2. TCE has incorrectly characterized our letter of 21 April 2011 to have been a settlement "offer."

3. TCE wants the permitting and approval protection set out in the OPA letter be expanded for all permits and approvals. We had indicated that it would apply only to Planning Act approvals, i.e., municipal approvals. Furthermore, we had indicated that we'd reserve the right to terminate the Replacement Contract if a permitting force majeure were to arise. TCE wants this right be mutual. Not surprisingly, TCE wants to fix the quantum of any such contract termination payment in the event of a force majeure, as opposed to a commitment to good faith negotiation of the quantum. It further clarifies that the termination payments for the MPS contracts need to be included in the OGS sunk costs. This will depend on the disposition of these contracts and to what extent TCE has mitigated its potential damages, so we need to be careful in considering inclusion of the MPS gas turbines in sunk costs.

4. TCE claims that the contract capacities in the OPA letter are inconsistent with the MPS gas turbines. I suggest that we ought to have SMS Energy conduct yet another review of the MPS information in light of TCE's latest comments. We revised our AACC based on information TCE shared with the government. We have stated to TCE in the past that we are not particularlt wedded to any technical specifications in Schedule A, and that we are willing to discuss these.

5. TCE characterizes the Capital Cost Adjustment Methodology as providing the OPA with "significant latitude in approving or disproving (sic) costs..." I'm not sure that this is correct. We set out in s. 3 of Schedule C in the OPA letter what is to be included in the Actual CAPEX. TCE claims that it is a "one-sided" mechanism, which it certainly is not, since TCE and the OPA share deviations from the target on a 50/50 basis. TCE's comments are not, however, an outright rejection of the target costing methodology.

6. TCE has an issue with testing ramp rates and sees it as being counterproductive, but doesn't explain it's issue beyond that fact that it is a "new" requirement. TCE draws an analogy to the CES contract, which the Replacement Contract will not be based upon. Being able to ramp consistently is important for a peaking plant.

7. TCE indicates that the target CAPEX in the OPA letter is ~$65M less than its "best estimate" for the Replacement Plant. TCE has never clarified what the $42 M in CAPEX spend in 2009 and 2010 are for in its model. I had raised the issue at our last meeting with TCE and the question was never answered. The 2009/2010 CAPEX spend amounts from TCE are very close to the estimated OGS sunk costs of $37 M. If there is double counting in the TCE model for OGS sunk costs, the difference if CAPEX is only about ~ $28M now.

8. With regard to the claimed sub-standard returns, using the parameters in the OPA letter the IRR for the Replacement Project is 9.1%, and not 5.3%. Deb, Ronak and I will get together Monday morning and see if we can figure out what TCE is getting at here.

9. TCE re-proposes a 30-year contract term and NRRIF (% of the NRR to index) of 50%. We had rejected both of these purported value propositions earlier.

10. TCE claims to have provided a "cash flow model" to the OPA. It provided a project pro forma income statement for OGS in December 2010. There was no "model" in the sense that the inputs to the model and calculation of the derived values was not disclosed to the OPA.

11. TCE wants either the NPV we used in our analysis or for us to disclose our model to them. It might be time to tell them what NPV we used and why we used what we used.

12. TCE continually seems to conflate the notion of OGS contract and OGS project in terms of its expectations for the financial value of the OGS contract. I think that we need to be careful that we separate the two. Our offering of foregone OGS profits is very near the full value of the profits under the OGS contract, i.e., excluding OGS residual value.

Michael

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

Crystal Pritchard

From: Michael Killeavy
Sent: Monday, May 02, 2011 8:09 PM
To: Sebastiano, Rocco; pivanoff@osler.com; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments: TCE Matter - Comparison Matrix 2 May 2011.docx

Importance: High

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

Attached is a preliminary draft of a matrix comparing the various settlement proposals made by the parties. You can see that the 29 April 2011 TCE response to the 21 April 2011 OPA letter, which outlines the government-instructed second counter-proposal, really does not constitute a separate, identifiable settlement proposal.

Michael

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

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener Precedent for 25-year contract – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
Capital Expenditures (CAPEX)	$540mm	$400mm	$475 mm	Unknown but we suspect it is $540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by $75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and to receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract.	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Tuesday, May 03, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.DOC; WSComparison_#20420450v3_LEGAL_1_ - v3 Common Interest Privilege Agreement, OPA-#20420450v4_LEGAL_1_ - v4 Common Interest Privilege Agreement, OPA.pdf

Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."

- the definition of "Third Party" has been simplified.

- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

****

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

Draft & Privileged

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

(f) **"Third Party"** or **"Third Parties"** means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

(i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

(ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel
120 Adelaide Street West, Suite 1600
Toronto, Ontario
M5H 1T1
Tel. No.: (416) 969-6035
Fax No.: (416) 967-1947
E-Mail: michael.lyle@powerauthority.on.ca

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By:____________________________

Name:________________________

Title:________________________

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

By:________________________

Name:________________________

Title:________________________

Crystal Pritchard

From: Robert Godhue on behalf of Michael Lyle
Sent: Tuesday, May 03, 2011 8:34 AM
To: Michael Killeavy
Cc: Susan Kennedy; Michael Lyle
Subject: TCE Arbitration
Attachments: TCEarbitration.ppt

Good Morning All,
Mike Lyle will be in meetings all day *but* can be pulled out if necessary.
-Robert

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058
Robert.Godhue@powerauthority.on.ca

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the ~~———~~1st day of April, 2011 (the "**Effective Date**"). ~~**[NTD: Consider whether this Agreement should be backdated.]**~~

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all ~~subsequent~~ arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants~~,~~ and experts ~~and affiliates~~.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

(vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

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

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

(i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

(ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party

prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

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

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

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

ONTARIO POWER AUTHORITY

By:__________________________

Name:________________________

Title:_________________________

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

By:__________________________

Name:________________________

Title:_________________________

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter

- TCE is attempting to pursue three tracks:
  - » Getting 60 day "clock" to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
  - » Opening discussions on the terms of reference for an arbitration
  - » Continuing negotiations re substantive matters

ONTARIO POWER AUTHORITY

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- From perspective of TCE, there are some key potential advantages to arbitration over litigation:

  » Can seek to negotiate scoped terms of reference limiting arbitration to determining quantum of financial loss

  » Private arbitration of benefit to TCE

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- OPA will attempt to negotiate three key points in arbitration terms of reference:

  » Arbitration between OPA and TCE with Crown not a party (TCE has indicated interest in having Crown party to arbitration)

  » Arbitration to be final settlement of all claims against OPA and Crown (rules out separate litigation against Crown for tort of interference with contractual relations)

  » Arbitration should address OPA arguments that damages for financial loss are not payable because of exclusion of liability clause in contract and the regulatory hurdles that were facing the project

ONTARIO POWER AUTHORITY

KWCG Project

- Arbitration will only address issue of financial loss for OGS project
- Key differences remain related directly to KWCG project including capital expenditures and permitting risk
- OPA and Government (through directive power) will have to decide whether to continue negotiation of KWCG contract or have KWCG project procured through a competitive process (Note: unclear what impact later option will have on TCE's willingness to arbitrate OGS financial loss)

Crystal Pritchard

From:	Michael Killeavy
Sent:	Tuesday, May 03, 2011 11:59 AM
To:	'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc:	JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject:	TCE Matter - Comparison Matrix of Settlement Proposals ...
Attachments:	TCE Matter - Comparison Matrix 2 May 2011.docx

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

Attached is a revised draft of a matrix comparing the various settlement proposals made by the parties. It also has a number of potential questions to ask about the 29 April 2011 letter from TCE.

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

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-instructed Second Counter Proposal April 21, 2011	TCE Response to Government-instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis [illegible] opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	$475 mm	Unknown but we infer from the reference to a ~$65 mm difference that it is $540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by $75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility.	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the *Planning Act.*	In the Government-Instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Questions

1. Please clarify the Annual Average Contract Capacity ("AACC") used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.

2. Please clarify the 2009 and 2010 CAPEX amounts detailed in your 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA? These amounts total to $42 million. We believe that these amounts are actually OGS sunk costs. Is this correct?

3. Please clarify TCE cost of capital used in its financial model, including how it is arrived at, i.e., proportion and cost of both debt and equity portions.

4. Please clarify the NRRIF used in your financial model? In your 29 April 2011 letter to Colin Andersen, you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler of the OPA, you indicate 20%.

5. Can you please specify your concerns about testing ramp rates for the Replacement Plant?

6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your 29 April 2011 letter where you state that it is "one-sided"?

7. In your letter of 29 April 2011 you mention that TCE has shared its cash flow model with the OPA. Actually, you shared a pro-forma income statement for the project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the actual model with us?

8.

Crystal Pritchard

From:	JoAnne Butler
Sent:	Tuesday, May 03, 2011 4:23 PM
To:	OPA Executive; Brett Baker
Cc:	Michael Killeavy; Deborah Langelaan; Ronak Mozayyan; Susan Kennedy
Subject:	TCE Material PRIVILEGED AND CONFIDENTIAL, PREPARED IN CONTEMPLATION OF LITIGATION
Attachments:	TCEMay3DRAFT 1.doc; TCEMay3DRAFT 1A.doc; TCEarbitration.ppt; TCE Matter - Comparison Matrix 2 May 2011.docx; TCEObservationsRecommendationsMay 3.doc

PRIVILEGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

We have worked up this material to facilitate our discussion tomorrow at ETM. They include two draft response letters to Alex Pourbaix, an extension of our current matrix on proposals, some slides from Legal on arbitration and a document on observations/recommendations. All would require some sort of legal view before being sent to anyone beyond the OPA.

JCB

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

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

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

DRAFT 1
PRIVILEGED , CONFIDENTIAL AND WITHOUT PREJUDICE

May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Indeed, your letter seeks only to confirm and amplify your original settlement proposal.

In light of that, I have requested that our commercial team move this file to our legal team, who will be contacting your legal counsel to commence discussions on arbitration of our dispute. It is apparent that continued settlement discussions will have no continued value add.

Sincerely,

Colin Andersen

DRAFT 1A
PRIVILEGED,CONFIDENTIAL AND WITHOUT PREJUDICE
May 3, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011. We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Indeed, your letter seeks only to confirm and amplify your original settlement proposal.

However, we have some questions to seek clarifications on some of the matters you raised in your letter, as follows:

1. Please clarify the Annual Average Contract Capacity ("AACC") used in the TCE model? We are in receipt of the revised Schedule B to the Implementation Agreement, dated 24 February 2011, which indicates seasonal capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW.

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While we can continue to try and resolve the commercial terms, we will be contacting your legal counsel to pursue potential legal resolution of this issue.

Sincerely,

Colin Andersen

Process Going Forward

- Communications from TCE counsel have indicated desire to discuss ways to move forward with dispute resolution process in parallel with continuing negotiations to resolve matter

- TCE is attempting to pursue three tracks:
  - » Getting 60 day "clock" to commence litigation against Crown ticking by service on Crown of notice of proceedings against the Crown
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ONTARIO
POWER AUTHORITY

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

SETTLEMENT PROPOSAL COMPARISON MATRIX

PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

Questions

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

DRAFT

May 3, 2011

PRIVILEDGED AND CONFIDENTIAL; PREPARED IN CONTEMPLATION OF LITIGATION

TCE Matter

OBSERVATIONS

1) The OPA Commercial Team prepared a government instructed counter proposal and delivered it to TCE on April 21, 2001. This proposal was authorized by the Board as our limit and any further changes in TCE's favour would start to completely erode rate payer value.
2) TCE submitted an original proposal on March 10, 2011, and submitted a subsequent letter on April 29 after receiving the government instructed counter proposal, where they have not backed down in any way from their original March 10th value proposition. Indeed, it could be said that they have asked for further premiums by asking to be absolved of all permitting matters and reducing their turbine output from previous correspondence. See **Comparison Matrix**.
3) We have used the disclosed TCE financial parameters, including CAPEX of $540 million, and financial value of the OGS contract of $375 million, and we can get a project return (IRR) of 5.1%, whereas TCE states it gets a 5.3% project return. Consequently, the two models seem to be calibrated correctly.
4) The two main issues we need to resolve with TCE are (i) the financial value of the OGS contract and (ii) CAPEX for the Replacement Plant. Only the financial value of the OGS contract is something that arbitration can resolve. If we still cannot come to either a resolution on CAPEX or a resolution on how to handle differences in CAPEX, we will not be able to conclude our settlement discussions and have a Replacement Contract.
5) The Commercial team does not recommend any further offers to meet TCE's demands. We would have to be directed to do so. The question remains do we continue to pretend to work towards a commercial settlement by asking for clarifying questions or do we simply stop commercial matters and move it directly to the Legal Department? **Two draft letters** are attached depending on which strategy is pursued.
6) The OPA Legal team has developed some slides that discuss commencing arbitration discussions with TCE so as to determine what course the arbitration will take and where the KWCG plant and the OGS lost profits fit in.
7) This matter is clearly not a commercial discussion anymore. The conversation is around strategies and tactics to see "who blinks first", ie. Government for fear of litigation and thereby, instructing the OPA to accede to TCE's demands

through a further proposal, or TCE for fear of litigation and mindful of the long term relationships and numerous contracts that they currently have through the OPA. The clock has effectively started ticking through TCE's notice to Government to commence litigation within 60 days. Proposal was sent on April 27, 2011.

RECOMMENDATIONS

1) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
2) Ask one round of clarifying questions from TCE; however, this will not impact or drive us towards sending another counter proposal. **Draft Letter 1A.**

OR

3) Start the arbitration discussion immediately to determine the boundaries of what an arbitration might look like. The **slides from Legal** address some of the issues around this mechanism.
4) Send a clear message that since they are unwilling to move on their proposal that all commercial discussions will end and only the legal dispute mechanisms of arbitration or litigation will be pursued. **Draft Letter 1.**

Items in Bold are send as Attachments to this Memo.

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, May 04, 2011 11:45 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....
Attachments: OPA Ltr to TCE 4 May 2011.docx

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

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

Thank you,
Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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M5H 1T1
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 4, 2011

Dear Alex,

Thank you for your letter dated April 29, 2011 ("letter"). All capitalized terms in this letter refer to terms defined in the Memorandum of Understanding between the OPA and TCE, dated 21 December 2010, unless defined otherwise.

We have reviewed your letter in detail and we are very disappointed that your letter does not really constitute any revisions to your settlement proposal, dated 10 March 2011 ("original settlement proposal"), which we told you is unacceptable to the OPA. Your letter seeks only to confirm and amplify your original settlement proposal. Indeed, your estimated capital expenditure ("CAPEX") for the Potential Project is in excess of $600 million, including gas and electrical interconnect costs, which we cannot reconcile with our own estimates for such a plant.

We have some questions to seek clarifications on some of the matters you raised in your letter:

1. Can you please clarify the Annual Average Contract Capacity ("AACC") used in the TCE financial modeling for the Potential Project? We are in receipt of the revised Schedule B to the proposed implementation agreement, dated 24 February 2011, which indicates seasonal contract capacities of: 510 MW; 481.5 MW; 455.9 MW; 475 MW. These yield an Annual Average Contract Capacity of 481 MW. You indicate in your letter that an Annual Average Contract Capacity of 481 MW is not achievable and that it ought to be 450 MW.

2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in your 15 March 2011 financing model assumptions, which were shared with JoAnne Butler? These amounts total to $42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?

3. Please clarify TCE cost of capital used in its financial model for the Potential Project, including how it is arrived at, i.e., proportion and cost of both debt and equity portions.

4. Please clarify the NRRIF used in your financial model for the Potential Project? In your letter you mentioned a 50% NRRIF, however, in the 15 March 2011 financing model assumptions, which were shared with JoAnne Butler, you indicate 20%.

5. Can you please specify your concerns about testing ramp rates for the Potential Project?

6. The proposed target costing methodology provides for both the TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs. We do not understand your comment in your letter where you state that it is "one-sided"?

7. In your letter you mention that TCE has shared its cash flow model with the OPA. Actually, you shared a pro forma income statement for the project, not the model where the modeling assumptions and calculations are disclosed. Can you please share the entire model with us?

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

Sincerely,

Colin Andersen

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, May 04, 2011 1:13 PM
To: Shawn Cronkwright; Chuck Farmer
Cc: Karen Frecker; Martha McOuat; 'fcass@airdberlis.com'
Subject: FW: OGS Cancellation - Media Scan
Attachments: OGS Media Scan 110412 TPB.doc

Here is what is public on TCE. It appears that we can allude to the possibility of other projects being part of the discussion re disposition of the OGS contract and acknowledge that KWCG might be such a project but go no further than that.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

From: Kristin Jenkins
Sent: April 15, 2011 4:08 PM
To: 'pivanoff@osler.com'
Cc: Susan Kennedy; Michael Lyle
Subject: FW: OGS Cancellation - Media Scan

As discussed.

From: Tim Butters
Sent: April 12, 2011 12:59 PM
To: Kristin Jenkins
Cc: Patricia Phillips; Mary Bernard
Subject: OGS Cancellation - Media Scan

Kristin,

Per your request, attached is the media monitoring report pertaining to public references on compensation for the cancellation of the OGS project.

The media scan includes the following sections:

1) Recent media reports (2011) with reference to OPA compensation for TransCanada
2) News media reports with reference to compensation 2010
3) News Releases (Ministry of Energy, TransCanada)
4) Other (transcript from TransCanada management call)

5) Hansard Transcript (November 4, 2010 – NDP Energy Critic question about OGS compensation)

Regards,

Tim Butters

ONTARIO POWER AUTHORITY

Tim Butters | Media Relations Specialist
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
Phone: 416.969.6249 | Fax: 416.967.1947 | Email: tim.butters@powerauthority.on.ca

OGS Media Scan – April 12, 2011

Prepared for: Kristin Jenkins

In this report:

1) Recent reports (2011) with reference to OPA compensation
2) News reports with reference to compensation 2010
3) News Releases (Ministry of Energy, TransCanada)
4) Other (transcript from TransCanada management call)
5) Hansard Transcript (November 4, 2011 – NDP Energy Critic question about OGS compensation)

Recent Stories | 2011 (reference to OPA compensation)

March 4, 2011

Oakville wins nearly $500,000 in legal costs

http://www.c4ca.org/Latest-News/oakville-wins-nearly-500000-in-legal-costs.html

- The Town of Oakville announced Thursday that it has received $493,100 in compensation from TransCanada for legal costs the Town incurred during its fight against the energy company's proposed 900-megawatt gas-fired power plant.

February 18, 2011

Focus is on Cambridge site for power plant

http://www.thestar.com/business/companies/article/941562--focus-is-on-cambridge-site-for-power-plant

- TransCanada is now negotiating with the Ontario Power Authority for compensation, which could come in the form of a power plant in a different location.
- Colin Andersen, chief executive of the power authority, said in an interview earlier this week that talks with TransCanada are "going well," but wouldn't comment specifically on the Kitchener-Cambridge area plant.
- "One of the discussions with TransCanada has to be about what kind of alternatives would be available with regards to the termination," he said. "It could be that project, it could be other projects that are under discussion.
- "I'm not going to rule out anything. I'm necessarily not going to point to one particular alternative either."

November 4, 2010

Bruce nuclear refit $2 billion over budget

http://www.thestar.com/business/article/885072--bruce-nuclear-refit-more-than-1b-over-budget

- TransCanada also said yesterday that it is also negotiating with the Ontario Power Authority about compensation for the province's decision to cancel a gas-fired generator in Oakville that met fervent local opposition.
- "The contract is very clear. There is no right for the OPA to cancel the contract," he said, but added that talks so far have been "very reasonable."
- He said other potential investors will be watching what happens in the aftermath of the Oakville cancellation.

October 10, 2010

Oakville power plant reversal means future trouble

http://www.thestar.com/article/873038--oakville-power-plant-reversal-means-future-trouble

- In an interview last week, Andersen said circumstances had changed and an Oakville plant is no longer the best option. But he was unable to point to any single report that prompted the change of plans. Rather, he said the reversal came gradually, thorough an ongoing process of analysis and planning. Pity it didn't dawn earlier, before September 2009, when the Ontario Power Authority announced it was awarding a contract to build and run the Oakville plant to TransCanada Corporation. Now, barely a year later, the Calgary company is preparing to discuss what "reasonable payments" it might receive as compensation for the broken contract

- The size of that compensation is now in the hands of lawyers; it is expected to be many millions. But it is no mystery who will pay - Ontario's already-burdened energy consumers.

October 9, 2010

Ontario cancels plans for Oakville gas-powered electricity plant

http://www.digitaljournal.com/article/298712

- Ontario will have to pay TransCanada something for the cancellation of the contract.
- However, the government does not know how much Ontarians will be paying for cancelling the project.

October 8, 2010
CBC Radio Metro Morning (transcript follows)

Matt Galloway:
The estimate is that it's going to cost about 1 billion dollars to cancel this deal, does that seem reasonable to you?

Ben Chin:
A billion dollars or more was the cost of the plant, and of course we honour our contracts, and it's important that we do that, because there are investors that come into the province, and they have to have a certain amount of certainty that when they commit to something, that contract is going to be honoured. TransCanada plays a very important role in this province, we have a long-standing relationship with them, and we do know that going forward, other assets will be needed to meet other system needs.

Matt Galloway:
So how much is it going to cost to cancel the contract?

Ben Chin:
I think it's premature to put a price tag on it.

Matt Galloway:
How is it premature if the decision was made yesterday?

Ben Chin:
We're in discussions with TransCanada and other assets will be required. So I don't want to make it sound too simple, but I think the analogy would be that you hire somebody to do a project in your house and that project is no longer required but you are going to do another project, or several other projects, and you begin the discussion of saying you're not doing project X but you may be doing Y or Z, so let's talk about that. And I think that's the discussion we're entering into.

Matt Galloway:
What does it say to investors who might be considering doing some work here in Ontario when you have a plan that's underway and maybe that plan gets yanked?

Ben Chin:
I think we always have to be very careful about that. The recent past is a good indication of that. In the 1990s and the early 2000s there were drastic changes made in the electricity policy in Ontario. We had an open market and we suddenly reversed on that, and that made investors very jittery and I think we can only speak about the five years that the OPA came into existence but during that time there has been renewed stability and people know that they can make

commitments and that we will be committed to them. And I think that's what we're saying here too, is that responsibly the OPA cannot advise the government and say this plant is not needed but we must build it, and at the same time, we have a commitment to the contractor so we are going to work with them to make sure that they're not out on their investment in this province and that we can work together on future projects.

October 8, 2010
Cancelling Oakville plant will cost, McGuinty says
http://toronto.ctv.ca/servlet/an/local/CTVNews/20101008/cost-oakville-101008/20101008/?hub=TorontoNewHome

- McGuinty said he's not aware of the specifics of the contract with TransCanada Corp., which won the bid last year to build the $1.2-billion plant, and can't say how much the government will have to shell out to break the deal.
- "I'm just saying that we have a very good, ongoing, working relationship with them, and I think there's a lot of goodwill on both sides to address this development," McGuinty said after touring a new school in London, Ont.
- TransCanada (TSX:TRP) and the Ontario Power Authority are to discuss "reasonable payments" the company is entitled to, TransCanada said in a release.
- One analyst said taxpayers could be on the hook for several million dollars.

