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. ~~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.

19. ~~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.

20. ~~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.

21. ~~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.

22. ~~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.

23. ~~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.

24. ~~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.

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

26. ~~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: Nimi Visram
Sent: Monday, May 30, 2011 11:10 AM
To: Michael Lyle
Subject: FW: TCE Potential Litigation

Attached FYI – one of the items for our update meeting this morning.

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority
please consider the environment before printing this email

From: Tim Aliev
Sent: May 30, 2011 9:05 AM
To: Nimi Visram
Cc: Paul Schofield; Aaron Cheng
Subject: FW: TCE Potential Litigation

Hi Nimi,
Just following up about the search. Did you have a chance to get additional detail? Greg is on vacation this week - Paul Schofield is Greg's backup and he will be able to assist you.
Thanks,
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From: Aaron Cheng
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To: Nimi Visram
Cc: Michael Lyle; Kim Marshall; Tim Aliev
Subject: RE: TCE Potential Litigation

Noted – thanks. Tim Aliev will forward you the info shortly.

Aaron Cheng
Director, Information Technology
Ontario Power Authority
416-969-6345

From: Nimi Visram
Sent: May-26-11 10:03 AM
To: Aaron Cheng
Cc: Michael Lyle; Kim Marshall; Nimi Visram
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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
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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

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From: Nimi Visram
Sent: Monday, May 30, 2011 12:13 PM
To: Tim Aliev
Cc: Paul Schofield; Aaron Cheng; Michael Lyle; Nimi Visram
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Also include :
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Crystal Pritchard

From: Paul Schofield
Sent: Monday, May 30, 2011 1:35 PM
To: Nimi Visram; Tim Aliev
Cc: Aaron Cheng; Michael Lyle
Subject: RE: TCE Potential Litigation

Are there any other keywords I should be looking for other than TCE or Transcanada?

Paul

From: Nimi Visram
Sent: Monday, May 30, 2011 12:39 PM
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Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Paul Schofield
Sent: Tuesday, June 07, 2011 3:14 PM
To: Nimi Visram; Tim Aliev
Cc: Aaron Cheng; Michael Lyle
Subject: RE: TCE Potential Litigation

Hi Nimi,

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Bring this forward so that we can discuss tomorrow afternoon:

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From: Nimi Visram
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To: Paul Schofield
Cc: Michael Lyle; Nimi Visram
Subject: FW: TCE Potential Litigation

Hello Paul,

Can we create a filter on the emails received/sent from OPA Staff that would include attachment and the subject would include TCE; TransCanada. Filter should include emails sent to /received from Government – Email span - should be reviewed for two weeks prior to October 7, 2010. How soon can we get this information?

Deborah Langelaan
Michael Killeavy
JoAnne Butler
Amir Shalaby
Susan Kennedy
Craig.MacLennan@ontario.ca

We'd also like a filter set for emails between OPA staff and: (attachments should also be included)
Chris_breen@transcanada.com
Or
sixthman@rogers.com (personal email of Chris Breen)
john_cashin@transcanada.com
alex_pourbaix@transcanada.com
John_mikkelsen@transcanada.com

Sean.mullin@ontario.ca
Jamison.steeve@ontario.ca
David.lindsay@ontario.ca
rclark@airdberlis.com

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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
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Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

Crystal Pritchard

From: Perun, Halyna N. (MEI) [Halyna.Perun2@ontario.ca]
Sent: Monday, June 13, 2011 4:17 PM
To: Michael Lyle
Cc: Calwell, Carolyn (MEI)
Subject: TCE

Pirvileged and Confidential

Hi Mike – CLOC is asking whether the OPA was served with a Notice of Action by TCE. We don't think so – and have said so, but we need your confirmation – can you please advise as soon as possible? Thank you

Halyna

Halyna N. Perun
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Crystal Pritchard

From: Perun, Halyna N. (MEI) [Halyna.Perun2@ontario.ca]
Sent: Monday, June 13, 2011 5:40 PM
To: Michael Lyle
Subject: RE: TCE

Thanks Mike

Halyna

Halyna N. Perun
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Sent: June 13, 2011 5:17 PM
To: Perun, Halyna N. (MEI)
Cc: Calwell, Carolyn (MEI)
Subject: Re: TCE

That is correct and I confirmed this with John Kelly in a discussion this afternoon.

From: Perun, Halyna N. (MEI) [mailto:Halyna.Perun2@ontario.ca]
Sent: Monday, June 13, 2011 04:16 PM
To: Michael Lyle
Cc: Calwell, Carolyn (MEI) <Carolyn.Calwell@ontario.ca>
Subject: TCE

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Crystal Pritchard

From: Michael Lyle
Sent: Monday, June 13, 2011 6:25 PM
To: 'pivanoff@osler.com'
Subject: Re: TCE

Sure

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Monday, June 13, 2011 06:24 PM
To: Michael Lyle
Subject: TCE

Mike, I was speaking to Rocco today about the KW project and arbitration strategy. Do you think it makes sense for Rocco to attend the meeting tomorrow as well? Let me know.

Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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Toronto, Ontario, Canada M5X 1B8

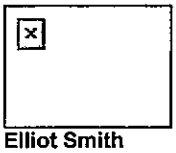
Crystal Pritchard

From: Smith, Elliot [ESmith@osler.com]
Sent: Thursday, June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Sebastiano, Rocco
Subject: Memo re Strategic Options for Arbitration with TCE
Attachments: Memo re Strategic Considerations for Arbitration with TCE 20838721_2.DOC

Michael and Michael,

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

Elliot



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Associate

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Toronto, Ontario, Canada M5X 1B8

Memorandum

Privileged & Confidential

To:	Michael Lyle, *OPA* c: Michael Killeavy, *OPA*	**Date:**	June 16, 2011
From:	Elliot Smith and Paul Ivanoff	**Tel:**	416.862.6435 and 416.862.4223
Subject:	Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Inc. ("TCE") and Ontario Power Authority ("OPA") dated October 9, 2009	**Matter No:**	1126205

1. Background

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

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

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

2. Conditions for TCE to Agree to Arbitration

(a) Arbitration Must Include the Crown

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

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

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

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

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

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

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

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

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

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

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

3. Potential OPA Conditions to Agree to Arbitration

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

(a) Assignment of Turbines

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

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

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

Impediments by TCE to the Assignment of the Turbines

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

Impediments by MPS to the Assignment of the Turbines

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

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

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

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

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

(b) Replacement Contract with TCE

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

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

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

4. Conclusion