October 8, 2010
Cost of breaking Oakville contract unknown, McGuinty says
http://www.thestar.com/news/ontario/article/873042--cost-of-breaking-oakville-contract-unknown-mcguinty-says

- "I know that we're going to be able to find a way for both sides to sit down and determine what the best path is going forward," McGuinty said after touring a new school with full-day kindergarten.
- The government's Ontario Power Authority will handle the negotiations with TransCanada and balance "value for ratepayers with fairness for investors," said spokesperson Ben Chin.
  "They're being very flexible."
- TransCanada has said it is entitled to "reasonable payments" but has declined further comment, including how much it has spent over the years trying to get the Oakville project up and running by 2014.
- Chin said the amount spent is a "small percentage" of the overall cost.

October 7, 2010
Worried Liberals pull plug on Oakville gas plant
http://www.thestar.com/news/canada/article/872042

- "If the government or OPA (Ontario Power Authority) kills the project they will be on the hook for hundreds of millions of dollars for incurred expenses and lost profits," warned one insider.
- Duguid wouldn't say if there was a fee to cancel the project. "Discussions are continuing," he said. "They are aware of this decision and the reasons for it."

October 7, 2010
Ontario government cancels plans for power plant amid public outcry
http://petertabuns.ca/news-and-press/293-ontario-government-cancels-plans-for-power-plant-amid-public-outcry.html
(Original link to story not available)

- "We have a very positive relationship with TransCanada," Energy Minister Brad Duguid said. ``We continue to discuss these issues with them, but the relationship is very positive and I expect those discussions will be positive."

News Releases

October 7, 2010
TransCanada Responds to Oakville Generating Station Decision
http://www.transcanada.com/5508.html

October 7, 2010
Oakville Power Plant Not Moving Forward
http://news.ontario.ca/mei/en/2010/10/oakville-power-plant-not-moving-forward.html

OTHER

TransCanada Management Discusses Q3 2010 Results – Earnings Call Transcript

Russ Girling, CEO:

On October 7, the Ontario government announced that it would not proceed with the Oakville generating station. TransCanada has begun to negotiate with the Ontario Power Authority on a settlement, which would terminate the contract and

compensate TransCanada for the economic consequences associated with the contracts termination.

Ontario is a large province and we know that there is a need for power and infrastructure. TransCanada can help meet that need as it is done with projects such as Portlands Energy Centre and Halton Hills generating station. As the government develop its long-term energy plan we would hope to play a significant role in the development of safe and reliable and efficient power for the province.

Analysis also captured in this Toronto Star story:
http://www.thestar.com/business/earnings/article/885150--transcanada-reports-higher-profits

Hansard Transcripts

November 4, 2010
POWER PLANT

Mr. Peter Tabuns: For the Minister of Energy: When the Liberals proposed the Oakville gas-fired power plant, the NDP said that this plant wasn't necessary. At that time, the Minister of Energy made an argument along the lines of, "The energy fairy says we don't need a plant here." The energy fairy has landed. The energy fairy is bringing a big bill.

TransCanada announced that they have "commenced negotiations with the OPA on a settlement which would terminate the contract and compensate TransCanada for the economic consequences associated...."

Will the minister reveal to Ontario families how big a bill they're stuck with?

Hon. Brad Duguid: I'm very pleased that this government was able to announce, not long ago, to the people of Oakville that we would no longer need to move forward with this gas plant. A lot of that came about as a result of the work of our good friend the member from Oakville, who worked very hard on that file.

But it also came about because of the hard work done by this government over the last seven years that has created 8,000 new megawatts of power, a 20% increase in the power capacity of this province. That is what enabled us to have some more flexibility. That is what enabled us to move towards a transmission solution for the Oakville area and the southwest GTA rather than have to pursue a 950-megawatt gas plant.

I'll speak more in the supplementary about the discussions going on with TransCanada, but this is a good-news story for the people of—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Mr. Peter Tabuns: You know, when you bungle something, when you don't listen to advice and you incur a liability for the people of Ontario, that's not a good-news story.

Right at the beginning, the NDP said this plant was not needed. You didn't have to be a genius to figure that out. The reality is that they went ahead with a mistake. They have incurred a liability. The ratepayers of this province are going to pay for it. What is this bungle going to cost us?

Hon. Brad Duguid: The NDP clearly don't think anything is needed when it comes to power. They don't support nuclear. They clearly no longer support renewable energy. Although I know the critic supports it, it's his leader who stands up day after day and opposes it. They don't support our investments in conservation. They don't support the efforts we're making to rebuild the energy generation in this province.

We're building a stronger, more reliable and cleaner system of energy. There was a time when the NDP may have supported that, but they apparently have lost their principles. Instead of being in favour of cleaner air and a brighter future for our kids and grandkids, they're standing clearly in the way of that. Man, they've moved a long way from their previous positions.

Crystal Pritchard

From: Smith, Elliot [ESmith@osler.com]
Sent: Thursday, May 05, 2011 9:51 AM
To: Michael Killeavy; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....
Attachments: OPA Ltr to TCE 4 May 2011 (Osler comments) 20556161_3.DOCX

Michael,
Further to your request below, we have revised the proposed letter to TCE.

With respect to question 6 (the "one-sided" target costing methodology), we suspect that TCE's view of this is derived from the fact that although cost overruns and under-runs are split 50/50, there is an overall cap which is lower than TCE's estimated CAPEX which may be why they see the mechanism as being "one-sided". In light of this, you may want to consider whether you still want to ask them that question.

Please let us know if you have any 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

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

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

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

Thank you,
Michael

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 4, 2011

Dear Alex:

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

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

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt of the revised Schedule B to the proposed implementation agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.

2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total $42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?

3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).

4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011

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

5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.

6. The target costing methodology proposed by the OPA in its April 21, 2011 proposal provides for both TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs, subject to an overall cap. Can you please clarify why you consider this mechanism to be "one-sided"? **[Note: I suspect TCE's view of the one-sidedness of this mechanism is based on the cap, which is lower than their "best estimate" of the CAPEX for the Potential Project. In light of the perceived effect of the cap, consider whether to ask this question.]**

7. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

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

Sincerely,

Colin Andersen

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, May 05, 2011 10:00 AM
To: 'Smith, Elliot'; 'Sebastiano, Rocco'; 'Ivanoff, Paul'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

Thanks Elliot. I think you are likely correct in your interpretation of TCE's view on how "one-sided" the target costing methodology is. I am fine with deleting the question if everyone else is, too?

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M5H 1T1
416-969-6288
416-520-9788 (CELL)
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Sent: May 5, 2011 9:51 AM
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Michael,
Further to your request below, we have revised the proposed letter to TCE.

With respect to question 6 (the "one-sided" target costing methodology), we suspect that TCE's view of this is derived from the fact that although cost overruns and under-runs are split 50/50, there is an overall cap which is lower than TCE's estimated CAPEX which may be why they see the mechanism as being "one-sided". In light of this, you may want to consider whether you still want to ask them that question.

Please let us know if you have any 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

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

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

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

Thank you,
Michael

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: Susan Kennedy
Sent: Thursday, May 05, 2011 11:26 AM
To: Michael Killeavy; 'Smith, Elliot'; 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

Ok by me.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: May 5, 2011 10:00 AM
To: Smith, Elliot; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

Thanks Elliot. I think you are likely correct in your interpretation of TCE's view on how "one-sided" the target costing methodology is. I am fine with deleting the question if everyone else is, too?

Michael Killeavy, LL.B., MBA, P.Eng.
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416-520-9788 (CELL)
416-967-1947 (FAX)

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: May 5, 2011 9:51 AM
To: Michael Killeavy; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

Michael,
Further to your request below, we have revised the proposed letter to TCE.

With respect to question 6 (the "one-sided" target costing methodology), we suspect that TCE's view of this is derived from the fact that although cost overruns and under-runs are split 50/50, there is an overall cap which is lower than TCE's estimated CAPEX which may be why they see the mechanism as being "one-sided". In light of this, you may want to consider whether you still want to ask them that question.

Please let us know if you have any questions or comments.

Elliot

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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: Wednesday, May 04, 2011 11:45 AM
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Subject: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

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Thank you,
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****

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, May 05, 2011 12:35 PM
To: Colin Andersen
Cc: JoAnne Butler; Brett Baker; Michael Lyle; Deborah Langelaan
Subject: FW: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....
Attachments: OPA Ltr to TCE 4 May 2011 (Osler comments) 20556161_3.DOCX

Colin,

Attached is a draft of the letter we discussed yesterday at the ETM. Counsel has reviewed it. We would like to delete the question pertaining to comment made by TCE on the "one-sided" nature of the target costing methodology, as I think Osler has explained what was meant.

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

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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Ontario Power Authority
120 Adelaide Street West, Suite 1600
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M5H 1T1
416-969-6288
416-520-9788 (CELL)
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From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: May 5, 2011 9:51 AM
To: Michael Killeavy; Sebastiano, Rocco; Ivanoff, Paul; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: RE: TCE Matter - OPA Response to TCE Letter of 29 April 2011 ....

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With respect to question 6 (the "one-sided" target costing methodology), we suspect that TCE's view of this is derived from the fact that although cost overruns and under-runs are split 50/50, there is an overall cap which is lower than TCE's estimated CAPEX which may be why they see the mechanism as being "one-sided". In light of this, you may want to consider whether you still want to ask them that question.

Please let us know if you have any questions or comments.

Elliot

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Toronto, Ontario, Canada M5X 1B8

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Wednesday, May 04, 2011 11:45 AM
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Colin has requested that a letter, substantially in the form of the attached letter, be sent by the OPA under his signature in response to TCE's letter of 29 April 2011. Can counsel please review and comment on the drafting of the attached letter? We would like to send the letter out tomorrow at the latest.

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

Thank you,
Michael

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 4, 2011

Dear Alex:

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

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

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt of the revised Schedule B to the proposed implementation agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.

2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total $42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?

3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).

4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011

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

5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.

6. The target costing methodology proposed by the OPA in its April 21, 2011 proposal provides for both TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under-runs, subject to an overall cap. Can you please clarify why you consider this mechanism to be "one-sided"? **[Note: I suspect TCE's view of the one-sidedness of this mechanism is based on the cap, which is lower than their "best estimate" of the CAPEX for the Potential Project. In light of the perceived effect of the cap, consider whether to ask this question.]**

7. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

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

Sincerely,

Colin Andersen

Crystal Pritchard

From: Susan Kennedy
Sent: Thursday, May 05, 2011 4:35 PM
To: Michael Lyle
Subject: Draft Litigation Hold Memo for TCE Attached
Attachments: TCE Document Retention Memo.doc; OPA - TCE

Importance: High

Draft memo (from you) attached for your review and comment and Paul's original email attached for reference.

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

ONTARIO POWER AUTHORITY

May 31, 2012

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

FROM: Michael Lyle

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

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PLEASE READ THIS MEMORANDUM CAREFULLY

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

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

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

Preservation of Records Relating to Litigation

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

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

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

ONTARIO POWER AUTHORITY

Documents Which Must Be Disclosed – "Relevance"

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

"Documents" includes all Paper, Computer and Electronic Records and Information

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

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

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

IT Personnel

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

The General Issues

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

1. the procurement and administration of the CES Contract between the OPA and TCE;

2. the OPA's planning analysis of the needs in Southwest GTA;

3. the communications between the OPA and the Government relating to the OGS;

4. the Minister of Energy's decision and announcement that the OGS will not proceed;

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

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

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

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

Memorandum

Privileged & Confidential

To: Michael Lyle
General Counsel
Ontario Power Authority

c: Rocco Sebastiano

Date: April 8, 2011

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".

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3. the communications between the OPA and the Government relating to the OGS;

4. the Minister of Energy's decision and announcment 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.

<u>If you have any questions or concerns, please contact the OPA law group at (416) 969-6035.</u>

Crystal Pritchard

From: Michael Killeavy
Sent: Monday, May 09, 2011 10:22 AM
To: Michael Lyle
Subject: RE: TCE statement
Attachments: 2011_Q1_english_corp.pdf

Please refer to page 30 in the attached Q1 report:

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

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

From: Michael Lyle
Sent: May 9, 2011 9:58 AM
To: Michael Killeavy
Subject: TCE statement

Can I have the electronic version of the TCE statement in their quarterly report re Oakville?

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

TRANSCANADA CORPORATION – FIRST QUARTER 2011

TransCanada Reports 30 Per Cent Increase in First Quarter Comparable Earnings to $425 Million, or $0.61 Per Share

CALGARY, Alberta – **April 29, 2011** – TransCanada Corporation (TSX, NYSE: TRP) (TransCanada or the Company) today announced comparable earnings for first quarter 2011 of $425 million or $0.61 per share. Net income attributable to common shares was $415 million or $0.59 per share. TransCanada's Board of Directors also declared a quarterly dividend of $0.42 per common share for the quarter ending June 30, 2011, equivalent to $1.68 per share on an annualized basis.

"Over the last year approximately $9 billion of new assets have commenced commercial operations and more recently our existing low-cost, base-load power assets have benefitted from higher power prices. Together, this contributed to a 30 per cent increase in comparable earnings for first quarter 2011 when compared to the same period last year," said Russ Girling, TransCanada's president and chief executive officer. "TransCanada's strong first quarter financial results highlight our ability to generate significant earnings and cash flow from our growing portfolio of high-quality energy infrastructure assets."

Girling added that TransCanada will continue to expand its portfolio of natural gas and crude oil pipelines, power generation plants and natural gas storage facilities in the future by advancing a number of projects. They include the Keystone U.S. Gulf Coast Expansion, the Guadalajara Pipeline project in Mexico, additional extensions and expansions of the Alberta System, the Bruce Power restart program in Ontario, the Coolidge Generating Station in Arizona and the Cartier Wind power project in Québec. Each is expected to generate long-term, sustainable earnings and cash flow as they are placed in service.

First Quarter Highlights
(All financial figures are unaudited and in Canadian dollars unless noted otherwise)

- Comparable earnings of $425 million, an increase of 30 per cent
- Comparable earnings per share of $0.61, an increase of 27 per cent
- Comparable EBITDA of $1.225 billion, an increase of 22 per cent
- Funds generated from operations of $919 million, an increase of 27 per cent
- Net income attributable to common shares of $415 million or $0.59 per share
- Common share dividend of $0.42 per share for the quarter ending June 30, 2011; Dividend Reinvestment and Share Purchase Plan share issuance from treasury to be ceased
- Keystone Cushing Extension commenced commercial operations; nominal capacity increased to 591,000 barrels per day (Bbl/d)
- In April 2011, announced agreements to sell a 25 per cent interest in each of Gas Transmission Northwest LLC and Bison Pipeline LLC to TC PipeLines, LP for US$605 million.

Comparable earnings for first quarter 2011 were $425 million ($0.61 per share) compared to $328 million ($0.48 per share) in the same period in 2010. The increase was primarily due to incremental earnings from recently commissioned assets including Keystone, Halton Hills, Bison, Groundbirch and the second phase of Kibby Wind. Also contributing to the year over year increase in earnings were higher power prices realized in Alberta, higher earnings from the Alberta System and lower

Natural Gas Pipelines business development costs. Partially offsetting these increases were higher interest costs and a lower contribution from Natural Gas Storage.

TransCanada's $20 billion capital program is approximately half complete and is expected to generate long-term growth in earnings, cash flows and dividends as projects commence operations.

Notable recent developments in Oil Pipelines, Natural Gas Pipelines, Energy and Corporate include:

Oil Pipelines:

- The Keystone Pipeline System continued to safely deliver a secure, stable supply of crude oil to the U.S Midwest. In February, the Keystone Cushing Extension commenced commercial operations. It increased the system's nominal capacity to 591,000 Bbl/d with contracted volumes of 530,000 Bbl/d.

  TransCanada's Keystone U.S. Gulf Coast Expansion is now entering the final stages of regulatory review. On April 15, 2011, the U.S. Department of State (DOS), the lead agency for U.S. federal regulatory approvals, issued a Supplemental Draft Environmental Impact Statement (SDEIS) in response to comments received on the Draft Environmental Impact Statement (DEIS) issued in April 2010 and to address new and additional information received. The SDEIS provides additional information on key environmental issues, but does not change the conclusion reached in the DEIS that the project would enhance U.S. energy security, benefit the U.S. economy and would have a limited environmental impact.

  The DOS has invited interested parties to comment on the SDEIS during a 45-day period which concludes June 6, 2011. Following receipt of comments on the SDEIS and subsequent publication of a Final Environmental Impact Statement, the DOS will consult with other U.S. federal agencies during a 90-day period to determine if granting approval for the U.S. Gulf Coast Expansion is in the national interest. The DOS has indicated it will make a final decision regarding the Presidential Permit prior to the end of 2011.

  The Keystone U.S. Gulf Coast Expansion will play an important role in linking a secure and growing supply of western Canadian and U.S. Williston Basin crude oil with the largest refining markets in the U.S.

Natural Gas Pipelines:

- Construction of the Horn River pipeline project started in March 2011. The $310 million project is scheduled to be operational in second quarter 2012 with commitments for contracted natural gas volumes rising to 634 million cubic feet per day (mmcf/d) by 2014.

  The Company has also executed an agreement securing contractual support for a new project to connect 100 mmcf/d of new natural gas supply in northeastern B.C. by 2014 with volumes expected to increase to 300 mmcf/d by 2020. This project is expected to extend the Horn River pipeline by approximately 100 kilometres (km) (62 miles) and to have an estimated capital cost of $265 million.

  In addition to the Horn River pipeline project, TransCanada continues to advance further pipeline development in B.C. and Alberta to transport new natural gas supplies. The Company has filed several applications with the National Energy Board (NEB) requesting approval of further expansions of the Alberta System to accommodate requests for additional natural gas transmission service throughout the northwest portion of the Western Canadian Sedimentary

Basin. The total aggregate capital cost of these expansion projects is estimated to be $475 million.

- On February 24, 2011, the NEB approved TransCanada's revised 2011 interim toll application for the Canadian Mainline effective March 1, 2011. The revised interim tolls are consistent with the existing 2007-2011 settlement with two adjustments that resulted in a lower revenue requirement and therefore lower interim tolls.

  TransCanada is preparing an application to the NEB for approval of final rates for 2011, which is expected to be filed today. The Company has continued discussions with shippers and other stakeholders to develop a tolling arrangement for the next several years to enhance the competitiveness of the Canadian Mainline and the Western Canadian Sedimentary Basin. Unfortunately, discussions have not resulted in such an arrangement and it appears that TransCanada will be filing a comprehensive application with the NEB later in 2011 to address tolls for 2012 and beyond.

  Also in respect to the Canadian Mainline, a successful open season closed in January 2011 and resulted in executed precedent agreements to transport 230,000 gigajoules per day (GJ/d) of Marcellus shale gas to eastern markets. TransCanada has commenced another open season to respond to market interest in transporting additional Marcellus shale volumes on the Canadian Mainline. That open season closed on April 15, 2011 and is expected to result in the transportation of an additional 150,000 GJ/d to markets east of the Parkway delivery point near Hamilton, Ontario beginning November 1, 2013. Executed precedent agreements from these open seasons are expected to be used to support a facilities application that the Company plans to file with the NEB in third quarter 2011.

- Construction of the 305 km (190 mile) Guadalajara Pipeline was 90 per cent complete as of mid-April 2011. The US$360 million project is expected to commence commercial operations late in the second quarter of 2011. In addition, TransCanada and the Comisión Federal de Electricidad recently executed a contract to add a compressor station to the pipeline. This approximate US $60 million project is expected to be in service in early 2013.

- The Alaska Pipeline Project team continues to work with shippers to resolve conditional bids received as part of the project's open season and is working toward the Federal Energy Regulatory Commission application deadline of October 2012.

- In March 2011, the Mackenzie Gas Project received a Certificate of Public Convenience and Necessity from the NEB, marking the end of the federal regulatory process. The project proponents continue to seek the Canadian government's support of an acceptable fiscal framework which would allow the project to progress. TransCanada remains committed to advancing the project.

- On April 26, 2011, the Company announced it entered into agreements to sell a 25 per cent interest in each of Gas Transmission Northwest LLC (GTN) and Bison Pipeline LLC to TC PipeLines, LP for an aggregate purchase price of US$605 million, which includes US$81 million or 25 per cent of GTN's debt. The sale is expected to close in May 2011 and is subject to certain closing conditions.

  At the end of April, TC PipeLines, LP announced an underwritten public offering of 6,300,000 common units at US$47.58 per common unit. Gross proceeds of approximately US$300 million from this offering will be used to partially fund the acquisition. The underwriters were also granted a 30-day option to purchase an additional 945,000 common units at the same price. The offering is expected to close on May 3, 2011.

As part of this offering, TransCanada will make a capital contribution of US$6 million to maintain its two per cent general partnership interest in TC PipeLines, LP. Assuming the underwriters exercise their option to purchase additional units, TransCanada's ownership in TC PipeLines, LP is expected to be approximately 33.3 per cent.

Energy:

- Construction of the 575 megawatt (MW) Coolidge Generating Station is complete. The US$500 million generating station is expected to enter commercial operation May 1, 2011. All of the power produced by the facility will be sold under a 20-year power purchase arrangement with the Salt River Project, a local Arizona utility.

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

- Refurbishment work on Bruce A Units 1 and 2 continues with the connection of the refurbished Unit 2 reactor to plant systems. Plant commissioning is underway on Unit 2 and will accelerate in second quarter 2011 when construction activities are essentially complete. Fuel Channel Assembly (FCA) is underway on Unit 1, with completion expected in second quarter 2011. The installation of these FCAs is the final stage of Atomic Energy of Canada Limited's work on the reactors.

  Subject to regulatory approval, Bruce Power expects to load fuel into Unit 2 in second quarter 2011 and achieve a first synchronization of the generator to the electrical grid by the end of 2011, with commercial operation expected to occur in first quarter 2012. Bruce Power expects to load fuel into Unit 1 in third quarter 2011, with a first synchronization of the generator during first quarter 2012 and commercial operation expected to occur during third quarter 2012. TransCanada's share of the total capital cost is expected to be approximately $2.4 billion, of which $2.1 billion had been incurred at March 31, 2011.

- In December 2010, Sundance A Units 1 and 2 were withdrawn from service for testing and were subject to a force majeure claim by TransAlta Corporation (TransAlta) in January 2011. In February 2011, TransAlta notified TransCanada that it had determined it was uneconomic to replace or repair the Sundance 1 and 2 generating units and that the Sundance A PPA should therefore be terminated.

  TransCanada does not agree with TransAlta's determination on either the force majeure claim or the destruction claim and has disputed both matters under the binding dispute resolution process provided in the PPA. As the limited information TransCanada has received to date does not support these claims, TransCanada continues to record revenues and costs under the PPA as though this event was a normal plant outage.

Corporate:

- The Board of Directors of TransCanada declared a quarterly dividend of $0.42 per common share for the quarter ending June 30, 2011 on TransCanada's outstanding common shares. The quarterly amount is equivalent to $1.68 per common share on an annual basis.

- Commencing with the dividends declared on April 28, 2011, common shares purchased with reinvested cash dividends under TransCanada's Dividend Reinvestment and Share Purchase Plan (DRP) will no longer be satisfied with shares issued from Treasury at a discount but rather will be acquired on the Toronto Stock Exchange at 100 per cent of the weighted average purchase price. The DRP is available for dividends payable on TransCanada's common and preferred shares, and TransCanada PipeLines Limited's preferred shares.

- TransCanada is well positioned to fund its existing capital program through its growing internally-generated cash flow, and its continued access to capital markets. TransCanada will also continue to examine opportunities for portfolio management, including an ongoing role for TC PipeLines, LP in financing its capital program.

Teleconference – Audio and Slide Presentation:

TransCanada will hold a teleconference and webcast to discuss its 2011 first quarter financial results. Russ Girling, TransCanada president and chief executive officer and Don Marchand, executive vice-president and chief financial officer, along with other members of the TransCanada executive leadership team, will discuss the financial results and company developments before opening the call to questions from analysts and members of the media.

Event:
TransCanada 2011 first quarter financial results teleconference and webcast

Date:
Friday, April 29, 2011

Time:
1 p.m. mountain daylight time (MDT) / 3 p.m. eastern daylight time (EDT)

How:
Analysts, members of the media and other interested parties are invited to participate by calling (866) 223-7781 or (416) 340-8018 (Toronto area). Please dial in 10 minutes prior to the start of the call. No pass code is required. A live webcast of the teleconference will be available at www.transcanada.com.

A replay of the teleconference will be available two hours after the conclusion of the call until midnight (EDT) May 6, 2011. Please call (800) 408-3053 or (905) 694-9451 (Toronto area) and enter pass code 5762531#.

With more than 60 years experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and oil pipelines, power generation and gas storage facilities. TransCanada's network of wholly owned natural gas pipelines extends more than 60,000 kilometres (37,000 miles), tapping into virtually all major gas supply basins in North America. TransCanada is one of the continent's largest providers of gas storage and related services with approximately 380 billion cubic feet of storage capacity. A growing independent power producer, TransCanada owns, or has interests in, over 10,800 megawatts of power generation in Canada and the United States. TransCanada is developing one of North America's largest oil delivery systems. TransCanada's common shares trade on the Toronto and New York stock exchanges under the symbol TRP. For more information visit: www.transcanada.com.

Forward-Looking Information

This news release may contain certain information that is forward-looking and is subject to important risks and uncertainties. The words "anticipate", "expect", "believe", "may", "should", "estimate", "project", "outlook", "forecast" or other similar words are used to identify such forward-looking information. Forward-looking statements in this document are intended to provide TransCanada security holders and potential investors with information regarding TransCanada and its subsidiaries, including management's assessment of TransCanada's and its subsidiaries' future financial and operational plans and outlook. Forward-looking statements in this document may include, among others, statements regarding the anticipated business prospects, projects and financial performance of TransCanada and its subsidiaries, expectations or projections about the future, strategies and goals for growth and expansion, expected and future cash flows, costs, schedules including anticipated construction and completion dates, operating and financial results and expected impact of future commitments and contingent liabilities. All forward-looking statements reflect TransCanada's beliefs and assumptions based on information available at the time the statements were made. Actual results or events may differ from those predicted in these forward-looking statements. Factors that could cause actual results or events to differ materially from current expectations include, among others, the ability of TransCanada to successfully implement its strategic initiatives and whether such strategic initiatives will yield the expected benefits, the operating performance of the Company's pipeline and energy assets, the availability and price of energy commodities, capacity payments, regulatory processes and decisions, changes in environmental and other laws and regulations, competitive factors in the pipeline and energy sectors, construction and completion of capital projects, labour, equipment and material costs, access to capital markets, interest and currency exchange rates, technological developments and economic conditions in North America. By its nature, forward-looking information is subject to various risks and uncertainties, which could cause TransCanada's actual results and experience to differ materially from the anticipated results or expectations expressed. Additional information on these and other factors is available in the reports filed by TransCanada with Canadian securities regulators and with the U.S. Securities and Exchange Commission. Readers are cautioned not to place undue reliance on this forward-looking information, which is given as of the date it is expressed in this news release or otherwise, and not to use future-oriented information or financial outlooks for anything other than their intended purpose. TransCanada undertakes no obligation to update publicly or revise any forward-looking information, whether as a result of new information, future events or otherwise, except as required by law.

Non-GAAP Measures

TransCanada uses the measures Comparable Earnings, Comparable Earnings per Share, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), Comparable EBITDA, Earnings Before Interest and Taxes (EBIT), Comparable EBIT, Comparable Interest Expense, Comparable Interest Income and Other, Comparable Income Taxes and Funds Generated from Operations in this news release. These measures do not have any standardized meaning prescribed by Canadian generally accepted accounting principles (GAAP). They are, therefore, considered to be non-GAAP measures and may not be comparable to similar measures presented by other entities. Management of TransCanada uses these non-GAAP measures to improve its ability to compare financial results among reporting periods and to enhance its understanding of operating performance, liquidity and ability to generate funds to finance operations. These non-GAAP measures are also provided to readers as additional information on TransCanada's operating performance, liquidity and ability to generate funds to finance operations.

EBITDA is an approximate measure of the Company's pre-tax operating cash flow and is generally used to better measure performance and evaluate trends of individual assets. EBITDA comprises earnings before deducting interest and other financial charges, income taxes, depreciation and amortization, net income attributable to non-controlling interests and preferred share dividends. EBIT is a measure of the Company's earnings from ongoing operations and is generally used to better measure performance and evaluate trends within each segment. EBIT comprises earnings before deducting interest and other financial charges, income taxes, net income attributable to non-controlling interests and preferred share dividends.

Comparable Earnings, Comparable EBITDA, Comparable EBIT, Comparable Interest Expense, Comparable Interest Income and Other, and Comparable Income Taxes comprise Net Income Attributable to Common Shares, EBITDA, EBIT, Interest Expense, Interest Income and Other, and

Quarterly Report to Shareholders

Management's Discussion and Analysis

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

Forward-Looking Information

This MD&A may contain certain information that is forward looking and is subject to important risks and uncertainties. The words "anticipate", "expect", "believe", "may", "should", "estimate", "project", "outlook", "forecast" or other similar words are used to identify such forward-looking information. Forward-looking statements in this document are intended to provide TransCanada security holders and potential investors with information regarding TransCanada and its subsidiaries, including management's assessment of TransCanada's and its subsidiaries' future financial and operational plans and outlook. Forward-looking statements in this document may include, among others, statements regarding the anticipated business prospects, projects and financial performance of TransCanada and its subsidiaries, expectations or projections about the future, strategies and goals for growth and expansion, expected and future cash flows, costs, schedules (including anticipated construction and completion dates), operating and financial results, and expected impact of future commitments and contingent liabilities. All forward-looking statements reflect TransCanada's beliefs and assumptions based on information available at the time the statements were made. Actual results or events may differ from those predicted in these forward-looking statements. Factors that could cause actual results or events to differ materially from current expectations include, among others, the ability of TransCanada to successfully implement its strategic initiatives and whether such strategic initiatives will yield the expected benefits, the operating performance of the Company's pipeline and energy assets, the availability and price of energy commodities, capacity payments, regulatory processes and decisions, changes in environmental and other laws and regulations, competitive factors in the pipeline and energy sectors, construction and completion of capital projects, labour, equipment and material costs, access to capital markets, interest and currency exchange rates, technological developments and economic conditions in North America. By its nature, forward-looking information is subject to various risks and uncertainties, including those material risks discussed in the Financial Instruments and Risk Management section in this MD&A, which could cause TransCanada's actual results and experience to differ materially from the anticipated results or expectations expressed. Additional information on these and other factors is available in the reports filed by TransCanada with Canadian securities regulators and with the U.S. Securities and Exchange Commission (SEC). Readers are cautioned not to place undue reliance on this forward-looking information, which is given as of the date it is expressed in this MD&A or otherwise, and not to use future-oriented information or financial outlooks for anything other than their intended purpose. TransCanada undertakes no obligation to update publicly or revise any forward-looking information, whether as a result of new information, future events or otherwise, except as required by law.

Non-GAAP Measures

TransCanada uses the measures Comparable Earnings, Comparable Earnings per Share, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), Comparable EBITDA, Earnings Before Interest and Taxes (EBIT), Comparable EBIT, Comparable Interest Expense, Comparable Interest Income and Other, Comparable Income Taxes and Funds Generated from Operations in this MD&A. These measures do not have any standardized meaning prescribed by Canadian GAAP. They are, therefore, considered to be non-GAAP measures and may not be comparable to similar measures presented by other entities. Management of TransCanada uses these non-GAAP measures to improve its ability to compare financial results among reporting periods and to enhance its understanding of operating performance, liquidity and ability to generate funds to finance operations. These non-GAAP measures are also provided to readers as additional information on TransCanada's operating performance, liquidity and ability to generate funds to finance operations.

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Comparable Earnings, Comparable EBITDA, Comparable EBIT, Comparable Interest Expense, Comparable Interest Income and Other, and Comparable Income Taxes comprise Net Income Attributable to Common Shares, EBITDA, EBIT, Interest Expense, Interest Income and Other, and Income Taxes Expense, respectively, adjusted for specific items that are significant but are not reflective of the Company's underlying operations in the period. Specific items are subjective, however, management uses its judgement and informed decision-making when identifying items to be excluded in calculating these non-GAAP measures, some of which may recur. Specific items may include but are not limited to certain fair value adjustments relating to risk management activities, income tax refunds and adjustments, gains or losses on sales of assets, legal and bankruptcy settlements, and write-downs of assets and investments.

The Company engages in risk management activities to reduce its exposure to certain financial and commodity price risks by utilizing instruments such as derivatives. The risk management activities which TransCanada excludes from Comparable Earnings provide effective economic hedges by locking in positive margins but do not meet the specific criteria for hedge accounting treatment and, therefore, changes in fair values are recorded in Net Income each period. The unrealized gains or losses from changes in fair value of these derivative contracts and natural gas inventory in storage are not considered to be representative of the underlying operations in the current period or the positive margin that will be realized upon settlement. As a result, these amounts have been excluded in the determination of Comparable Earnings.

The table below presents a reconciliation of these non-GAAP measures to Net Income Attributable to Common Shares. Comparable Earnings per Share is calculated by dividing Comparable Earnings by the weighted average number of common shares outstanding for the period.

Funds Generated from Operations comprise Net Cash Provided by Operations before changes in operating working capital and allows management to better measure consolidated operating cash flow, excluding fluctuations from working capital balances which may not necessarily be reflective of underlying operations in the same period. A reconciliation of Funds Generated from Operations to Net Cash Provided by Operations is presented in the Funds Generated from Operations table in the Liquidity and Capital Resources section in this MD&A.

Reconciliation of Non-GAAP Measures

For the three months ended March 31 *(unaudited)* *(millions of dollars)*	Natural Gas Pipelines 2011	Natural Gas Pipelines 2010	Oil Pipelines 2011	Oil Pipelines 2010	Energy 2011	Energy 2010	Corporate 2011	Corporate 2010	Total 2011	Total 2010
Comparable EBITDA	796	768	99	-	354	259	(24)	(26)	1,225	1,001
Depreciation and amortization	(244)	(253)	(23)	-	(100)	(90)	(3)	-	(370)	(343)
Comparable EBIT	552	515	76	-	254	169	(27)	(26)	855	658
Other Income Statement Items										
Comparable interest expense									(210)	(182)
Interest expense of joint ventures									(16)	(16)
Comparable interest income and other									31	24
Comparable income taxes									(185)	(118)
Net income attributable to non-controlling interests									(36)	(31)
Preferred share dividends									(14)	(7)
Comparable Earnings									425	328
Specific item (net of tax):										
Risk management activities(1)									(10)	(32)
Net Income Attributable to Common Shares									415	296

For the three months ended March 31 *(unaudited)(millions of dollars except per share amounts)*	2011	2010
Comparable Interest Expense	(210)	(182)
Specific item:		
Risk management activities(1)	(1)	-
Interest Expense	(211)	(182)
Comparable Interest Income and Other	31	24
Specific item:		
Risk management activities(1)	2	-
Interest Income and Other	33	24
Comparable Income Taxes	(185)	(118)
Specific item:		
Income taxes attributable to risk management activities(1)	7	17
Income Taxes Expense	(178)	(101)
Comparable Earnings per Share	$0.61	$0.48
Specific item (net of tax):		
Risk management activities	(0.02)	(0.05)
Net Income per Share	$0.59	$0.43

(1)

For the three months ended March 31 *(unaudited)(millions of dollars)*	2011	2010
Risk Management Activities (Losses)/Gains:		
U.S. Power derivatives	(13)	(28)
Natural Gas Storage proprietary inventory and derivatives	(5)	(21)
Interest rate derivatives	(1)	-
Foreign exchange derivatives	2	-
Income taxes attributable to risk management activities	7	17
Risk Management Activities	(10)	(32)

Consolidated Results of Operations

TransCanada's Net Income Attributable to Controlling Interests in first quarter 2011 was $429 million and Net Income Attributable to Common Shares was $415 million or $0.59 per share compared to $303 million and $296 million or $0.43 per share, respectively, in first quarter 2010.

Comparable Earnings in first quarter 2011 were $425 million or $0.61 per share compared to $328 million or $0.48 per share for the same period in 2010. Comparable Earnings in first quarter 2011 excluded net unrealized after-tax losses of $10 million ($17 million pre-tax) (2010 – losses of $32 million after tax ($49 million pre-tax)) resulting from changes in the fair value of certain risk management activities.

Comparable Earnings increased $97 million or $0.13 per share in first quarter 2011 compared to the same period in 2010 and reflected the following:

- increased Natural Gas Pipelines Comparable EBIT primarily due to higher earnings from the Alberta System, reduced business development costs and incremental earnings from Bison which was placed in service in January 2011, partially offset by the negative impact of a weaker U.S. dollar on U.S. operations;
- Oil Pipelines Comparable EBIT as the Company commenced recording earnings from Keystone in first quarter 2011;
- increased Energy Comparable EBIT primarily due to higher prices for Western Power, increased volumes and lower costs at Bruce A, and incremental earnings from the start-up of Halton Hills in September 2010 and the second phase of Kibby Wind in October 2010, partially offset by lower realized prices and volumes at Bruce B, and decreased third-party storage and proprietary natural gas revenues for Natural Gas Storage;
- increased Comparable Interest Expense primarily due to decreased capitalized interest for Keystone, which commenced full operations in February 2011, and incremental interest expense on new debt issues in 2010, partially offset by realized losses in first quarter 2010 on derivatives used to manage the Company's exposure to fluctuating interest rates, Canadian dollar-denominated debt maturities and the positive impact of a weaker U.S. dollar on U.S. dollar-denominated interest expense;
- increased Comparable Interest Income and Other, which included higher realized gains on derivatives used to manage the Company's exposure to foreign exchange rate fluctuations on U.S. dollar-denominated income;
- increased Comparable Income Taxes primarily due to higher pre-tax earnings; and
- increased Preferred Share Dividends due to new preferred share issues in 2010.

Further discussion of first quarter 2011 financial results is included in the Natural Gas Pipelines, Oil Pipelines, Energy and Other Income Statement Items sections in this MD&A.

U.S. Dollar-Denominated Balances

On a consolidated basis, the impact of changes in the value of the U.S. dollar on U.S. operations is partially offset by other U.S. dollar-denominated items as set out in the following table. The resultant pre-tax net exposure is managed using derivatives, further reducing the Company's exposure to changes in U.S. foreign exchange rates. The average U.S. dollar exchange rate for the three months ended March 31, 2011 was 0.99 (2010 – 1.04).

Summary of Significant U.S. Dollar-Denominated Balances

(unaudited) *(millions of U.S. dollars, pre-tax)*	Three months ended March 31 2011	 2010
U.S. Natural Gas Pipelines Comparable EBIT[1]	249	226
U.S. Oil Pipelines Comparable EBIT[1]	51	-
U.S. Power Comparable EBIT[1]	32	39
Interest on U.S. dollar-denominated long-term debt	(182)	(159)
Capitalized interest on U.S capital expenditures	47	68
U.S. non-controlling interests and other	(51)	(45)
	146	129

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBIT.

Natural Gas Pipelines

Natural Gas Pipelines' Comparable EBIT was $552 million in first quarter 2011 compared to $515 million for the same period in 2010.

Natural Gas Pipelines Results

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Canadian Natural Gas Pipelines		
Canadian Mainline	265	265
Alberta System	185	175
Foothills	33	33
Other (TQM, Ventures LP)	12	13
Canadian Natural Gas Pipelines Comparable EBITDA[1]	495	486
Depreciation and amortization	(180)	(183)
Canadian Natural Gas Pipelines Comparable EBIT[1]	315	303
U.S. Natural Gas Pipelines (in U.S. dollars)		
ANR	111	115
GTN	45	43
Great Lakes[2]	30	32
PipeLines LP[3][4]	27	25
Iroquois	19	18
Bison[5]	13	-
Portland[4][6]	10	10
International (Tamazunchale, TransGas, Gas Pacifico/INNERGY)	10	10
General, administrative and support costs[7]	(2)	(6)
Non-controlling interests[4]	50	46
U.S. Natural Gas Pipelines Comparable EBITDA[1]	313	293
Depreciation and amortization	(64)	(67)
U.S. Natural Gas Pipelines Comparable EBIT[1]	249	226
Foreign exchange	(4)	9
U.S. Natural Gas Pipelines Comparable EBIT[1] (in Canadian dollars)	245	235
Natural Gas Pipelines Business Development Comparable EBITDA[1]	(8)	(23)
Natural Gas Pipelines Comparable EBIT[1]	552	515
Summary:		
Natural Gas Pipelines Comparable EBITDA[1]	796	768
Depreciation and amortization	(244)	(253)
Natural Gas Pipelines Comparable EBIT[1]	552	515

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.
(2) Represents the Company's 53.6 per cent direct ownership interest.
(3) Represents the Company's 38.2 per cent ownership interest.
(4) Non-Controlling Interests reflects Comparable EBITDA for the portions of PipeLines LP and Portland not owned by TransCanada.
(5) Includes Bison's operations since January 2011.
(6) Represents the Company's 61.7 per cent ownership interest.
(7) Represents General, Administrative and Support Costs associated with certain of the Company's pipelines.

Net Income for Wholly Owned Canadian Natural Gas Pipelines

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Canadian Mainline	62	66
Alberta System	48	38
Foothills	6	6

Canadian Natural Gas Pipelines

Canadian Mainline's net income in first quarter 2011 was $62 million, a decrease of $4 million from the same period in 2010. Net income in first quarter 2011 reflected a lower average investment base as well as a lower rate of return on common equity (ROE), as determined by the National Energy Board (NEB), of 8.08 per cent in 2011 compared to 8.52 per cent in 2010. The lower ROE and average investment base was partially offset by higher OM&A cost savings in 2011.

Canadian Mainline's Comparable EBITDA in first quarter 2011 of $265 million was consistent with first quarter 2010. A decrease in revenues as a result of a lower overall return, associated with a reduced ROE and financial charges, on a reduced average investment base, was offset by a recovery of higher flow-through costs. The flow-through costs do not impact net income and increased due to higher income taxes, partially offset by the lower financial charges.

The Alberta System's net income was $48 million in first quarter 2011 compared to $38 million in the same quarter of 2010. The increase reflected an ROE of 9.70 per cent on 40 per cent deemed common equity approved by the NEB in September 2010 as part of the Company's 2010 - 2012 Revenue Requirement Settlement application. Net income in first quarter 2010 reflected an ROE of 8.75 per cent on 35 per cent deemed common equity.

The Alberta System's Comparable EBITDA was $185 million in first quarter 2011 compared to $175 million for the same period in 2010. The increase was primarily due to the increased ROE included in the 2010 - 2012 Revenue Requirement Settlement.

U.S. Natural Gas Pipelines

ANR's Comparable EBITDA in first quarter 2011 was US$111 million compared to US$115 million for the same period in 2010. The decrease was primarily due to higher OM&A costs.

The Bison pipeline was placed in service in January 2011 and contributed US$13 million of EBITDA in first quarter 2011.

Comparable EBITDA for the remainder of the U.S. Natural Gas Pipelines in first quarter 2011 was US$189 million compared to US$178 million for the same period in 2010. The increase was primarily due to higher earnings from Northern Border and GTN, and lower general, administrative and support costs.

Depreciation

Natural Gas Pipelines' depreciation decreased $9 million in first quarter 2011 compared to the same period in 2010 primarily due to Great Lakes' lower depreciation rate per its rate settlement, partially offset by incremental depreciation for Bison.

Business Development

Natural Gas Pipelines' Business Development Comparable EBITDA loss decreased $15 million in first quarter 2011 compared to the same period in 2010 primarily due to an increased level of reimbursement by the State of Alaska for costs related to the Alaska Pipeline Project. The State of Alaska reimbursed up to 50 per cent of the eligible costs incurred for the Alaska Pipeline Project prior to the close of the first binding open season on July 30, 2010. Commencing July 31, 2010, the State began reimbursing up to 90 per cent of the eligible costs. Project applicable expenses and reimbursements are shared proportionately with ExxonMobil, TransCanada's joint venture partner in developing the Alaska Pipeline Project. The decrease in business development costs was partially offset by a levy charged by the NEB in March 2011 to recover the Aboriginal Pipeline Group's (APG) proportionate share of costs relating to the Mackenzie Gas Project (MGP) hearings.

Operating Statistics

Three months ended March 31 *(unaudited)*	Canadian Mainline(1) 2011	Canadian Mainline(1) 2010	Alberta System(2) 2011	Alberta System(2) 2010	Foothills 2011	Foothills 2010	ANR(3) 2011	ANR(3) 2010	GTN(3) 2011	GTN(3) 2010
Average investment base (millions of dollars)	6,404	6,629	4,966	4,956	624	677	n/a	n/a	n/a	n/a
Delivery volumes (Bcf)										
Total	597	560	1,000	938	329	328	480	447	176	207
Average per day	6.6	6.2	11.1	10.4	3.7	3.6	5.3	5.0	2.0	2.3

(1) Canadian Mainline's throughput volumes in the above table reflect physical deliveries to domestic and export markets. Canadian Mainline's physical receipts originating at the Alberta border and in Saskatchewan for the three months ended March 31, 2011 were 376 billion cubic feet (Bcf) (2010 – 385 Bcf); average per day was 4.2 Bcf (2010 – 4.3 Bcf).

(2) Field receipt volumes for the Alberta System for the three months ended March 31, 2011 were 843 Bcf (2010 – 855 Bcf); average per day was 9.4 Bcf (2010 – 9.5 Bcf).

(3) ANR's and GTN's results are not impacted by average investment base as these systems operate under fixed-rate models approved by the U.S. Federal Energy Regulatory Commission.

Oil Pipelines

In first quarter 2011, the Company recorded $76 million of Comparable EBIT related to the Keystone oil pipeline. In late January 2011, work was completed to allow the Wood River/Patoka section of the system to operate at its design pressure following the NEB's decision to remove the maximum operating pressure restriction in December 2010. The Company commenced recording EBITDA for the Wood River/Patoka section of Keystone at the beginning of February 2011. In February 2011, the Cushing Extension was placed in service and TransCanada also began recording EBITDA related to this section of Keystone. Cash flows related to Keystone, other than general, administrative and support costs, were capitalized until the Company began recording EBITDA.

Oil Pipelines Results

For the period February 1 to March 31 *(unaudited)(millions of dollars)*	2011
Canadian Oil Pipelines Comparable EBITDA[1]	35
Depreciation and amortization	(9)
Canadian Oil Pipelines Comparable EBIT[1]	26
U.S. Oil Pipelines Comparable EBITDA[1] (in U.S. dollars)	65
Depreciation and amortization	(14)
U.S. Oil Pipelines Comparable EBIT[1]	51
Foreign exchange	(1)
U.S. Oil Pipelines Comparable EBIT[1] (in Canadian dollars)	50
Oil Pipelines Comparable EBIT[1]	76
Summary:	
Oil Pipelines Comparable EBITDA[1]	99
Depreciation and amortization	(23)
Oil Pipelines Comparable EBIT[1]	76

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.

Operating Statistics

For the period February 1 to March 31 *(unaudited)*	2011
Delivery volumes (thousands of barrels)[1]:	
Total	22,466
Average per day	381

(1) Delivery volumes reflect physical deliveries.

Energy

Energy's Comparable EBIT was $254 million in first quarter 2011 compared to $169 million for the same period in 2010.

Energy Results

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	 2010
Canadian Power		
Western Power	120	42
Eastern Power[1]	80	52
Bruce Power	77	63
General, administrative and support costs	(8)	(10)
Canadian Power Comparable EBITDA[2]	269	147
Depreciation and amortization	(67)	(60)
Canadian Power Comparable EBIT[2]	202	87
U.S. Power (in U.S. dollars)		
Northeast Power[3]	71	73
General, administrative and support costs	(9)	(9)
U.S. Power Comparable EBITDA[2]	62	64
Depreciation and amortization	(30)	(25)
U.S. Power Comparable EBIT[2]	32	39
Foreign exchange	-	1
U.S. Power Comparable EBIT[2] (in Canadian dollars)	32	40
Natural Gas Storage		
Alberta Storage	31	53
General, administrative and support costs	(2)	(2)
Natural Gas Storage Comparable EBITDA[2]	29	51
Depreciation and amortization	(4)	(4)
Natural Gas Storage Comparable EBIT[2]	25	47
Energy Business Development Comparable EBITDA[2]	(5)	(5)
Energy Comparable EBIT[2]	254	169
Summary:		
Energy Comparable EBITDA[2]	354	259
Depreciation and amortization	(100)	(90)
Energy Comparable EBIT[2]	254	169

(1) Includes Halton Hills effective September 2010.
(2) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.
(3) Includes phase two of Kibby Wind effective October 2010.

Canadian Power

Western and Eastern Canadian Power Comparable EBIT(1)(2)

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Revenues		
Western power	279	164
Eastern power	118	67
Other(3)	23	22
	420	253
Commodity Purchases Resold		
Western power	(143)	(106)
Other(4)	(5)	(5)
	(148)	(111)
Plant operating costs and other	(72)	(48)
General, administrative and support costs	(8)	(10)
Comparable EBITDA(1)	192	84
Depreciation and amortization	(39)	(37)
Comparable EBIT(1)	153	47

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.
(2) Includes Halton Hills effective September 2010.
(3) Includes sales of excess natural gas purchased for generation and thermal carbon black. The realized gains and losses from derivatives used to purchase and sell natural gas to manage Western and Eastern Power's assets are presented on a net basis in Other Revenues.
(4) Includes the cost of excess natural gas not used in operations.

Western and Eastern Canadian Power Operating Statistics

(unaudited)	Three months ended March 31 2011	2010
Sales Volumes (GWh)		
Supply		
Generation		
Western Power	681	585
Eastern Power(1)	1,078	429
Purchased		
Sundance A & B and Sheerness PPAs(2)	2,105	2,655
Other purchases	202	149
	4,066	3,818
Sales		
Contracted		
Western Power	2,269	2,269
Eastern Power(1)	1,078	445
Spot		
Western Power	719	1,104
	4,066	3,818
Plant Availability(3)		
Western Power(4)	98%	95%
Eastern Power(1)(5)	99%	96%

(1) Includes Halton Hills effective September 2010.
(2) No volumes were delivered under the Sundance A PPA in 2011.
(3) Plant availability represents the percentage of time in a period that the plant is available to generate power regardless of whether it is running.
(4) Excludes facilities that provide power to TransCanada under PPAs.
(5) Bécancour has been excluded from the availability calculation as power generation has been suspended since 2008.

Western Power's Comparable EBITDA of $120 million and Power Revenues of $279 million in first quarter 2011 increased $78 million and $115 million, respectively, compared to the same period in 2010, primarily due to higher overall realized power prices. Average spot market power prices in Alberta increased 104 per cent to $83 per megawatt hour (MWh) in first quarter 2011 compared to $41 per MWh in first quarter 2010 due to unseasonably cold weather combined with unplanned plant outages, which caused an increase in demand and a reduction in market supply. Western Power's Comparable EBITDA in first quarter 2011 included $39 million of earnings from the Sundance A power purchase arrangement (PPA), the revenues and costs of which have been recorded as though Units 1 and 2 were on normal plant outages. Refer to the Recent Developments section in this MD&A for further discussion regarding the Sundance A outage.

Western Power's Commodity Purchases Resold increased $37 million in first quarter 2011 compared to the same period in 2010 primarily due to higher volumes at Sheerness and increased retail contracts.

Eastern Power's Comparable EBITDA of $80 million and Power Revenues of $118 million in first quarter 2011 increased $28 million and $51 million, respectively, compared to the same period in 2010. The increases were primarily due to incremental earnings from Halton Hills, which went into service in September 2010.

Plant Operating Costs and Other of $72 million in first quarter 2011, which includes fuel gas consumed in power generation, increased $24 million compared to the same period in 2010 primarily due to incremental fuel consumed at Halton Hills.

Western Power manages the sale of its supply volumes on a portfolio basis. A portion of its supply is sold into the spot market to assure supply in case of an unexpected plant outage. The overall amount of spot market volumes is dependent upon the ability to transact in forward sales markets at acceptable contract terms. This approach to portfolio management helps to minimize costs in situations where Western Power would otherwise have to purchase electricity in the open market to fulfill its contractual sales obligations. Approximately 76 per cent of Western Power sales volumes were sold under contract in first quarter 2011, compared to 67 per cent in first quarter 2010. To reduce its exposure to spot market prices on uncontracted volumes, as at March 31, 2011, Western Power had entered into fixed-price power sales contracts to sell approximately 6,300 gigawatt hours (GWh) for the remainder of 2011 and 6,800 GWh for 2012.

Eastern Power is focused on selling power under long-term contracts. In first quarter 2011 and 2010, 100 per cent of Eastern Power's sales volumes were sold under contract and are expected to continue to be 100 per cent sold under contract for the remainder of 2011 and 2012.

Bruce Power Results[1]

(TransCanada's proportionate share) *(unaudited)* *(millions of dollars unless otherwise indicated)*	Three months ended March 31 2011	 2010
Revenues[2]	213	225
Operating Expenses	(136)	(162)
Comparable EBITDA[1]	77	63
Bruce A Comparable EBITDA[1]	34	13
Bruce B Comparable EBITDA[1]	43	50
Comparable EBITDA[1]	77	63
Depreciation and amortization	(28)	(23)
Comparable EBIT[1]	49	40
Bruce Power – Other Information		
Plant availability		
Bruce A	100%	65%
Bruce B	91%	98%
Combined Bruce Power	94%	87%
Planned outage days		
Bruce A	-	35
Bruce B	21	-
Unplanned outage days		
Bruce A	4	26
Bruce B	8	6
Sales volumes (GWh)		
Bruce A	1,500	989
Bruce B	2,032	2,155
	3,532	3,144
Results per MWh		
Bruce A power revenues	$65	$64
Bruce B power revenues[3]	$53	$58
Combined Bruce Power revenues	$57	$60
Percentage of Bruce B output sold to spot market[4]	90%	78%

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.
(2) Revenues include Bruce A's fuel cost recoveries of $8 million for the three months ended March 31, 2011 (2010 – $5 million).
(3) Includes revenues received under the floor price mechanism, from contract settlements and deemed generation, and the associated volumes.
(4) All of Bruce B's output is covered by the floor price mechanism, including volumes sold to the spot market.

TransCanada's proportionate share of Bruce A's Comparable EBITDA increased $21 million to $34 million in first quarter 2011 as a result of higher volumes and lower operating expenses due to decreased outage days. Bruce A's plant availability in first quarter 2011 was 100 per cent with four outage days compared to an availability of 65 per cent and 61 outage days for the same period in 2010. Results in first quarter 2010 also included the positive impact of a payment made from Bruce B to Bruce A regarding 2009 amendments to a long-term agreement with the Ontario Power Authority (OPA). The net positive impact reflected TransCanada's higher percentage ownership interest in Bruce A.

TransCanada's proportionate share of Bruce B's Comparable EBITDA decreased $7 million to $43 million in first quarter 2011 from $50 million in first quarter 2010 due to lower realized prices resulting from the expiry of fixed-price contracts at higher prices, and lower volumes and higher operating expenses due to increased outage days, partially offset by the payment made in first quarter 2010 to Bruce A regarding the 2009 amendments to a long-term agreement with the OPA. Bruce B's plant availability in first quarter 2011 was 91 per cent with 29 outage days compared to an availability of 98 per cent and six outage days in the same period in 2010.

Under a contract with the OPA, all output from Bruce A in first quarter 2011 was sold at a fixed price of $64.71 per MWh (before recovery of fuel costs from the OPA) compared to $64.45 per MWh in first quarter 2010. Also under a contract with the OPA, all output from the Bruce B units was subject to a floor price of $48.96 per MWh in first quarter 2011 compared to $48.76 per MWh in first quarter 2010. Both the Bruce A and Bruce B contract prices are adjusted annually for inflation on April 1. Effective April 1, 2011, the fixed price for output from Bruce A increased to $66.33 per MWh and the Bruce B floor price increased to $50.18 per MWh.

Amounts received under the Bruce B floor price mechanism within a calendar year are subject to repayment if the monthly average spot price exceeds the floor price. With respect to 2011, TransCanada currently expects spot prices to be less than the floor price for the remainder of the year, therefore, no amounts recorded in revenues in first quarter 2011 are expected to be repaid.

Bruce B enters into fixed-price contracts whereby Bruce B receives or pays the difference between the contract price and the spot price. Bruce B's realized price decreased $5 per MWh to $53 per MWh in first quarter 2011 compared to the same period in 2010 and reflected revenues recognized from both the floor price mechanism and contract sales. The decrease was a result of the majority of higher-priced contracts entered into in previous years expiring by the end of December 2010. As the remaining contracts expire, a further reduction in realized prices at Bruce B in future periods is expected. At March 31, 2011, Bruce B had sold forward net volumes of approximately 500 GWh and 670 GWh, representing TransCanada's proportionate share, for the remainder of 2011 and 2012, respectively.

The overall plant availability percentage in 2011 is expected to be in the mid-80s for the two operating Bruce A units and in the high 80s for the four Bruce B units. A planned maintenance outage of approximately seven weeks commenced on April 15, 2011 on Bruce B Unit 7. Bruce A expects an outage of approximately one week on Unit 3 in June 2011. For further information on Bruce Power's planned maintenance outages, refer to the MD&A in TransCanada's 2010 Annual Report.

As at March 31, 2011, Bruce A had incurred approximately $4.2 billion in costs for the refurbishment and restart of Units 1 and 2, and approximately $0.3 billion for the refurbishment of Units 3 and 4.

U.S. Power

U.S. Power Comparable EBIT[1][2]

(unaudited) *(millions of U.S. dollars)*	Three months ended March 31 2011	2010
Revenues		
Power[3]	255	232
Capacity	39	40
Other[4]	30	25
	324	297
Commodity purchases resold	(131)	(136)
Plant operating costs and other[4]	(122)	(88)
General, administrative and support costs	(9)	(9)
Comparable EBITDA[1]	62	64
Depreciation and amortization	(30)	(25)
Comparable EBIT[1]	32	39

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable EBITDA and Comparable EBIT.
(2) Includes phase two of Kibby Wind effective October 2010.
(3) The realized gains and losses from derivatives used to purchase and sell power, natural gas and fuel oil to manage U.S. Power's assets are presented on a net basis in Power Revenues.
(4) Includes revenues and costs related to a third-party service agreement at Ravenswood.

U.S. Power Operating Statistics[1]

(unaudited)	Three months ended March 31 2011	2010
Sales Volumes (GWh)		
Supply		
Generation	1,291	891
Purchased	1,939	2,486
	3,230	3,377
Plant Availability[2][3]	82%	86%

(1) Includes phase two of Kibby Wind effective October 2010.
(2) Plant availability represents the percentage of time in a period that the plant is available to generate power regardless of whether it is running.
(3) Plant availability decreased in the three months ended March 31, 2011 due to the impact of a planned outage at Ravenswood.

U.S. Power's Power Revenues in first quarter 2011 of US$255 million increased from US$232 million in the same period in 2010 as a result of higher realized power prices and incremental revenues from the second phase of Kibby Wind which was placed in service in October 2010, partially offset by lower volumes of power sold.

Commodity Purchases Resold of US$131 million in first quarter 2011 decreased from US$136 million in the same period in 2010 primarily due to a decrease in the quantity of power purchased for resale under power sales commitments to wholesale, commercial and industrial customers in New England in first quarter 2011, partially offset by higher power prices per MWh purchased.

Plant Operating Costs and Other, which includes fuel gas consumed in generation of US$122 million in first quarter 2011, increased US$34 million over the same period in 2010 primarily due to higher fuel costs as a result of increased generation in first quarter 2011 and reduced lease costs in first quarter 2010.

U.S. Power focuses on selling power under short- and long-term contracts to wholesale, commercial and industrial customers in the New England, New York and PJM Interconnection power markets. Exposure to fluctuations in spot prices on these power sales commitments are hedged with a combination of forward purchases of power, forward purchases of fuel to generate power and through the use of financial contracts. As at March 31, 2011, approximately 4,300 GWh or 60 per cent of U.S. Power's planned generation is contracted for the remainder of 2011. Planned generation fluctuates depending on hydrology, wind conditions, commodity prices and the resulting dispatch of the assets, and power sales fluctuate based on customer usage. The seasonal nature of the U.S. Power business generally results in higher generation volumes in the summer months.

Natural Gas Storage

Natural Gas Storage's Comparable EBITDA in first quarter 2011 was $29 million compared to $51 million for the same period in 2010. The decrease in Comparable EBITDA in first quarter 2011 was primarily due to decreased third-party storage and proprietary natural gas revenues as a result of lower realized natural gas price spreads.

Other Income Statement Items

Comparable Interest Expense

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Interest on long-term debt[1]		
Canadian dollar-denominated	122	131
U.S. dollar-denominated	182	159
Foreign exchange	(3)	6
	301	296
Other interest and amortization	6	20
Capitalized interest	(97)	(134)
Comparable Interest Expense[2]	210	182

(1) Includes interest on Junior Subordinated Notes.
(2) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Comparable Interest Expense.

Comparable Interest Expense in first quarter 2011 increased $28 million to $210 million from $182 million in first quarter 2010. The increase reflected decreased capitalized interest for Keystone, which commenced full operations in February 2011, and incremental interest expense on debt issues of US$1.25 billion in June 2010 and US$1.0 billion in September 2010. These increases were partially offset by Canadian dollar-denominated debt maturities in 2010 and 2011, and the positive impact of a weaker U.S. dollar on U.S. dollar-denominated interest. Comparable Interest Expense in first quarter 2010 included losses on derivatives used to manage TransCanada's exposure to fluctuating interest rates.

Comparable Interest Income and Other in first quarter 2011 increased $7 million to $31 million from $24 million in first quarter 2010. The increase reflected higher realized gains on derivatives used to manage the Company's net exposure to foreign exchange rate fluctuations on U.S. dollar-denominated income.

Comparable Income Taxes were $185 million in first quarter 2011 compared to $118 million for the same period in 2010. The increase was primarily due to higher pre-tax earnings in 2011 compared to 2010.

Liquidity and Capital Resources

TransCanada's financial position remains sound and consistent with recent years as does its ability to generate cash in the short and long term to provide liquidity, maintain financial capacity and flexibility, and provide for planned growth. TransCanada's liquidity is underpinned by predictable cash flow from operations, cash balances on hand and unutilized committed revolving bank lines of US$1.0 billion, $2.0 billion and US$800 million, maturing in November 2011, December 2012 and December 2012, respectively. These facilities also support the Company's commercial paper programs. In addition, at March 31, 2011, TransCanada's proportionate share of unutilized capacity on committed bank facilities at TransCanada-operated affiliates was $113 million with maturity dates in 2011 and 2012. As at March 31, 2011, TransCanada had remaining capacity of $1.75 billion, $2.0 billion and US$1.75 billion under its equity, Canadian debt and U.S. debt shelf prospectuses, respectively. TransCanada's liquidity, market and other risks are discussed further in the Risk Management and Financial Instruments section in this MD&A.

At March 31, 2011, the Company held Cash and Cash Equivalents of $0.6 billion compared to $0.8 billion at December 31, 2010. The decrease in Cash and Cash Equivalents was primarily due to expenditures for the Company's capital program, debt repayments and dividend payments, partially offset by increased cash generated from operations.

Operating Activities

Funds Generated from Operations[(1)]

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Cash Flows		
Funds generated from operations[(1)]	919	723
Decrease in operating working capital	90	109
Net cash provided by operations	1,009	832

(1) Refer to the Non-GAAP Measures section in this MD&A for further discussion of Funds Generated from Operations.

Net Cash Provided by Operations increased $177 million for the three months ended March 31, 2011 compared to the same period in 2010, reflecting increased Funds Generated from Operations and changes in operating working capital. Funds Generated from Operations for the first quarter 2011 were $919 million compared to $723 million for the same period in 2010. The increase was primarily due to an increase in cash generated through earnings.

As at March 31, 2011, TransCanada's current liabilities were $5.1 billion and current assets were $2.8 billion resulting in a working capital deficiency of $2.3 billion. Excluding $2.2 billion of Notes Payable under the Company's commercial paper programs and draws on its line-of-credit facilities, TransCanada's working capital deficiency was $0.1 billion. The Company believes this shortfall can be managed through its ability to generate cash flow from operations as well as its ongoing access to capital markets.

Investing Activities

TransCanada remains committed to executing its remaining $11 billion capital expenditure program. For the three months ended March 31, 2011, capital expenditures totalled $0.8 billion (2010 – $1.3 billion) primarily related to refurbishment and restart of Bruce A Units 1 and 2, Keystone, expansion of the Alberta System, and construction of the Guadalajara natural gas pipeline.

Financing Activities

In January 2011, TCPL retired $300 million of 4.3 per cent debentures.

The Company is well positioned to fund its existing capital program through its internally-generated cash flow and its continued access to capital markets. TransCanada will also continue to examine opportunities for portfolio management, including an ongoing role for PipeLines LP, in financing its capital program.

Dividends

On April 28, 2011, TransCanada's Board of Directors declared a quarterly dividend of $0.42 per share for the quarter ending June 30, 2011 on the Company's outstanding common shares. The dividend is payable on July 29, 2011 to shareholders of record at the close of business on June 30, 2011. In addition, quarterly dividends of $0.2875 and $0.25 per Series 1 and Series 3 preferred share, respectively, were declared for the quarter ending June 30, 2011. The dividends are payable on June 30, 2011 to shareholders of record at the close of business on May 31, 2011. Furthermore, a quarterly dividend of $0.275 per Series 5 preferred share was declared for the period ending July 30, 2011, payable on August 2, 2011 to shareholders of record at the close of business on June 30, 2011.

Commencing with the dividends declared April 28, 2011, common shares purchased with reinvested cash dividends under TransCanada's Dividend Reinvestment and Share Purchase Plan (DRP) will no longer be satisfied with shares issued from treasury at a discount but rather will be acquired on the Toronto Stock Exchange at 100 per cent of the weighted average purchase price. The DRP is available for dividends payable on TransCanada's common and preferred shares, and TCPL's preferred shares. In the three months ended March 31, 2011, TransCanada issued 2.6 million (2010 – 2.3 million) common shares under its DRP, in lieu of making cash dividend payments of $93 million (2010 - $78 million).

Contractual Obligations

During first quarter 2011, TransCanada had a net reduction to its purchase obligations primarily due to the settlement of its commitments in the normal course of business. There have been no other material changes to TransCanada's contractual obligations from December 31, 2010 to March 31, 2011, including payments due for the next five years and thereafter. For further information on these contractual obligations, refer to the MD&A in TransCanada's 2010 Annual Report.

Significant Accounting Policies and Critical Accounting Estimates

To prepare financial statements that conform with GAAP, TransCanada is required to make estimates and assumptions that affect both the amount and timing of recording assets, liabilities, revenues and expenses since the determination of these items may be dependent on future events. The Company uses the most current information available and exercises careful judgement in making these estimates and assumptions.

TransCanada's significant accounting policies and critical accounting estimates have remained unchanged since December 31, 2010. For further information on the Company's accounting policies and estimates refer to the MD&A in TransCanada's 2010 Annual Report.

Changes in Accounting Policies

The Company's accounting policies have not changed materially from those described in TransCanada's 2010 Annual Report except as follows:

Changes in Accounting Policies for 2011

Business Combinations, Consolidated Financial Statements and Non-Controlling Interests
Effective January 1, 2011, the Company adopted CICA Handbook Section 1582 "Business Combinations", which is effective for business combinations with an acquisition date after January 1, 2011. This standard was amended to require additional use of fair value measurements, recognition of additional assets and liabilities, and increased disclosure. Adopting the standard is expected to have a significant impact on the way the Company accounts for future business combinations. Entities adopting Section 1582 were also required to adopt CICA Handbook Sections 1601 "Consolidated Financial Statements" and 1602 "Non-Controlling Interests". Sections 1601 and 1602 require Non-Controlling Interests to be presented as part of Shareholders' Equity on the balance sheet. In addition, the income statement of the controlling parent now includes 100 per cent of the subsidiary's results and presents the allocation of income between the controlling and non-controlling interests. Changes resulting from the adoption of Section 1582 were applied prospectively and changes resulting from the adoption of Sections 1601 and 1602 were applied retrospectively.

Future Accounting Changes

U.S. GAAP/International Financial Reporting Standards
The CICA's Accounting Standards Board (AcSB) previously announced that Canadian publicly accountable enterprises are required to adopt International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), effective January 1, 2011.

In accordance with GAAP, TransCanada follows specific accounting policies unique to a rate-regulated business. These rate-regulated accounting (RRA) standards allow the timing of recognition of certain revenues and expenses to differ from the timing that may otherwise be expected in a non-rate-regulated business under GAAP in order to appropriately reflect the economic impact of regulators' decisions regarding the Company's revenues and tolls.

In July 2009, the IASB issued an Exposure Draft "Rate-Regulated Activities", which proposed a form of RRA under IFRS. At its September 2010 meeting, the IASB concluded that the development of RRA under IFRS requires further analysis and removed the RRA project from its current agenda. TransCanada does not expect a final RRA standard under IFRS to be effective in the foreseeable future.

In October 2010, the AcSB and the Canadian Securities Administrators amended their policies applicable to Canadian publicly accountable enterprises that use RRA in order to permit these entities to defer the adoption of IFRS for one year. TransCanada deferred its adoption and accordingly will continue to prepare its consolidated financial statements in 2011 in accordance with Canadian GAAP, as defined by Part V of the CICA Handbook, in order to continue using RRA.

As an SEC registrant, TransCanada prepares and files a "Reconciliation to United States GAAP" and has the option to prepare and file its consolidated financial statements using U.S. GAAP. As a result of the developments noted above, the Company's Board of Directors have approved the adoption of U.S. GAAP effective January 1, 2012.

U.S. GAAP Conversion Project
Effective January 1, 2012, the Company will begin reporting under U.S. GAAP. TransCanada's IFRS conversion team has been redeployed to support the conversion to U.S. GAAP. The conversion team is

led by a multi-disciplinary Steering Committee that provides directional leadership for the adoption of U.S. GAAP. Management also updates TransCanada's Audit Committee on the progress of the U.S. GAAP project at each Audit Committee meeting.

U.S. GAAP training is being provided to TransCanada staff and directors who are impacted by the conversion. Significant changes to existing systems and processes are not required to implement U.S. GAAP as the Company's primary accounting standard since TransCanada prepares and files a "Reconciliation to United States GAAP".

Identified differences between Canadian GAAP and U.S. GAAP that are significant to the Company are explained below and are consistent with those currently reported in the Company's publicly-filed "Reconciliation to United States GAAP."

Joint Ventures
Canadian GAAP requires the Company to account for certain investments using the proportionate consolidation method of accounting whereby TransCanada's proportionate share of assets, liabilities, revenues, expenses and cash flows are included in the Company's financial statements. U.S. GAAP does not permit the use of proportionate consolidation with respect to TransCanada's joint ventures and requires that such investments be recorded using the equity method of accounting.

Inventory
Canadian GAAP allows the Company's proprietary natural gas inventory held in storage to be recorded at its fair value. Under U.S. GAAP, inventory is recorded at lower of cost or market.

Income Tax
Canadian GAAP requires that the Company record current income tax benefits resulting from substantively enacted Canadian federal income tax legislation. Under U.S. GAAP, the legislation must be fully enacted for income tax adjustments to be recorded.

Employee Benefits
Canadian GAAP requires an entity to recognize an accrued benefit asset or liability for defined benefit pension and other postretirement benefit plans. Under U.S. GAAP, an employer is required to recognize the overfunded or underfunded status of defined benefit pension and other postretirement benefit plans as an asset or liability in its balance sheet and to recognize changes in the funded status through Other Comprehensive Income in the year in which the change occurs.

Debt Issue Costs
Canadian GAAP requires debt issue costs to be included in long-term debt. Under U.S. GAAP these costs are classified as deferred assets.

Financial Instruments and Risk Management

TransCanada continues to manage and monitor its exposure to counterparty credit, liquidity and market risk.

Counterparty Credit and Liquidity Risk

TransCanada's maximum counterparty credit exposure with respect to financial instruments at the balance sheet date, without taking into account security held, consisted of accounts receivable, the fair value of derivative assets, and notes, loans and advances receivable. The carrying amounts and fair values of these financial assets, except amounts for derivative assets, are included in Accounts Receivable and Other in the Non-Derivative Financial Instruments Summary table below. Letters of credit and cash are the primary types of security provided to support these amounts. The majority of counterparty credit exposure is with counterparties who are investment grade. At March 31, 2011, there were no significant amounts past due or impaired.

At March 31, 2011, the Company had a credit risk concentration of $297 million due from a creditworthy counterparty. This amount is expected to be fully collectible and is secured by a guarantee from the counterparty's parent company.

The Company continues to manage its liquidity risk by ensuring sufficient cash and credit facilities are available to meet its operating and capital expenditure obligations when due, under both normal and stressed economic conditions.

Natural Gas Storage Commodity Price Risk

At March 31, 2011, the fair value of proprietary natural gas inventory held in storage, as measured using a weighted average of forward prices for the following four months less selling costs, was $49 million (December 31, 2010 - $49 million). The change in the fair value adjustment of proprietary natural gas inventory in storage in the three months ended March 31, 2011 resulted in net pre-tax unrealized gains of $2 million (2010 - losses of $24 million), which was recorded as an increase in Revenues and Inventories. The change in fair value of natural gas forward purchase and sale contracts in the three months ended March 31, 2011 resulted in net pre-tax unrealized losses of $7 million (2010 – gains of $3 million), which was included in Revenues.

VaR Analysis

TransCanada uses a Value-at-Risk (VaR) methodology to estimate the potential impact from its exposure to market risk on its liquid open positions. VaR represents the potential change in pre-tax earnings over a given holding period. It is calculated assuming a 95 per cent confidence level that the daily change resulting from normal market fluctuations in its open positions will not exceed the reported VaR. Although losses are not expected to exceed the statistically estimated VaR on 95 per cent of occasions, losses on the other five per cent of occasions could be substantially greater than the estimated VaR. TransCanada's consolidated VaR was $14 million at March 31, 2011 (December 31, 2010 – $12 million). The increase from December 31, 2010 was primarily due to increased Alberta power forward prices as well as increased price volatility in the Alberta power market.

Net Investment in Self-Sustaining Foreign Operations

The Company hedges its net investment in self-sustaining foreign operations (on an after-tax basis) with U.S. dollar-denominated debt, cross-currency interest rate swaps, forward foreign exchange contracts and foreign exchange options. At March 31, 2011, the Company had designated as a net investment hedge U.S. dollar-denominated debt with a carrying value of $9.5 billion (US$9.8 billion) and a fair value of $10.8 billion (US$11.1 billion). At March 31, 2011, $251 million (December 31, 2010 - $181 million) was included in Intangibles and Other Assets for the fair value of forwards and swaps used to hedge the Company's net U.S. dollar investment in foreign operations.

The fair values and notional principal amounts for the derivatives designated as a net investment hedge were as follows:

Derivatives Hedging Net Investment in Self-Sustaining Foreign Operations

Asset/(Liability) *(unaudited)* *(millions of dollars)*	March 31, 2011 Fair Value[1]	March 31, 2011 Notional or Principal Amount	December 31, 2010 Fair Value[1]	December 31, 2010 Notional or Principal Amount
U.S. dollar cross-currency swaps (maturing 2011 to 2017)	246	US 3,150	179	US 2,800
U.S. dollar forward foreign exchange contracts (maturing 2011)	5	US 550	2	US 100
	251	US 3,700	181	US 2,900

(1) Fair values equal carrying values.

Non-Derivative Financial Instruments Summary

The carrying and fair values of non-derivative financial instruments were as follows:

(unaudited) *(millions of dollars)*	March 31, 2011 Carrying Amount	March 31, 2011 Fair Value	December 31, 2010 Carrying Amount	December 31, 2010 Fair Value
Financial Assets[1]				
Cash and cash equivalents	576	576	764	764
Accounts receivable and other[2][3]	1,573	1,607	1,555	1,595
Available-for-sale assets[2]	25	25	20	20
	2,174	2,208	2,339	2,379
Financial Liabilities[1][3]				
Notes payable	2,192	2,192	2,092	2,092
Accounts payable and deferred amounts[4]	1,133	1,133	1,436	1,436
Accrued interest	336	336	367	367
Long-term debt	17,327	20,416	17,922	21,523
Junior subordinated notes	962	969	985	992
Long-term debt of joint ventures	849	944	866	971
	22,799	25,990	23,668	27,381

(1) Consolidated Net Income in first quarter 2011 included losses of $9 million (2010 – losses of $7 million) for fair value adjustments related to interest rate swap agreements on US$350 million (2010 – US$250 million) of Long-Term Debt. There were no other unrealized gains or losses from fair value adjustments to the non-derivative financial instruments.

(2) At March 31, 2011, the Consolidated Balance Sheet included financial assets of $1,254 million (December 31, 2010 – $1,271 million) in Accounts Receivable, $38 million (December 31, 2010 – $40 million) in Other Current Assets and $306 million (December 31, 2010 - $264 million) in Intangibles and Other Assets.

(3) Recorded at amortized cost, except for the US$350 million (December 31, 2010 – US$250 million) of Long-Term Debt that is adjusted to fair value.

(4) At March 31, 2011, the Consolidated Balance Sheet included financial liabilities of $1,101 million (December 31, 2010 – $1,406 million) in Accounts Payable and $32 million (December 31, 2010 - $30 million) in Deferred Amounts.

Derivative Financial Instruments Summary

Information for the Company's derivative financial instruments, excluding hedges of the Company's net investment in self-sustaining foreign operations, is as follows:

March 31, 2011 *(unaudited)* *(all amounts in millions unless otherwise indicated)*	Power	Natural Gas	Foreign Exchange	Interest
Derivative Financial Instruments Held for Trading[1]				
Fair Values[2]				
Assets	$175	$123	$10	$17
Liabilities	$(132)	$(154)	$(16)	$(18)
Notional Values				
Volumes[3]				
Purchases	21,828	169	-	-
Sales	24,462	132	-	-
Canadian dollars	-	-	-	836
U.S. dollars	-	-	US 1,839	US 250
Cross-currency	-	-	47/US 37	-
Net unrealized (losses)/gains in the three months ended March 31, 2011[4]	$(1)	$(16)	$2	$(1)
Net realized gains/(losses) in the three months ended March 31, 2011[4]	$3	$(26)	$21	$2
Maturity dates	2011-2015	2011-2015	2011-2012	2011-2016
Derivative Financial Instruments in Hedging Relationships[5][6]				
Fair Values[2]				
Assets	$75	$6	$-	$9
Liabilities	$(177)	$(19)	$(56)	$(19)
Notional Values				
Volumes[3]				
Purchases	18,273	16	-	-
Sales	7,906	-	-	-
U.S. dollars	-	-	US 120	US 1,000
Cross-currency	-	-	136/US 100	-
Net realized losses in the three months ended March 31, 2011[4]	$(38)	$(3)	$-	$(5)
Maturity dates	2011-2015	2011-2013	2011- 2014	2011-2015

(1) All derivative financial instruments in the held-for-trading classification have been entered into for risk management purposes and are subject to the Company's risk management strategies, policies and limits. These include derivatives that have not been designated as hedges or do not qualify for hedge accounting treatment but have been entered into as economic hedges to manage the Company's exposures to market risk.

(2) Fair values equal carrying values.

(3) Volumes for power and natural gas derivatives are in GWh and Bcf, respectively.

(4) Realized and unrealized gains and losses on held-for-trading derivative financial instruments used to purchase and sell power and natural gas are included net in Revenues. Realized and unrealized gains and losses on interest rate and foreign exchange derivative financial instruments held for trading are included in Interest Expense and Interest Income and Other, respectively. The effective portion of unrealized gains and losses on derivative financial instruments in cash flow hedging relationships is initially recognized in Other Comprehensive Income and reclassified to Revenues, Interest Expense and Interest Income and Other, as appropriate, as the original hedged item settles.

(5) All hedging relationships are designated as cash flow hedges except for interest rate derivative financial instruments designated as fair value hedges with a fair value of $9 million and a notional amount of US$350 million. Net realized gains on fair value hedges for

the three months ended March 31, 2011 were $2 million and were included in Interest Expense. In first quarter 2011, the Company did not record any amounts in Net Income related to ineffectiveness for fair value hedges.

(6) For the three months ended March 31, 2011, Net Income included losses of $3 million for changes in the fair value of power and natural gas cash flow hedges that were ineffective in offsetting the change in fair value of their related underlying positions. For the three months ended March 31, 2011, there were no gains or losses included in Net Income for discontinued cash flow hedges. No amounts have been excluded from the assessment of hedge effectiveness.

2010
(unaudited)
(all amounts in millions unless otherwise indicated)

	Power	Natural Gas	Foreign Exchange	Interest
Derivative Financial Instruments Held for Trading				
Fair Values(1)(2)				
Assets	$169	$144	$8	$20
Liabilities	$(129)	$(173)	$(14)	$(21)
Notional Values(2)				
Volumes(3)				
Purchases	15,610	158	-	-
Sales	18,114	96	-	-
Canadian dollars	-	-	-	736
U.S. dollars	-	-	US 1,479	US 250
Cross-currency	-	-	47/ US 37	-
Net unrealized (losses)/gains in the three months ended March 31, 2010(4)	$(16)	$2	-	$(4)
Net realized gains/(losses) in the three months ended March 31, 2010(4)	$22	$(12)	$8	$(4)
Maturity dates(2)	2011-2015	2011-2015	2011-2012	2011-2016
Derivative Financial Instruments in Hedging Relationships(5)(6)				
Fair Values(1)(2)				
Assets	$112	$5	$-	$8
Liabilities	$(186)	$(19)	$(51)	$(26)
Notional Values(2)				
Volumes(3)				
Purchases	16,071	17	-	-
Sales	10,498	-	-	-
U.S. dollars	-	-	US 120	US 1,125
Cross-currency	-	-	136/US 100	-
Net realized losses in the three months ended March 31, 2010(4)	($7)	$(3)	-	$(10)
Maturity dates(2)	2011-2015	2011-2013	2011-2014	2011-2015

(1) Fair values equal carrying values.

(2) As at December 31, 2010.

(3) Volumes for power and natural gas derivatives are in GWh and Bcf, respectively.

(4) Realized and unrealized gains and losses on held-for-trading derivative financial instruments used to purchase and sell power and natural gas are included net in Revenues. Realized and unrealized gains and losses on interest rate and foreign exchange derivative financial instruments held for trading are included in Interest Expense and Interest Income and Other, respectively. The effective portion of unrealized gains and losses on derivative financial instruments in cash flow hedging relationships is initially recognized in Other Comprehensive Income and reclassified to Revenues, Interest Expense and Interest Income and Other, as appropriate, as the original hedged item settles.

(5) All hedging relationships are designated as cash flow hedges except for interest rate derivative financial instruments designated as fair value hedges with a fair value of $8 million and a notional amount of US$250 million at December 31, 2010. Net realized gains on fair value hedges for the three months ended March 31, 2010 were $1 million and were included in Interest Expense. In first quarter 2010, the Company did not record any amounts in Net Income related to ineffectiveness for fair value hedges.

(6) For the three months ended March 31, 2010, Net Income included losses of $8 million for changes in the fair value of power and natural gas cash flow hedges that were ineffective in offsetting the change in fair value of their related underlying positions. For the

three months ended March 31, 2010, there were no gains or losses included in Net Income for discontinued cash flow hedges. No amounts were excluded from the assessment of hedge effectiveness.

Balance Sheet Presentation of Derivative Financial Instruments

The fair value of the derivative financial instruments in the Company's Balance Sheet was as follows:

(unaudited) *(millions of dollars)*	March 31, 2011	December 31, 2010
Current		
Other current assets	243	273
Accounts payable	(326)	(337)
Long-term		
Intangibles and other assets	423	374
Deferred amounts	(265)	(282)

Other Risks

Additional risks faced by the Company are discussed in the MD&A in TransCanada's 2010 Annual Report. These risks remain substantially unchanged since December 31, 2010.

Controls and Procedures

As of March 31, 2011, an evaluation was carried out under the supervision of, and with the participation of management, including the President and Chief Executive Officer and the Chief Financial Officer, of the effectiveness of TransCanada's disclosure controls and procedures as defined under the rules adopted by the Canadian securities regulatory authorities and by the SEC. Based on this evaluation, the President and Chief Executive Officer and the Chief Financial Officer concluded that the design and operation of TransCanada's disclosure controls and procedures were effective at a reasonable assurance level as at March 31, 2011.

During the recent fiscal quarter, there have been no changes in TransCanada's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, TransCanada's internal control over financial reporting.

Outlook

Since the disclosure in TransCanada's 2010 Annual Report, the Company's earnings outlook for 2011 has improved due to higher overall realized power prices in Western Power in first quarter 2011. With the expectation of more normalized weather and additional generation capacity coming into the Alberta market, TransCanada does not expect these prices to remain at the higher first quarter levels for the remainder of 2011. For further information on outlook, refer to the MD&A in TransCanada's 2010 Annual Report.

Recent Developments

Natural Gas Pipelines

Canadian Mainline

In February 2011, the NEB approved TransCanada's application for revised interim 2011 Canadian Mainline tolls, effective March 1, 2011. The revised interim tolls are consistent with the existing 2007-2011 settlement with two adjustments that resulted in a lower revenue requirement and therefore lower interim tolls. TransCanada is preparing an application to the NEB for approval of final rates for 2011, which it expects to file on April 29, 2011. The Company has continued discussions with shippers and other stakeholders to develop a tolling arrangement for the next several years to enhance the competitiveness of the Canadian Mainline and the Western Canadian Sedimentary Basin. Unfortunately, discussions have not resulted in such an arrangement and it appears that TransCanada will be filing a comprehensive application with the NEB later in 2011 to address tolls for 2012 and beyond.

In first quarter 2011, throughput volumes and revenues were higher than projected in the 2011 interim tolls application due to colder than anticipated weather. The final revenue variance for 2011 will depend on actual throughput volumes in 2011 and an NEB decision for final 2011 costs and tolls.

TransCanada held a successful open season that closed in January 2011 and resulted in executed precedent agreements for the Canadian Mainline to transport 230,000 gigajoules per day (GJ/d) of natural gas from Marcellus shale gas reserves to eastern markets. The Company held another open season to respond to market interest in transporting additional Marcellus shale volumes on the Canadian Mainline. That open season closed April 15, 2011 and is expected to result in the transportation of an additional 150,000 GJ/d to markets east of the Parkway delivery point near Hamilton, Ontario, beginning November 1, 2013. Executed precedent agreements from these open seasons are expected to be used to support a facilities application that the Company plans to file with the NEB in third quarter 2011.

Alberta System

The Alberta System continues to operate under 2011 interim tolls approved by the NEB in 2010. TransCanada anticipates filing for final 2011 tolls in second quarter 2011 that would reflect the provisions of the Alberta System 2010 – 2012 Revenue Requirement Settlement and commercial integration of the ATCO Pipelines system. The Company expects the revised tolls to be effective in third quarter 2011.

The Horn River natural gas pipeline project was approved by the NEB in January 2011 and commenced construction in March 2011.

The Company has executed an agreement securing contractual support for a new project to connect 100 million cubic feet per day (mmcf/d) of new natural gas supply in northeastern B.C. by 2014 with volumes expected to increase to 300 mmcf/d by 2020. This project is expected to extend the Horn River pipeline by approximately 100 kilometres (km) (62 miles) and to have an estimated capital cost of $265 million.

In addition to the Horn River project, TransCanada continues to advance further pipeline development in B.C. and Alberta to transport new natural gas supplies. The Company has filed several applications with the NEB requesting approval of further expansions of the Alberta System to accommodate requests for additional natural gas transmission service throughout the northwest portion of the Western Canadian Sedimentary Basin. The total aggregate capital cost of these expansion projects is estimated to be $475 million.

PipeLines LP

On April 26, 2011, the Company announced it entered into agreements to sell a 25 per cent interest in each of Gas Transmission Northwest LLC (GTN LLC) and Bison Pipeline LLC (Bison LLC) to PipeLines LP for an aggregate purchase price of US$605 million, which includes US$81 million of long-term debt or 25 per cent of GTN LLC debt outstanding. GTN LLC and Bison LLC own the GTN and Bison natural gas pipelines, respectively. The sale is expected to close in May 2011 and is subject to certain closing conditions.

At the end of April 2011, PipeLines LP announced an underwritten public offering of 6,300,000 common units at US$47.58 per unit. Gross proceeds of approximately US$300 million from this offering will be used to partially fund the acquisition with the balance funded by a draw on PipeLines LP's committed and available US$400 million bridge loan facility and a draw on PipeLines LP's US$250 million committed and available senior revolving credit facility. The underwriters were also granted a 30-day option to purchase an additional 945,000 common units at the same price. The offering is expected to close on May 3, 2011.

As part of this offering, TransCanada will make a capital contribution of US$6 million to maintain its two per cent general partnership interest in PipeLines LP. Assuming the underwriters exercise their option to purchase additional units, TransCanada's ownership in PipeLines LP is expected to be approximately 33.3 per cent.

Mackenzie Gas Project

In March 2011, the MGP received a Certificate of Public Convenience and Necessity from the NEB, marking the end of the federal regulatory process. The MGP proponents continue to seek the Canadian government's support of an acceptable fiscal framework which would allow the project to progress. TransCanada remains committed to advancing the project.

Guadalajara

Construction of the 305 km (190 miles) Guadalajara natural gas pipeline in Mexico was approximately 90 per cent complete as of mid-April 2011. In addition, TransCanada and the Comisión Federal de Electricidad recently executed a contract to add a compressor station to the pipeline. The total capital cost of the project, including the compressor station, is expected to be approximately US$420 million. The pipeline is expected to commence commercial operations in late second quarter 2011 and the compressor station is anticipated to be in service in early 2013.

Alaska Pipeline Project

The Alaska Pipeline Project team continues to work with shippers to resolve conditional bids received as part of the project's open season and is working toward the U.S. Federal Energy Regulatory Commission (FERC) application deadline of October 2012.

Oil Pipelines

Keystone

In late January 2011, work was completed to allow the Wood River/Patoka section of the system to operate at its design pressure following the NEB's decision to remove the maximum operating pressure restriction in December 2010. In February 2011, the Cushing Extension commenced commercial operations, extending the pipeline system to Cushing, Oklahoma and increasing nominal capacity to 591,000 Bbl/d.

TransCanada's Keystone U.S. Gulf Coast Expansion is now entering the final stages of regulatory review. On April 15, 2011, the U.S. Department of State (DOS), the lead agency for U.S. federal regulatory approvals, issued a Supplemental Draft Environmental Impact Statement (SDEIS) in response to comments received on a Draft Environmental Impact Statement (DEIS) issued in April 2010 and to address new and additional information received. The SDEIS provides additional information on key environmental issues, but does not change the conclusion reached in the DEIS that the project would enhance U.S. energy security, benefit the U.S. economy and have limited environmental impact. The DOS has invited interested parties to comment on the SDEIS during a 45-day period, which concludes June 6, 2011. Following receipt of comments on the SDEIS and subsequent publication of a Final Environmental Impact Statement, the DOS will consult with other U.S. federal agencies during a 90-day period to determine if granting approval for the U.S. Gulf Coast Expansion is in the national interest. The DOS has indicated it will make a final decision regarding the Presidential Permit prior to the end of 2011.

The capital cost of Keystone, including the U.S. Gulf Coast Expansion, is estimated to be US$13 billion. At March 31, 2011, US$7.6 billion had been invested, including US$1.5 billion related to the U.S. Gulf Coast Expansion. The remainder is expected to be invested between now and the in-service date of the expansion, which is expected in 2013. Capital costs related to the construction of Keystone are subject to capital cost risk- and reward-sharing mechanisms with Keystone's long-term committed shippers.

On March 31, 2011, Keystone filed revised fixed tolls for the Wood River/Patoka section of the system with both the NEB and the FERC. The Company expects the revised tolls, which reflect the final project costs of the Wood River/Patoka section, to be effective May 1, 2011, subject to regulatory approval.

In 2010, three entities, each of which had entered into Transportation Service Agreements for the Cushing Extension, had filed separate Statements of Claim against certain of TransCanada's Keystone subsidiaries in the Alberta Court of Queen's Bench seeking declaratory relief or, alternatively, damages in varying amounts. All of the claims have been discontinued on a without-cost and without-liability basis.

Energy

Sundance A

In December 2010, the Sundance A Units 1 and 2 were withdrawn from service for testing and were subject to a force majeure claim by TransAlta Corporation (TransAlta) in January 2011. In February 2011, TransAlta notified TransCanada that it had determined it was uneconomic to replace or repair Units 1 and 2, and that the Sundance A PPA should therefore be terminated.

TransCanada does not agree with TransAlta's determination on either the force majeure claim or the destruction claim and has disputed both matters under the binding dispute resolution process provided in the PPA. As the limited information TransCanada has received to date does not support these claims, TransCanada continues to record revenues and costs under the PPA as though this event was a normal plant outage.

Bruce

Refurbishment work on Bruce A Units 1 and 2 continues with the connection of the refurbished Unit 2 reactor to plant systems. Plant commissioning is underway on Unit 2 and will accelerate in second quarter 2011 when construction activities are essentially complete. Fuel Channel Assembly (FCA) is underway on Unit 1, with completion expected in second quarter 2011. The installation of these FCAs is the final stage of Atomic Energy of Canada Limited's work on the reactors.

Subject to regulatory approval, Bruce Power expects to load fuel into Unit 2 in second quarter 2011 and achieve a first synchronization of the generator to the electrical grid by the end of 2011, with commercial operation expected to occur in first quarter 2012. Bruce Power expects to load fuel into Unit 1 in third quarter 2011, with a first synchronization of the generator during first quarter 2012 and commercial operation expected to occur during third quarter 2012. TransCanada's share of the total capital cost is expected to be approximately $2.4 billion of which $2.1 billion was incurred as of March 31, 2011.

Coolidge

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

Ravenswood

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

Oakville

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

Cartier Wind

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

Share Information

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

Selected Quarterly Consolidated Financial Data[(1)]

(unaudited) (millions of dollars except per share amounts)	2011 First	2010 Fourth	2010 Third	2010 Second	2010 First	2009 Fourth	2009 Third	2009 Second
Revenues	2,243	2,057	2,129	1,923	1,955	1,986	2,049	1,984
Net income attributable to controlling interests	429	283	391	295	303	387	345	314
Share Statistics								
Net income per common share – Basic and Diluted	$0.59	$0.39	$0.54	$0.41	$0.43	$0.56	$0.50	$0.50
Dividend declared per common share	$0.42	$0.40	$0.40	$0.40	$0.40	$0.38	$0.38	$0.38

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

Factors Affecting Quarterly Financial Information

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

In Oil Pipelines, which consists of the Company's investment in the Keystone crude oil pipeline, annual revenues and TransCanada's net income are based on contracted crude oil transportation and uncommitted spot transportation. Quarter-over-quarter revenues, EBIT and TransCanada's net income during any particular fiscal year remain relatively stable with fluctuations resulting from changes in the amount of spot volumes transported and the associated rate charged. Spot volumes transported are affected by customer demand, market pricing, planned and unplanned outages of refineries, terminals and pipeline facilities, and developments outside of the normal course of operations.

In Energy, which consists primarily of the Company's investments in electrical power generation plants and non-regulated natural gas storage facilities, quarter-over-quarter revenues, EBIT and TransCanada's net income are affected by seasonal weather conditions, customer demand, market prices, capacity payments, planned and unplanned plant outages, acquisitions and divestitures, certain fair value adjustments and developments outside of the normal course of operations.

Significant developments that affected the last eight quarters' EBIT and Net Income are as follows:

- First Quarter 2011, Natural Gas Pipelines' EBIT included incremental earnings from Bison, which was placed in service in January 2011. Oil Pipelines began recording EBIT for the Wood River/Patoka and Cushing Extension sections of Keystone in February 2011. Energy's EBIT included net unrealized losses of $18 million pre-tax ($11 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities.

- Fourth Quarter 2010, Natural Gas Pipelines' EBIT decreased as a result of recording a $146 million pre-tax ($127 million after-tax) valuation provision for advances to the APG for the MGP. Energy's EBIT included contributions from the second phase of Kibby Wind, which was placed in service in October 2010, and net unrealized gains of $22 million pre-tax ($12 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities.

- Third Quarter 2010, Natural Gas Pipelines' EBIT increased as a result of recording nine months of incremental earnings related to the Alberta System 2010 – 2012 Revenue Requirement Settlement, which resulted in a $33 million increase to Net Income. Energy's EBIT included contributions from Halton Hills, which was placed in service in September 2010, and net unrealized gains of $4 million pre-tax ($3 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities.

- Second Quarter 2010, Energy's EBIT included net unrealized gains of $15 million pre-tax ($10 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities. Net Income reflected a decrease of $58 million after tax due to losses in 2010 compared to gains in 2009 for interest rate and foreign exchange rate derivatives that did not qualify as hedges for accounting purposes and the translation of U.S. dollar-denominated working capital balances.

- First Quarter 2010, Energy's EBIT included net unrealized losses of $49 million pre-tax ($32 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities.

- Fourth Quarter 2009, Natural Gas Pipelines EBIT included a dilution gain of $29 million pre-tax ($18 million after tax) resulting from TransCanada's reduced ownership interest in PipeLines LP, which was caused by PipeLines LP's issue of common units to the public. Energy's EBIT included net unrealized gains of $7 million pre-tax ($5 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities. Net Income included $30 million of favourable income tax adjustments resulting from reductions in the Province of Ontario's corporate income tax rates.

- Third Quarter 2009, Energy's EBIT included net unrealized gains of $14 million pre-tax ($10 million after tax) due to changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities.

- Second Quarter 2009, Energy's EBIT included net unrealized losses of $7 million pre-tax ($5 million after tax) resulting from changes in the fair value of proprietary natural gas inventory in storage and certain risk management activities. Energy's EBIT also included contributions from Portlands Energy, which was placed in service in April 2009, and the negative impact of Western Power's lower overall realized power prices.

Consolidated Income

(unaudited) *(millions of dollars except per share amounts)*	Three months ended March 31 2011	2010
Revenues	2,243	1,955
Operating and Other Expenses		
Plant operating costs and other	759	747
Commodity purchases resold	277	256
Depreciation and amortization	370	343
	1,406	1,346
Financial Charges/(Income)		
Interest expense	211	182
Interest expense of joint ventures	16	16
Interest income and other	(33)	(24)
	194	174
Income before Income Taxes	643	435
Income Taxes Expense		
Current	104	81
Future	74	20
	178	101
Net Income	465	334
Net Income Attributable to Non-Controlling Interests	36	31
Net Income Attributable to Controlling Interests	429	303
Preferred Share Dividends	14	7
Net Income Attributable to Common Shares	415	296
Net Income per Common Share		
Basic and Diluted	$0.59	$0.43
Average Common Shares Outstanding – Basic (millions)	698	686
Average Common Shares Outstanding – Diluted (millions)	699	687

See accompanying notes to the consolidated financial statements.

Consolidated Comprehensive Income

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	 2010
Net Income	465	334
Other Comprehensive (Loss)/Income, Net of Income Taxes		
Change in foreign currency translation gains and losses on investments in foreign operations[1]	(98)	(147)
Change in gains and losses on financial derivatives to hedge the net investments in foreign operations[2]	49	59
Change in gains and losses on derivative instruments designated as cash flow hedges[3]	(51)	(76)
Reclassification to Net Income of gains and losses on derivative instruments designated as cash flow hedges pertaining to prior periods[4]	44	(1)
Other Comprehensive (Loss)/Income	(56)	(165)
Comprehensive Income	409	169
Comprehensive Income Attributable to Non-Controlling Interests	39	30
Comprehensive Income Attributable to Controlling Interests	370	139
Preferred Share Dividends	14	7
Comprehensive Income Attributable to Common Shares	356	132

(1) Net of income tax expense of $29 million for the three months ended March 31, 2011 (2010 – expense of $30 million).
(2) Net of income tax expense of $19 million for the three months ended March 31, 2011 (2010 – expense of $26 million).
(3) Net of income tax recovery of $18 million for the three months ended March 31, 2011 (2010 – recovery of $57 million).
(4) Net of income tax expense of $24 million for the three months ended March 31, 2011 (2010 – expense of $1 million).

See accompanying notes to the consolidated financial statements.

Consolidated Cash Flows

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Cash Generated From Operations		
Net income	465	334
Depreciation and amortization	370	343
Future income taxes	74	20
Employee future benefits funding in excess of expense	(11)	(32)
Other	21	58
	919	723
Decrease in operating working capital	90	109
Net cash provided by operations	1,009	832
Investing Activities		
Capital expenditures	(784)	(1,276)
Deferred amounts and other	5	(216)
Net cash used in investing activities	(779)	(1,492)
Financing Activities		
Dividends on common and preferred shares	(200)	(188)
Distributions paid to non-controlling interests	(27)	(27)
Notes payable issued, net	133	432
Long-term debt issued, net of issue costs	-	10
Reduction of long-term debt	(321)	(141)
Long-term debt of joint ventures issued	-	8
Reduction of long-term debt of joint ventures	(11)	(26)
Common shares issued	21	9
Preferred shares issued, net of issue costs	-	339
Net cash (used in)/provided by financing activities	(405)	416
Effect of Foreign Exchange Rate Changes on Cash and Cash Equivalents	(13)	(17)
Decrease in Cash and Cash Equivalents	(188)	(261)
Cash and Cash Equivalents		
Beginning of period	764	997
Cash and Cash Equivalents		
End of period	576	736
Supplementary Cash Flow Information		
Income taxes paid, net of refunds	88	4
Interest paid	253	239

See accompanying notes to the consolidated financial statements.

Consolidated Balance Sheet

(unaudited) *(millions of dollars)*	March 31, 2011	December 31, 2010
ASSETS		
Current Assets		
Cash and cash equivalents	576	764
Accounts receivable	1,254	1,271
Inventories	402	425
Other	602	777
	2,834	3,237
Plant, Property and Equipment	36,113	36,244
Goodwill	3,488	3,570
Regulatory Assets	1,486	1,512
Intangibles and Other Assets	2,070	2,026
	45,991	46,589
LIABILITIES		
Current Liabilities		
Notes payable	2,192	2,092
Accounts payable	1,960	2,243
Accrued interest	336	367
Current portion of long-term debt	574	894
Current portion of long-term debt of joint ventures	64	65
	5,126	5,661
Regulatory Liabilities	334	314
Deferred Amounts	689	694
Future Income Taxes	3,290	3,222
Long-Term Debt	16,753	17,028
Long-Term Debt of Joint Ventures	785	801
Junior Subordinated Notes	962	985
	27,939	28,705
SHAREHOLDERS' EQUITY		
Controlling interests	16,903	16,727
Non-controlling interests	1,149	1,157
	18,052	17,884
	45,991	46,589

See accompanying notes to the consolidated financial statements.

Consolidated Accumulated Other Comprehensive (Loss)/Income

(unaudited) *(millions of dollars)*	Currency Translation Adjustments	Cash Flow Hedges	Total
Balance at December 31, 2010	(683)	(194)	(877)
Change in foreign currency translation gains and losses on investments in foreign operations[1]	(98)	-	(98)
Change in gains and losses on financial derivatives to hedge the net investments in foreign operations[2]	49	-	49
Change in gains and losses on derivative instruments designated as cash flow hedges[3]	-	(52)	(52)
Reclassification to Net Income of gains and losses on derivative instruments designated as cash flow hedges pertaining to prior periods[4][5]	-	42	42
Balance at March 31, 2011	(732)	(204)	(936)

Balance at December 31, 2009	(592)	(40)	(632)
Change in foreign currency translation gains and losses on investments in foreign operations[1]	(147)	-	(147)
Change in gains and losses on financial derivatives to hedge the net investments in foreign operations[2]	59	-	59
Changes in gains and losses on derivative instruments designated as cash flow hedges[3]	-	(77)	(77)
Reclassification to Net Income of gains and losses on derivative instruments designated as cash flow hedges pertaining to prior periods[4]	-	1	1
Balance at March 31, 2010	(680)	(116)	(796)

(1) Net of income tax expense of $29 million for the three months ended March 31, 2011 (2010 – expense of $30 million).
(2) Net of income tax expense of $19 million for the three months ended March 31, 2011 (2010 – expense of $26 million).
(3) Net of income tax recovery of $18 million for the three months ended March 31, 2011 (2010 – recovery of $57 million).
(4) Net of income tax expense of $24 million for the three months ended March 31, 2011 (2010 – expense of $1 million).
(5) Losses related to cash flow hedges reported in Accumulated Other Comprehensive (Loss)/Income and expected to be reclassified to Net Income in the next 12 months are estimated to be $86 million ($56 million, net of tax). These estimates assume constant commodity prices, interest rates and foreign exchange rates over time, however, the amounts reclassified will vary based on the actual value of these factors at the date of settlement.

See accompanying notes to the consolidated financial statements.

Consolidated Shareholders' Equity

(unaudited) *(millions of dollars)*	Three months ended March 31 2011	2010
Common Shares		
Balance at beginning of period	11,745	11,338
Shares issued under dividend reinvestment plan	93	78
Shares issued on exercise of stock options	21	9
Balance at end of period	11,859	11,425
Preferred Shares		
Balance at beginning of period	1,224	539
Shares issued under public offering, net of issue costs	-	342
Balance at end of period	1,224	881
Contributed Surplus		
Balance at beginning of period	331	328
Issuance of stock options, net of exercises	-	1
Balance at end of period	331	329
Retained Earnings		
Balance at beginning of period	4,304	4,186
Net income attributable to controlling interests	429	303
Common share dividends	(294)	(275)
Preferred share dividends	(14)	(7)
Balance at end of period	4,425	4,207
Accumulated Other Comprehensive (Loss)/Income		
Balance at beginning of period	(877)	(632)
Other comprehensive (loss)/income	(59)	(164)
Balance at end of period	(936)	(796)
	3,489	3,411
Shareholders' Equity Attributable to Controlling Interests	16,903	16,046
Shareholders' Equity Attributable to Non-Controlling Interests		
Balance at beginning of period	1,157	1,174
Net income attributable to non-controlling interests		
PipeLines LP	26	22
Preferred share dividends of subsidiary	6	6
Portland	4	3
Other comprehensive income/(loss) attributable to non-controlling interests	3	(1)
Distributions to non-controlling interests	(27)	(27)
Other	(20)	(21)
Balance at end of period	1,149	1,156
Total Shareholders' Equity	18,052	17,202

See accompanying notes to the consolidated financial statements.

Notes to Consolidated Financial Statements

(Unaudited)

1. Significant Accounting Policies

The consolidated financial statements of TransCanada Corporation (TransCanada or the Company) have been prepared in accordance with Canadian generally accepted accounting principles (GAAP) as defined in Part V of the Canadian Institute of Chartered Accountants (CICA) Handbook, which is discussed further in Note 2. The accounting policies applied are consistent with those outlined in TransCanada's annual audited Consolidated Financial Statements for the year ended December 31, 2010. These Consolidated Financial Statements reflect all normal recurring adjustments that are, in the opinion of management, necessary to present fairly the financial position and results of operations for the respective periods. These Consolidated Financial Statements do not include all disclosures required in the annual financial statements and should be read in conjunction with the 2010 audited Consolidated Financial Statements included in TransCanada's 2010 Annual Report. Unless otherwise indicated, "TransCanada" or "the Company" includes TransCanada Corporation and its subsidiaries. Capitalized and abbreviated terms that are used but not otherwise defined herein are identified in the Glossary of Terms contained in TransCanada's 2010 Annual Report. Amounts are stated in Canadian dollars unless otherwise indicated.

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

In Oil Pipelines, which consists of the Company's investment in the Keystone crude oil pipeline, annual revenues and TransCanada's net income are based on contracted crude oil transportation and uncommitted spot transportation. Quarter-over-quarter revenues and TransCanada's net income during any particular fiscal year remain relatively stable with fluctuations resulting from changes in the amount of spot volumes transported and the associated rate charged. Spot volumes transported are affected by customer demand, market pricing, planned and unplanned outages of refineries, terminals and pipeline facilities, and developments outside of the normal course of operations.

In Energy, which consists primarily of the Company's investments in electrical power generation plants and non-regulated natural gas storage facilities, quarter-over-quarter revenues and TransCanada's net income are affected by seasonal weather conditions, customer demand, market prices, capacity payments, planned and unplanned plant outages, acquisitions and divestitures, certain fair value adjustments and developments outside of the normal course of operations.

In preparing these financial statements, TransCanada is required to make estimates and assumptions that affect both the amount and timing of recording assets, liabilities, revenues and expenses since the determination of these items may be dependent on future events. The Company uses the most current information available and exercises careful judgement in making these estimates and assumptions. In the opinion of management, these consolidated financial statements have been properly prepared within reasonable limits of materiality and within the framework of the Company's significant accounting policies.

2. Changes in Accounting Policies

Changes in Accounting Policies for 2011

Business Combinations, Consolidated Financial Statements and Non-Controlling Interests
Effective January 1, 2011, the Company adopted CICA Handbook Section 1582 "Business Combinations", which is effective for business combinations with an acquisition date after January 1, 2011. This standard was amended to require additional use of fair value measurements, recognition of additional assets and liabilities, and increased disclosure. Adopting the standard is expected to have a significant impact on the way the Company accounts for future business combinations. Entities adopting Section 1582 were also required to adopt CICA Handbook Sections 1601 "Consolidated Financial Statements" and 1602 "Non-Controlling Interests". Sections 1601 and 1602 require Non-Controlling Interests to be presented as part of Shareholders' Equity on the balance sheet. In addition, the income statement of the controlling parent now includes 100 per cent of the subsidiary's results and presents the allocation of income between the controlling and non-controlling interests. Changes resulting from the adoption of Section 1582 were applied prospectively and changes resulting from the adoption of Sections 1601 and 1602 were applied retrospectively.

Future Accounting Changes

U.S. GAAP/International Financial Reporting Standards
The CICA's Accounting Standards Board (AcSB) previously announced that Canadian publicly accountable enterprises are required to adopt International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), effective January 1, 2011.

In accordance with GAAP, TransCanada follows specific accounting policies unique to a rate-regulated business. These rate-regulated accounting (RRA) standards allow the timing of recognition of certain revenues and expenses to differ from the timing that may otherwise be expected in a non-rate-regulated business under GAAP in order to appropriately reflect the economic impact of regulators' decisions regarding the Company's revenues and tolls. The IASB has concluded that the development of RRA under IFRS requires further analysis and has removed the RRA project from its current agenda. TransCanada does not expect a final RRA standard under IFRS to be effective in the foreseeable future.

In October 2010, the AcSB and the Canadian Securities Administrators amended their policies applicable to Canadian publicly accountable enterprises that use RRA in order to permit these entities to defer the adoption of IFRS for one year. TransCanada deferred its adoption and accordingly will continue to prepare its consolidated financial statements in 2011 in accordance with Canadian GAAP, as defined by Part V of the CICA Handbook, in order to continue using RRA.

As an SEC registrant, TransCanada prepares and files a "Reconciliation to United States GAAP" and has the option to prepare and file its consolidated financial statements using U.S. GAAP. As a result of the developments noted above, the Company's Board of Directors have approved the adoption of U.S. GAAP effective January 1, 2012.

US GAAP Conversion Project
Effective January 1, 2012, the Company will begin reporting under U.S. GAAP. The accounting policies and financial impact of adopting U.S. GAAP are consistent with that currently reported in the Company's publicly-filed "Reconciliation to United States GAAP." Significant changes to existing systems and processes

are not required to implement U.S. GAAP as the Company's primary accounting standard since TransCanada prepares and files a "Reconciliation to U.S. GAAP".

TransCanada's IFRS conversion team has been redeployed to support the conversion to U.S. GAAP. The conversion team is led by a multi-disciplinary Steering Committee that provides directional leadership for the adoption of U.S. GAAP. Management also updates TransCanada's Audit Committee on the progress of the U.S. GAAP project at each Audit Committee meeting.

3. Segmented Information

For the three months ended March 31 *(unaudited)* *(millions of dollars)*	Natural Gas Pipelines 2011	Natural Gas Pipelines 2010	Oil Pipelines[1] 2011	Oil Pipelines[1] 2010	Energy 2011	Energy 2010	Corporate 2011	Corporate 2010	Total 2011	Total 2010
Revenues	1,129	1,129	135	-	979	826	-	-	2,243	1,955
Plant operating costs and other	(333)	(361)	(36)	-	(366)	(360)	(24)	(26)	(759)	(747)
Commodity purchases resold	-	-	-	-	(277)	(256)	-	-	(277)	(256)
Depreciation and amortization	(244)	(253)	(23)	-	(100)	(90)	(3)	-	(370)	(343)
	552	515	76	-	236	120	(27)	(26)	837	609
Interest expense									(211)	(182)
Interest expense of joint ventures									(16)	(16)
Interest income and other									33	24
Income taxes									(178)	(101)
Net Income									465	334
Net Income Attributable to Non-Controlling Interests									(36)	(31)
Net Income Attributable to Controlling Interests									429	303
Preferred Share Dividends									(14)	(7)
Net Income Attributable to Common Shares									415	296

(1) Commencing in February 2011, TransCanada began recording earnings related to the Wood River/Patoka and Cushing Extension sections of Keystone.

Total Assets

(unaudited) *(millions of dollars)*	March 31, 2011	December 31, 2010
Natural Gas Pipelines	23,201	23,592
Oil Pipelines	8,603	8,501
Energy	12,693	12,847
Corporate	1,494	1,649
	45,991	46,589

4. Long-Term Debt

In the three months ended March 31, 2011, the Company capitalized interest related to capital projects of $97 million (2010 - $134 million).

5. Share Capital

In the three months ended March 31, 2011, TransCanada issued 2.6 million (2010 – 2.3 million) common shares under its Dividend Reinvestment and Share Purchase Plan (DRP), in lieu of making cash dividend payments of $93 million (2010 - $78 million). The dividends under the DRP were paid with common shares issued from treasury.

6. Financial Instruments and Risk Management

TransCanada continues to manage and monitor its exposure to counterparty credit, liquidity and market risk.

Counterparty Credit and Liquidity Risk

TransCanada's maximum counterparty credit exposure with respect to financial instruments at the balance sheet date, without taking into account security held, consisted of accounts receivable, the fair value of derivative assets, and notes, loans and advances receivable. The carrying amounts and fair values of these financial assets, except amounts for derivative assets, are included in Accounts Receivable and Other in the Non-Derivative Financial Instruments Summary table below. Letters of credit and cash are the primary types of security provided to support these amounts. The majority of counterparty credit exposure is with counterparties who are investment grade. At March 31, 2011, there were no significant amounts past due or impaired.

At March 31, 2011, the Company had a credit risk concentration of $297 million due from a creditworthy counterparty. This amount is expected to be fully collectible and is secured by a guarantee from the counterparty's parent company.

The Company continues to manage its liquidity risk by ensuring sufficient cash and credit facilities are available to meet its operating and capital expenditure obligations when due, under both normal and stressed economic conditions.

Natural Gas Storage Commodity Price Risk

At March 31, 2011, the fair value of proprietary natural gas inventory held in storage, as measured using a weighted average of forward prices for the following four months less selling costs, was $49 million (December 31, 2010 - $49 million). The change in the fair value adjustment of proprietary natural gas inventory in storage in the three months ended March 31, 2011 resulted in net pre-tax unrealized gains of $2 million (2010 - losses of $24 million), which was recorded as an increase in Revenues and Inventories. The change in fair value of natural gas forward purchase and sale contracts in the three months ended March 31, 2011 resulted in net pre-tax unrealized losses of $7 million (2010 – gains of $3 million), which was included in Revenues.

VaR Analysis

TransCanada uses a Value-at-Risk (VaR) methodology to estimate the potential impact from its exposure to market risk on its liquid open positions. VaR represents the potential change in pre-tax earnings over a given holding period. It is calculated assuming a 95 per cent confidence level that the daily change resulting from normal market fluctuations in its open positions will not exceed the reported VaR. Although losses are not expected to exceed the statistically estimated VaR on 95 per cent of occasions, losses on the other five per cent of occasions could be substantially greater than the estimated VaR. TransCanada's consolidated VaR was $14 million at March 31, 2011 (December 31, 2010 – $12 million). The increase from December 31, 2010 was primarily due to increased Alberta power forward prices as well as increased price volatility in the Alberta power market.

Net Investment in Self-Sustaining Foreign Operations

The Company hedges its net investment in self-sustaining foreign operations (on an after-tax basis) with U.S. dollar-denominated debt, cross-currency interest rate swaps, forward foreign exchange contracts and foreign exchange options. At March 31, 2011, the Company had designated as a net investment hedge U.S. dollar-denominated debt with a carrying value of $9.5 billion (US$9.8 billion) and a fair value of $10.8 billion (US$11.1 billion). At March 31, 2011, $251 million (December 31, 2010 - $181 million) was included in Intangibles and Other Assets for the fair value of forwards and swaps used to hedge the Company's net U.S. dollar investment in foreign operations.

The fair values and notional principal amounts for the derivatives designated as a net investment hedge were as follows:

Derivatives Hedging Net Investment in Self-Sustaining Foreign Operations

Asset/(Liability) *(unaudited)* *(millions of dollars)*	March 31, 2011 Fair Value[(1)]	March 31, 2011 Notional or Principal Amount	December 31, 2010 Fair Value[(1)]	December 31, 2010 Notional or Principal Amount
U.S. dollar cross-currency swaps (maturing 2011 to 2017)	246	US 3,150	179	US 2,800
U.S. dollar forward foreign exchange contracts (maturing 2011)	5	US 550	2	US 100
	251	US 3,700	181	US 2,900

(1) Fair values equal carrying values.

Non-Derivative Financial Instruments Summary

The carrying and fair values of non-derivative financial instruments were as follows:

(unaudited) *(millions of dollars)*	March 31, 2011 Carrying Amount	March 31, 2011 Fair Value	December 31, 2010 Carrying Amount	December 31, 2010 Fair Value
Financial Assets[(1)]				
Cash and cash equivalents	576	576	764	764
Accounts receivable and other[(2)(3)]	1,573	1,607	1,555	1,595
Available-for-sale assets[(2)]	25	25	20	20
	2,174	2,208	2,339	2,379
Financial Liabilities[(1)(3)]				
Notes payable	2,192	2,192	2,092	2,092
Accounts payable and deferred amounts[(4)]	1,133	1,133	1,436	1,436
Accrued interest	336	336	367	367
Long-term debt	17,327	20,416	17,922	21,523
Junior subordinated notes	962	969	985	992
Long-term debt of joint ventures	849	944	866	971
	22,799	25,990	23,668	27,381

(1) Consolidated Net Income in first quarter 2011 included losses of $9 million (2010 – losses of $7 million) for fair value adjustments related to interest rate swap agreements on US$350 million (2010 – US$250 million) of Long-Term Debt. There were no other unrealized gains or losses from fair value adjustments to the non-derivative financial instruments.

(2) At March 31, 2011, the Consolidated Balance Sheet included financial assets of $1,254 million (December 31, 2010 – $1,271 million) in Accounts Receivable, $38 million (December 31, 2010 – $40 million) in Other Current Assets and $306 million (December 31, 2010 - $264 million) in Intangibles and Other Assets.

(3) Recorded at amortized cost, except for the US$350 million (December 31, 2010 – US$250 million) of Long-Term Debt that is adjusted to fair value.

(4) At March 31, 2011, the Consolidated Balance Sheet included financial liabilities of $1,101 million (December 31, 2010 – $1,406 million) in Accounts Payable and $32 million (December 31, 2010 - $30 million) in Deferred Amounts.

Derivative Financial Instruments Summary

Information for the Company's derivative financial instruments, excluding hedges of the Company's net investment in self-sustaining foreign operations, is as follows:

March 31, 2011 *(unaudited)* *(all amounts in millions unless otherwise indicated)*	Power	Natural Gas	Foreign Exchange	Interest
Derivative Financial Instruments Held for Trading(1)				
Fair Values(2)				
Assets	$175	$123	$10	$17
Liabilities	$(132)	$(154)	$(16)	$(18)
Notional Values				
Volumes(3)				
Purchases	21,828	169	-	-
Sales	24,462	132	-	-
Canadian dollars	-	-	-	836
U.S. dollars	-	-	US 1,839	US 250
Cross-currency	-	-	47/US 37	-
Net unrealized (losses)/gains in the three months ended March 31, 2011(4)	$(1)	$(16)	$2	$(1)
Net realized gains/(losses) in the three months ended March 31, 2011(4)	$3	$(26)	$21	$2
Maturity dates	2011-2015	2011-2015	2011-2012	2011-2016
Derivative Financial Instruments in Hedging Relationships(5)(6)				
Fair Values(2)				
Assets	$75	$6	$-	$9
Liabilities	$(177)	$(19)	$(56)	$(19)
Notional Values				
Volumes(3)				
Purchases	18,273	16	-	-
Sales	7,906	-	-	-
U.S. dollars	-	-	US 120	US 1,000
Cross-currency	-	-	136/US 100	-
Net realized losses in the three months ended March 31, 2011(4)	$(38)	$(3)	$-	$(5)
Maturity dates	2011-2015	2011-2013	2011- 2014	2011-2015

(1) All derivative financial instruments in the held-for-trading classification have been entered into for risk management purposes and are subject to the Company's risk management strategies, policies and limits. These include derivatives that have not been designated as hedges or do not qualify for hedge accounting treatment but have been entered into as economic hedges to manage the Company's exposures to market risk.

(2) Fair values equal carrying values.
(3) Volumes for power and natural gas derivatives are in gigawatt hours (GWh) and billion cubic feet (Bcf), respectively.
(4) Realized and unrealized gains and losses on held-for-trading derivative financial instruments used to purchase and sell power and natural gas are included net in Revenues. Realized and unrealized gains and losses on interest rate and foreign exchange derivative financial instruments held for trading are included in Interest Expense and Interest Income and Other, respectively. The effective portion of unrealized gains and losses on derivative financial instruments in cash flow hedging relationships is initially recognized in Other Comprehensive Income and reclassified to Revenues, Interest Expense and Interest Income and Other, as appropriate, as the original hedged item settles.
(5) All hedging relationships are designated as cash flow hedges except for interest rate derivative financial instruments designated as fair value hedges with a fair value of $9 million and a notional amount of US$350 million. Net realized gains on fair value hedges for the three months ended March 31, 2011 were $2 million and were included in Interest Expense. In first quarter 2011, the Company did not record any amounts in Net Income related to ineffectiveness for fair value hedges.
(6) For the three months ended March 31, 2011, Net Income included losses of $3 million for changes in the fair value of power and natural gas cash flow hedges that were ineffective in offsetting the change in fair value of their related underlying positions. For the three months ended March 31, 2011, there were no gains or losses included in Net Income for discontinued cash flow hedges. No amounts have been excluded from the assessment of hedge effectiveness.

2010 *(unaudited)* *(all amounts in millions unless otherwise indicated)*	Power	Natural Gas	Foreign Exchange	Interest
Derivative Financial Instruments Held for Trading				
Fair Values(1)(2)				
Assets	$169	$144	$8	$20
Liabilities	$(129)	$(173)	$(14)	$(21)
Notional Values(2)				
Volumes(3)				
Purchases	15,610	158	-	-
Sales	18,114	96	-	-
Canadian dollars	-	-	-	736
U.S. dollars	-	-	US 1,479	US 250
Cross-currency	-	-	47/ US 37	-
Net unrealized (losses)/gains in the three months ended March 31, 2010(4)	$(16)	$2	-	$(4)
Net realized gains/(losses) in the three months ended March 31, 2010(4)	$22	$(12)	$8	$(4)
Maturity dates(2)	2011-2015	2011-2015	2011-2012	2011-2016
Derivative Financial Instruments in Hedging Relationships(5)(6)				
Fair Values(1)(2)				
Assets	$112	$5	$-	$8
Liabilities	$(186)	$(19)	$(51)	$(26)
Notional Values(2)				
Volumes(3)				
Purchases	16,071	17	-	-
Sales	10,498	-	-	-
U.S. dollars	-	-	US 120	US 1,125
Cross-currency	-	-	136/US 100	-
Net realized losses in the three months ended March 31, 2010(4)	($7)	$(3)	-	$(10)
Maturity dates(2)	2011-2015	2011-2013	2011-2014	2011-2015

(1) Fair values equal carrying values.
(2) As at December 31, 2010.
(3) Volumes for power and natural gas derivatives are in GWh and Bcf, respectively.

(4) Realized and unrealized gains and losses on held-for-trading derivative financial instruments used to purchase and sell power and natural gas are included net in Revenues. Realized and unrealized gains and losses on interest rate and foreign exchange derivative financial instruments held for trading are included in Interest Expense and Interest Income and Other, respectively. The effective portion of unrealized gains and losses on derivative financial instruments in cash flow hedging relationships is initially recognized in Other Comprehensive Income and reclassified to Revenues, Interest Expense and Interest Income and Other, as appropriate, as the original hedged item settles.

(5) All hedging relationships are designated as cash flow hedges except for interest rate derivative financial instruments designated as fair value hedges with a fair value of $8 million and a notional amount of US$250 million at December 31, 2010. Net realized gains on fair value hedges for the three months ended March 31, 2010 were $1 million and were included in Interest Expense. In first quarter 2010, the Company did not record any amounts in Net Income related to ineffectiveness for fair value hedges.

(6) For the three months ended March 31, 2010, Net Income included losses of $8 million for changes in the fair value of power and natural gas cash flow hedges that were ineffective in offsetting the change in fair value of their related underlying positions. For the three months ended March 31, 2010, there were no gains or losses included in Net Income for discontinued cash flow hedges. No amounts were excluded from the assessment of hedge effectiveness.

Balance Sheet Presentation of Derivative Financial Instruments

The fair value of the derivative financial instruments in the Company's Balance Sheet was as follows:

(unaudited) *(millions of dollars)*	**March 31, 2011**	December 31, 2010
Current		
Other current assets	243	273
Accounts payable	(326)	(337)
Long-term		
Intangibles and other assets	423	374
Deferred amounts	(265)	(282)

Fair Value Hierarchy

The Company's financial assets and liabilities recorded at fair value have been categorized into three categories based on a fair value hierarchy. In Level I, the fair value of assets and liabilities is determined by reference to quoted prices in active markets for identical assets and liabilities. In Level II, determination of the fair value of assets and liabilities includes valuations using inputs, other than quoted prices, for which all significant outputs are observable, directly or indirectly. This category includes fair value determined using valuation techniques, such as option pricing models and extrapolation using observable inputs. In Level III, determination of the fair value of assets and liabilities is based on inputs that are not readily observable and are significant to the overall fair value measurement. Long-dated commodity transactions in certain markets are included in this category. Long-dated commodity prices are derived with a third-party modelling tool that uses market fundamentals to derive long-term prices.

There were no transfers between Level I and Level II in first quarter 2011 and 2010. Financial assets and liabilities measured at fair value, including both current and non-current portions, are categorized as follows:

	Quoted Prices in Active Markets (Level 1)		Significant Other Observable Inputs (Level II)		Significant Unobservable Inputs (Level III)		Total	
(unaudited) *(millions of dollars, pre-tax)*	Mar 31 2011	Dec 31 2010	Mar 31 2011	Dec 31 2010	Mar 31 2011	Dec 31 2010	Mar 31 2011	Dec 31 2010
Natural Gas Inventory	-	-	49	49	-	-	49	49
Derivative Financial Instrument Assets:								
Interest rate contracts	-	-	26	28	-	-	26	28
Foreign exchange contracts	15	10	246	179	-	-	261	189
Power commodity contracts	-	-	232	269	4	5	236	274
Natural gas commodity contracts	72	93	53	56	-	-	125	149
Derivative Financial Instrument Liabilities:								
Interest rate contracts	-	-	(37)	(47)	-	-	(37)	(47)
Foreign exchange contracts	(14)	(11)	(58)	(54)	-	-	(72)	(65)
Power commodity contracts	-	-	(282)	(299)	(13)	(8)	(295)	(307)
Natural gas commodity contracts	(140)	(178)	(29)	(15)	-	-	(169)	(193)
Non-Derivative Financial Instruments:								
Available-for-sale assets	25	20	-	-	-	-	25	20
	(42)	(66)	200	166	(9)	(3)	149	97

The following table presents the net change in financial assets and liabilities measured at fair value and included in the Level III fair value category:

For the three months ended March 31 *(unaudited)* *(millions of dollars, pre-tax)*	Derivatives 2011	2010
Balance at beginning of period	(3)	(2)
New contracts[2]	1	(10)
Transfers out of Level III[3]	(2)	(5)
Settlements	-	(1)
Change in unrealized gains recorded in Net Income	-	5
Change in unrealized (losses)/gains recorded in Other Comprehensive Income	(5)	8
Balance at end of period	(9)	(5)

(1) The fair value of derivative assets and liabilities is presented on a net basis.
(2) For the three months ended March 31, 2011, there were no amounts (2010 – loss of $1 million) included in Net Income attributable to derivatives that were entered into during the period and still held at the reporting date.
(3) As contracts near maturity, they are transferred out of Level III and into Level II.

A 10 per cent increase or decrease in commodity prices, with all other variables held constant, would result in a $7 million decrease or increase, respectively, in the fair value of derivative financial instruments included in Level III and outstanding as at March 31, 2011.

7. Employee Future Benefits

The net benefit plan expense for the Company's defined benefit pension plans and other post-employment benefit plans is as follows:

Three months ended March 31	Pension Benefit Plans		Other Benefit Plans	
(unaudited)(millions of dollars)	2011	2010	2011	2010
Current service cost	14	12	-	-
Interest cost	23	23	2	2
Expected return on plan assets	(28)	(27)	-	-
Amortization of net actuarial loss	6	2	-	-
Amortization of past service costs	1	1	-	-
Net benefit cost recognized	16	11	2	2

8. Contingencies

Amounts received under the Bruce B floor price mechanism within a calendar year are subject to repayment if the monthly average spot price exceeds the floor price. No amounts recorded in revenues in the first three months of 2011 are expected to be repaid.

9. Subsequent Events

On April 26, 2011, the Company announced it entered into agreements to sell a 25 per cent interest in each of Gas Transmission Northwest LLC (GTN LLC) and Bison Pipeline LLC (Bison LLC) to PipeLines LP for an aggregate purchase price of US$605 million, which includes US$81 million of long-term debt or 25 per cent of GTN LLC debt outstanding. GTN LLC and Bison LLC own the GTN and Bison natural gas pipelines, respectively. The sale is expected to close in May 2011 and is subject to certain closing conditions.

At the end of April 2011, PipeLines LP announced an underwritten public offering of 6,300,000 common units at US$47.58 per unit. Gross proceeds of approximately US$300 million from this offering will be used to partially fund the acquisition with the balance funded by a draw on PipeLines LP's committed and available US$400 million bridge loan facility and a draw on PipeLines LP's US$250 million committed and available senior revolving credit facility. The underwriters were also granted a 30-day option to purchase an additional 945,000 common units at the same price. The offering is expected to close on May 3, 2011.

As part of this offering, TransCanada will make a capital contribution of US$6 million to maintain its two per cent general partnership interest in PipeLines LP. Assuming the underwriters exercise their option to purchase additional units, TransCanada's ownership in PipeLines LP is expected to be approximately 33.3 per cent.

TransCanada welcomes questions from shareholders and potential investors. Please telephone:

Investor Relations, at (800) 361-6522 (Canada and U.S. Mainland) or direct dial David Moneta/Terry Hook at (403) 920-7911. The investor fax line is (403) 920-2457. Media Relations: Terry Cunha/Shawn Howard (403) 920-7859 or (800) 608-7859.

Visit the TransCanada website at: www.transcanada.com.

Crystal Pritchard

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

Importance: High

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

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

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

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Irene Mauricette
Executive Assistant to
The Chief Executive Officer

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

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

May 9, 2011

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

Dear ~~Alex~~: Alex

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

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

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt from you of the revised Schedule B to the proposed Implementation Agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.

2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total $42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?

3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).

4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011 financing model assumptions shared with JoAnne Butler, TCE indicated 20% was being used.

5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.

6. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

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

Sincerely,

Colin Andersen

Colin Andersen
Chief Executive Officer

Crystal Pritchard

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

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Irene Mauricette
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The Chief Executive Officer

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Web: www.powerauthority.on.ca

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

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

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

ONTARIO POWER AUTHORITY

May 31, 2012

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

FROM: Michael Lyle

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

---

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

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

ONTARIO POWER AUTHORITY

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1. the procurement and administration of the CES Contract between the OPA and TCE;

2. the OPA's planning analysis of the needs in Southwest GTA;

3. the communications between the OPA and the Government relating to the OGS;

4. the Minister of Energy's decision and announcement that the OGS will not proceed;

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

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

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, May 10, 2011 1:32 PM
To: Deborah Langelaan; Michael Killeavy
Subject: RE: TCE Potential Litigation

Agreed. Oversight on my part as the memo itself actually includes him. I will send it along.

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

From: Deborah Langelaan
Sent: May 10, 2011 1:31 PM
To: Michael Killeavy; Michael Lyle
Subject: RE: TCE Potential Litigation

I've forwarded a copy to Ronak but I think Shawn Cronkwright should also be included on the distribution list since he was the one that managed the procurement process.

Deb

From: Michael Killeavy
Sent: May 10, 2011 1:30 PM
To: Michael Lyle
Cc: Deborah Langelaan
Subject: RE: TCE Potential Litigation

Would this also apply to Ronak and Anshul, both of whom were assisting Deb and me?

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

416-967-1947 (FAX)

From: Michael Lyle
Sent: May 10, 2011 1:24 PM
To: Colin Andersen; JoAnne Butler; Amir Shalaby; Kristin Jenkins; Kim Marshall; Brett Baker; Michael Killeavy; Deborah Langelaan; John Zych; Susan Kennedy; Robert Godhue; Nimi Visram; Sarah Diebel; Aaron Cheng
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Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, May 10, 2011 1:33 PM
To: Shawn Cronkwright
Subject: FW: TCE Potential Litigation
Attachments: TCE Document Retention Memo.doc

This should have gone to you as well.

Michael Lyle
General Counsel and Vice President
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ONTARIO POWER AUTHORITY

May 31, 2012

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

FROM: Michael Lyle

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

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Susan Kennedy: extension 6054

Crystal Pritchard

From: Kim Marshall
Sent: Tuesday, May 10, 2011 1:54 PM
To: Terry Gabriele; Elizabeth Squissato; Aaron Cheng
Cc: Michael Lyle
Subject: FW: TCE Potential Litigation
Attachments: TCE Document Retention Memo.doc

Terry, Elizabeth and Aaron – fyi.

Aaron, not sure you have been looped into the IT requirements here but if not we need to speak with Susan quickly I think. By cc to mike – susan the right person? thx

Kimberly Marshall
Vice President, Business Strategies & Solutions
Ontario Power Authority
120 Adelaide Street West
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Toronto, Ontario M5H 1T1

Phone: 416-969-6232
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ONTARIO
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May 31, 2012

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

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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

From: Aaron Cheng
Sent: Tuesday, May 10, 2011 2:41 PM
To: Susan Kennedy
Cc: Michael Lyle; Kim Marshall
Subject: RE: TCE Potential Litigation

We'll set up a quick meeting with you to go through the requirements. The SharePoint platform established for IPSP will be used as a secure portal for the application.

Thanks,
Aaron

Aaron Cheng
Director, Information Technology
Ontario Power Authority
416-969-6345

From: Michael Lyle
Sent: May-10-11 2:03 PM
To: Kim Marshall; Terry Gabriele; Elizabeth Squissato; Aaron Cheng
Subject: Re: TCE Potential Litigation

Yes as first point of contact.

From: Kim Marshall
Sent: Tuesday, May 10, 2011 01:53 PM
To: Terry Gabriele; Elizabeth Squissato; Aaron Cheng
Cc: Michael Lyle
Subject: FW: TCE Potential Litigation

Terry, Elizabeth and Aaron – fyi.

Aaron, not sure you have been looped into the IT requirements here but if not we need to speak with Susan quickly I think. By cc to mike – susan the right person? thx

Kimberly Marshall
Vice President, Business Strategies & Solutions
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Fax: 416-967-1947
Visit our Website: www.powerauthority.on.ca

From: Michael Lyle
Sent: Tuesday, May 10, 2011 1:24 PM
To: Colin Andersen; JoAnne Butler; Amir Shalaby; Kristin Jenkins; Kim Marshall; Brett Baker; Michael Killeavy; Deborah

Langelaan; John Zych; Susan Kennedy; Robert Godhue; Nimi Visram; Sarah Diebel; Aaron Cheng
Subject: TCE Potential Litigation

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

Michael Lyle
General Counsel and Vice President
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Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Tuesday, May 10, 2011 2:44 PM
To: Michael Killeavy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle; Sebastiano, Rocco; Susan Kennedy; Smith, Elliot
Subject: RE: Letter from Colin Andersen [Privileged and Confidential]

As an update, a call has been placed to TCE's counsel. He was out of the office at the time and a message has been left to return the call.
We'll let you know once we hear from him.
Regards,

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Tuesday, May 10, 2011 10:02 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: FW: Letter from Colin Andersen
Importance: High

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

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

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

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

Irene Mauricette
Executive Assistant to
The Chief Executive Officer

Ontario Power Authority
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Email: irene.mauricette@powerauthority.on.ca
Web: www.powerauthority.on.ca

Crystal Pritchard

From: Nimi Visram
Sent: Tuesday, May 10, 2011 5:04 PM
To: Michael Killeavy; Deborah Langelaan
Cc: Michael Lyle; JoAnne Butler; John Zych
Subject: FW: OPA Board Meetings - May 18 & 19, 2011
Attachments: BOD_Mtg_v4_20110518.ppt; OGS_BOD_CM_20110518 v2.pptx
Categories:

Thank you Michael.

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

From: Michael Killeavy
Sent: May 10, 2011 4:17 PM
To: Nimi Visram
Cc: Deborah Langelaan; JoAnne Butler
Subject: RE: OPA Board Meetings - May 18 & 19, 2011

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: Nimi Visram
Sent: May 10, 2011 3:50 PM
To: John Zych; Amir Shalaby; Andrew Pride; Brett Baker; Colin Andersen; JoAnne Butler; Kim Marshall; Kristin Jenkins; Michael Lyle; Aaron Cheng; Andrew Pietrewicz; Barbara Ellard; Bob Chow; Bob Gibbons; Chuck Farmer; Elizabeth Squissato; George Pessione; Guy Raffaele; Hillary Thatcher; Joe Toneguzzo; Kevin Dick; Michael Killeavy; Murray Campbell; Patricia Phillips; Ruth Covich; Sean Brady; Shawn Cronkwright; Sorana Ionescu; Susan Kennedy; Terry Gabriele; Julia McNally
Cc: Cathy Schell; Clare Hudson; Irene Mauricette; Jacquie Davidson; Kathleen Wilson; Manuela Moellenkamp
Subject: RE: OPA Board Meetings - May 18 & 19, 2011

Thnx

Nimi

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

From: Nimi Visram **On Behalf Of** John Zych
Sent: April 27, 2011 1:45 PM
To: Amir Shalaby; Andrew Pride; Brett Baker; Colin Andersen; JoAnne Butler; Kim Marshall; Kristin Jenkins; Michael Lyle; Aaron Cheng; Andrew Pietrewicz; Barbara Ellard; Bob Chow; Bob Gibbons; Chuck Farmer; Elizabeth Squissato; George Pessione; Guy Raffaele; Hillary Thatcher; Joe Toneguzzo; John Zych; Kevin Dick; Michael Killeavy; Murray Campbell; Patricia Phillips; Ruth Covich; Sean Brady; Shawn Cronkwright; Sorana Ionescu; Susan Kennedy; Terry Gabriele; Julia McNally
Cc: John Zych; Nimi Visram; Cathy Schell; Clare Hudson; Irene Mauricette; Jacquie Davidson; Kathleen Wilson; Manuela Moellenkamp
Subject: OPA Board Meetings - May 18 & 19, 2011

John Zych
Corporate Secretary
Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto, ON M5H 1T1

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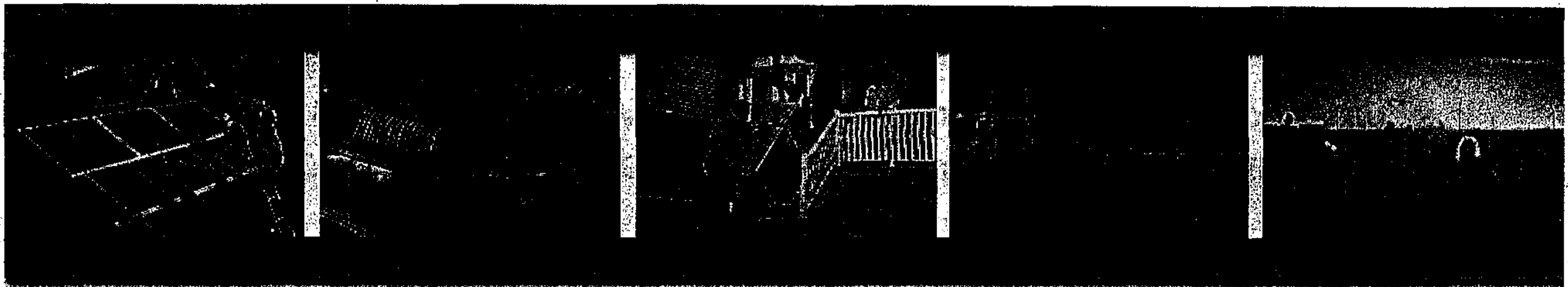
416-967-7474 Main telephone
416-967-1947 Fax
John.Zych@powerauthority.on.ca

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

ONTARIO POWER AUTHORITY



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

May 18, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

- OPA was instructed by the government to make a second counter-proposal to the TCE proposal of 10 March 2011.
- This government-instructed counter-proposal to settle was submitted on 21 April 2011. It had an effective financial value of $712 million.
- On 29 April 2011 TCE rejected the government-instructed counter-proposal.
- TCE also served the government with 60-day advance notice of its intent to sue the Crown pursuant to Section 7(1) of the *Proceedings Against the Crown Act*.

Next Steps

- Certain aspects of the TCE rejection of the government-instructed counter-proposal are unclear to us.

- A letter from Colin to Alex Pourbaix was sent on *[insert date]* requesting clarification of certain aspects of the TCE rejection letter and advising TCE that we want our counsel and their counsel to commence talks on submitting the dispute to arbitration.

- Our counsel will be meeting TCE's counsel to discuss the terms of reference for the arbitration of the dispute.

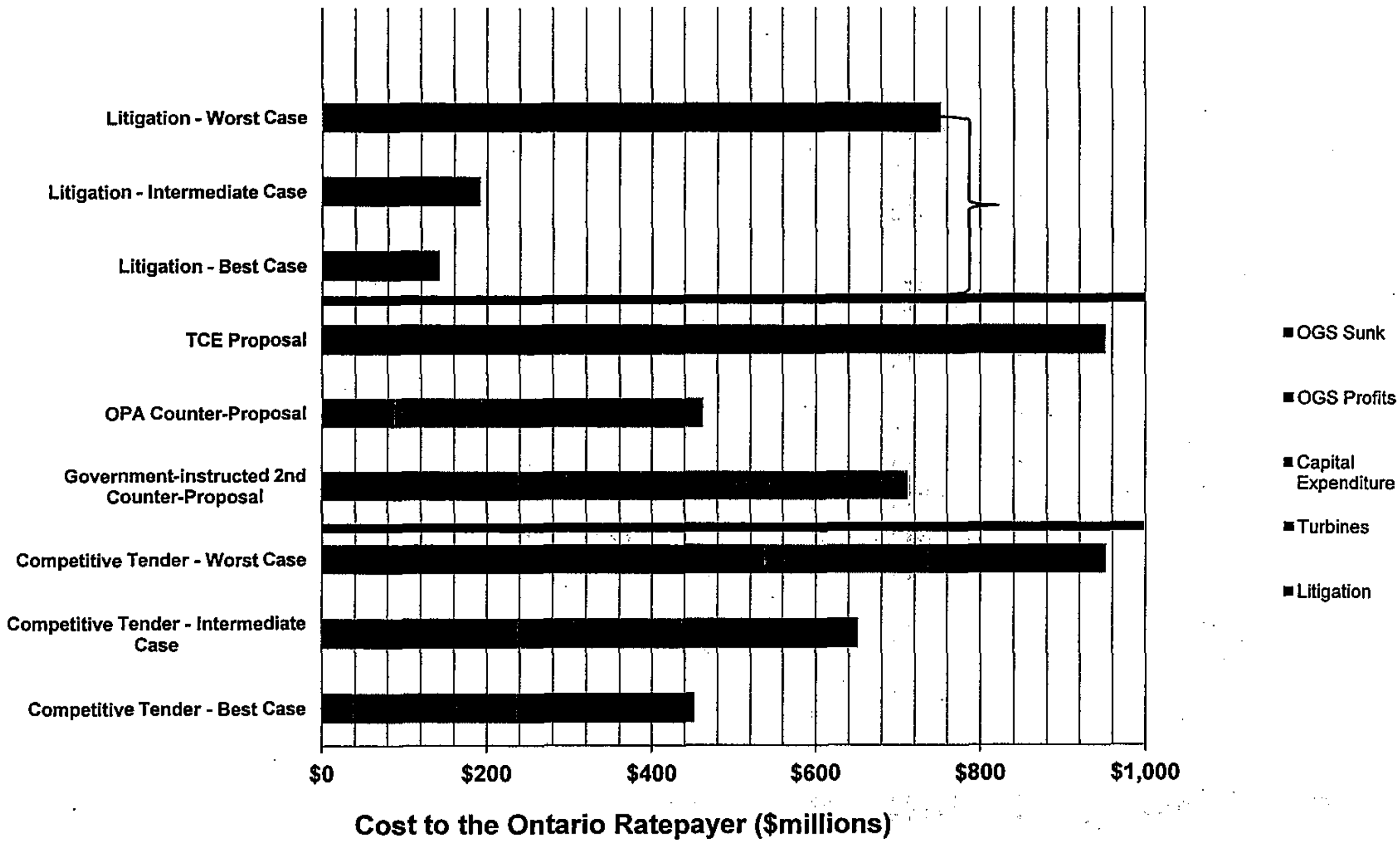
Appendix

Comparison of Settlement Proposals

	TCE Proposal March 10, 2011	OPA Counter-Proposal March 28, 2011	Government-Instructed Second Counter Proposal April 21, 2011	TCE Response to Government-Instructed Second Counter-Proposal 29 April 2011	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	$14,922/MW-month	Unknown	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE claimed "unleveraged" discount rate of 5.25%	Unknown	TCE can finance/leverage how they want to increase NPV of project. We have assumed in second proposal what we believe that they would use.
Contract Term	20 Years + Option for 10-Year Extension	25 Years	25 Years	20 Years + Option for 10-Year Extension.	We believe that TCE obtains all their value in the first 20 years. 10 Year Option is a "nice to have" sweetener. Precedent for25-year contract. – Portlands Energy Centre has option for additional five years on the 20-year term.
Contract Capacity (Annual Average)	450 MW	500 MW	481 MW	450 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Payment in addition to the NRR	Unknown	Precedent – Portlands Energy Centre, Halton Hills, and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	$475 mm	Unknown but we infer from the reference to a ~$65 mm difference that it is $540 mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities. We have increased it by $75mm; however, cannot really substantiate why. Therefore, we are still proposing a target cost on CAPEX where increases/decreases are shared.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	Reasonable	Unknown	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	No government assistance with permitting and approvals combined with a good faith obligation to negotiate OGS compensation and sunk costs if the K-W Peaking Plant doesn't proceed because of permitting issues.	TCE is willing to accept permitting risk provided that it has a right to (a) terminate the Replacement Contract and (b) receive a lump sum payment for (i) sunk costs and (ii) financial value of the OGS contract. This would apply to any and all permits, not just those issued under the *Planning Act*.	In the Government-instructed counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

ONTARIO POWER AUTHORITY

Financial Value of Various Scenarios



Crystal Pritchard

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

Privileged

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

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

Perhaps we could discuss this further at ETM tomorrow.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
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Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, May 10, 2011 5:41 PM
To: Michael Lyle
Subject: Re: TCE

Sure. Thanks.

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

Privileged

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Perhaps we could discuss this further at ETM tomorrow.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

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

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

JCB

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

Privileged

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

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Perhaps we could discuss this further at ETM tomorrow.

Michael Lyle
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Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

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

Confidential: Solicitor/Client Privilege

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

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Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Michael Killeavy
Sent: Friday, May 20, 2011 12:23 PM
To: 'RSebastiano@osler.com'; 'PIvanoff@osler.com'; 'ESmith@osler.com'; Susan Kennedy
Cc: JoAnne Butler; Michael Lyle
Subject: Fw: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

This is an interesting development. Perhaps we could teleconference later today?

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Michael.killeavy@powerauthority.on.ca

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: Friday, May 20, 2011 12:18 PM
To: Deborah Langelaan
Cc: Michael Killeavy; JoAnne Butler; Michael Barrack <MBarrack@tgf.ca>; John Finnigan <JFinnigan@tgf.ca>; Geoff Murray <geoff_murray@transcanada.com>; Terry Bennett <terry_bennett@transcanada.com>; John Cashin <john_cashin@transcanada.com>; Jody Johnson <jody_johnson@transcanada.com>; Doug McLean <doug_mclean@transcanada.com>
Subject: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

With Prejudice

Dear Deborah,

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

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

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

Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Crystal Pritchard

From: Susan Kennedy
Sent: Friday, May 20, 2011 6:46 PM
To: Michael Lyle; 'pivanoff@osler.com'
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below. I guess I interpret her message as either, "we'd never take each other to court, so why bother with some form of judicial relief". By the same token, I'd suggest there is no reason not to include, as you never know what may happen.

Paul, Mike will likely follow up with you on Tueday. I was wondering if declaratory relief could prove useful to establish privilege should be maintained even if there was a release of information. So, by way of example, Ministry accidently forwards OPA privileged document to TCE, would declaratory relief assist is successfully maintaining privilege of document (ie keeping document inadmissable). That would be a reason we (or if the reverse happened, they) might seek relief despite our "special" relationship.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Friday, May 20, 2011 04:28 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I wanted to follow up on the message that I left yesterday. In light of the relationship between the Ministry and the OPA, I have trouble justifying or explaining an allowance for declaratory relief between the parties. That PACA allows for that remedy doesn't warrant including it here. I would prefer the paragraph to come out. Nevertheless, as indicated, I would be happy to discuss further if you wish.

Carolyn

Carolyn Calwell
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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 13, 2011 2:56 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 11, 2011 6:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I have revised the Cooperation and Common Interest Privilege Agreement to address the Crown's comment regarding injunctive relief. I note that Section 14 of the *Proceedings Against the Crown Act* contemplates that declaratory relief may be sought in lieu of an injunction. The text of that section is as follows:

No injunction or specific performance against Crown

14. (1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1990, c. P.27, s. 14.

With that in mind, I suggest that we propose to the Crown that we revise the "Injunctive Relief" section (i.e. Section 17) to provide for "Declaratory Relief" instead of "Injunctive Relief". They are not immune from a declaratory order. The attached version of the Agreement reflects the change.

Please contact me if you would like to discuss.

Regards,
Paul

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, May 11, 2011 4:26 PM
To: Ivanoff, Paul
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."

- the definition of "Third Party" has been simplified.

- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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Crystal Pritchard

From: Michael Killeavy
Sent: Friday, May 20, 2011 8:06 PM
To: 'safouh@smsenergy-engineering.com'; Deborah Langelaan
Cc: 'RSebastiano@osler.com'; 'PIvanoff@osler.com'; Susan Kennedy; Michael Lyle
Subject: Re: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

Deb and I will meet with JoAnne next week and decide on next steps.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, May 20, 2011 07:40 PM
To: Deborah Langelaan
Cc: Michael Killeavy; rsebastiano@osler.com <rsebastiano@osler.com>; pivanoff@osler.com <pivanoff@osler.com>; Susan Kennedy; Michael Lyle
Subject: RE: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

Reissue to include Susan Kennedy and Micheal Lyle who inadvertently were not copied on original email.

Privileged & Confidential

Thank you - Deborah.

For your information I received from Paul Ivanoff of Osler earlier today a copy of the long awaited LTSA. I am assuming the purpose of its submission is so that TransCanada is not seen delinquent on any promises it made to the OPA during the "negotiation" process and it is done Without Prejudice. If this is the case then I suggest that we don't review the LTSA at this time.

Otherwise, please let us know what action SMS is required to take with respect to the LTSA.

Have a great long weekend everyone,

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: May 20, 2011 4:33 PM
To: rsebastiano@osler.com; pivanoff@osler.com; safouh@smsenergy-engineering.com; Susan Kennedy; Michael Lyle

Cc: Michael Killeavy
Subject: Fw: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

FYI

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: Friday, May 20, 2011 12:18 PM
To: Deborah Langelaan
Cc: Michael Killeavy; JoAnne Butler; Michael Barrack <MBarrack@tgf.ca>; John Finnigan <JFinnigan@tgf.ca>; Geoff Murray <geoff_murray@transcanada.com>; Terry Bennett <terry_bennett@transcanada.com>; John Cashin <john_cashin@transcanada.com>; Jody Johnson <jody_johnson@transcanada.com>; Doug McLean <doug_mclean@transcanada.com>
Subject: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

With Prejudice

Dear Deborah,

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

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

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

Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Crystal Pritchard

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Tuesday, May 24, 2011 11:01 AM
To: Michael Lyle
Subject: FW: OPA - TCE [Privileged and Confidential]

Mike,

In Susan's absence and in light of our meeting later today, I wanted to send you my comment on the Common Interest Privilege Agreement. I believe that this is the only outstanding issue on this document.

Carolyn

From: Calwell, Carolyn (MEI)
Sent: May 20, 2011 4:29 PM
To: 'Susan Kennedy'
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I wanted to follow up on the message that I left yesterday. In light of the relationship between the Ministry and the OPA, I have trouble justifying or explaining an allowance for declaratory relief between the parties. That PACA allows for that remedy doesn't warrant including it here. I would prefer the paragraph to come out. Nevertheless, as indicated, I would be happy to discuss further if you wish.

Carolyn

Carolyn Calwell
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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 13, 2011 2:56 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 11, 2011 6:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I have revised the Cooperation and Common Interest Privilege Agreement to address the Crown's comment regarding injunctive relief. I note that Section 14 of the *Proceedings Against the Crown Act* contemplates that declaratory relief may be sought in lieu of an injunction. The text of that section is as follows:

No injunction or specific performance against Crown

14. (1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1990, c. P.27, s. 14.

With that in mind, I suggest that we propose to the Crown that we revise the "Injunctive Relief" section (i.e. Section 17) to provide for "Declaratory Relief" instead of "Injunctive Relief". They are not immune from a declaratory order. The attached version of the Agreement reflects the change.

Please contact me if you would like to discuss.

Regards,
Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, May 11, 2011 4:26 PM
To: Ivanoff, Paul
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

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Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy

Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."

- the definition of "Third Party" has been simplified.

- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.

Paul Ivanoff
Partner

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Crystal Pritchard

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Thursday, May 26, 2011 9:55 AM
To: Michael Lyle
Cc: Perun, Halyna N. (MEI)
Subject: RE: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement OPA (3).DOC

Mike,

I understand from John Kelly that you are prepared to share some correspondence related to this matter if the Common Interest Privilege Agreement is signed. We may have a window of opportunity with the DM tomorrow and are prepared to take the agreement forward if we can remove the declaratory relief paragraph (#17 in the last version that Susan sent). As such, we would recommend the Agreement in the form attached (having deleted that paragraph). Please let me know if this is acceptable so that we can move on execution.

Carolyn

Carolyn Calwell
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
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Partner

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Toronto, Ontario, Canada M5X 1B8

****

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

(f) **"Third Party"** or **"Third Parties"** means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

   (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

   (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

NOTICE

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

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

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

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

777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5

Attention: Halyna Perun, A/ Legal Director, Legal Services Branch
Ministries of Energy & Infrastructure

Tel. No.: (416) 325-6681

Fax No.: (416) 325-1781
E-mail: halyna.perun2@ontario.ca

GENERAL PROVISIONS

18. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.

19. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

21. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.

22. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

23. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.

24. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.

25. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

26. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By:__________________________

Name:________________________

Title:_________________________

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

By:__________________________

Name:________________________

Title:_________________________

Crystal Pritchard

From: Nimi Visram
Sent: Thursday, May 26, 2011 10:03 AM
To: Aaron Cheng
Cc: Michael Lyle; Kim Marshall; Nimi Visram
Subject: FW: TCE Potential Litigation
Attachments: TCE Document Retention Memo.doc

Good morning Aaron,

Further to Mike Lyle's email below on May 10th, 2011, Mike has asked if IT can please identify all emails that including attachments sent to and received from TransCanada for two week period from September 23rd, 2010 to October 7, 2010 inclusive. Please make this your top priority as Mike needs this as soon as possible.

Thnx
Nimi

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

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

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

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

ONTARIO POWER AUTHORITY

May 31, 2012

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

FROM: Michael Lyle

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

---

PLEASE READ THIS MEMORANDUM CAREFULLY

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

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

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

Preservation of Records Relating to Litigation

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

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

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

ONTARIO POWER AUTHORITY

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;

ONTARIO POWER AUTHORITY

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

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

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

Crystal Pritchard

From: Greg Coons
Sent: Thursday, May 26, 2011 12:34 PM
To: Nimi Visram; Michael Lyle
Subject: RE: TCE Potential Litigation

We also need to know if we will be searching our offsite backups as well, so we can provide an accurate time estimate to do the search.

Searching the backups would increase the effort substantially.

Greg Coons
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Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

From: Aaron Cheng
Sent: May 26, 2011 10:14 AM
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Subject: RE: TCE Potential Litigation

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Aaron Cheng
Director, Information Technology
Ontario Power Authority
416-969-6345

From: Nimi Visram
Sent: May-26-11 10:03 AM
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Cc: Michael Lyle; Kim Marshall; Nimi Visram
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Good morning Aaron,

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Crystal Pritchard

From: Nimi Visram
Sent: Thursday, May 26, 2011 2:20 PM
To: Michael Lyle
Cc: Greg Coons; Nimi Visram; Robert Godhue
Subject: RE: TCE Potential Litigation

Mike, to recap the search you would like done on the TransCanada emails. This is very similar to an FOI Search.

To search emails sent from **Internal OPA Staff**
We would have to provide Greg with the list of OPA staff who may have corresponded with TransCanada

To search emails sent to **OPA from External Sources**
We would have to provide Greg with the complete email address of anybody who may have corresponded with the OPA re: TransCanada.

Would it be useful for me to set up a quick meeting between you and Greg do discuss your exact needs and timelines for this search.

Thnx
Nimi

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Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, May 27, 2011 12:33 PM
To: Michael Lyle
Subject: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v7_LEGAL_1_ - v7 Common Interest Privilege Agreement, OPA.DOC; WSComparison_#20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement, OPA-#20420450v7_LEGAL_1_ - v7 Common Interest Privilege Agreement, OPA.pdf

Mike,

Attached is the revised Cooperation and Common Interest Privilege Agreement.

Regards,

Paul

Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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

COOPERATION AND

COMMON INTEREST PRIVILEGE AGREEMENT

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

ONTARIO POWER AUTHORITY
("OPA")

- and -

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

RECITALS:

A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").

B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.

C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.

D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:

   (a) "**Claims**" means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.

   (b) "**Effective Date**" means the effective date as defined above.

   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.

   (d) "**Privileged Information**" means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:

      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

      (iv) any analyses, document binders, files, compilations or databases;

      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

(viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

(f) **"Third Party"** or **"Third Parties"** means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

(i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

(ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

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D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.

E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

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   (c) "**Parties**" means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.

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      (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;

      (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;

      (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;

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      (v) the sharing or exchange via any media, including but not limited to electronic media;

      (vi) theories, impressions, analyses, legal research, or legal opinions;

      (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

      (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

(e) **"TCE"** has the meaning defined in paragraph A of the Recitals.

(f) **"Third Party"** or **"Third Parties"** means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.

3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").

4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.

5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:

   (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and

   (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.

8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.

9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.

12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.

13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.

16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

~~**DECLARATORY RELIEF**~~

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

NOTICE

<u>17.</u> ~~18.~~ All notices and other communications between the Parties, unless otherwise specifically provided, shall be in writing and deemed to have been duly given when delivered in person or telecopied or delivered by overnight courier, with postage prepaid, addressed as follows:

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

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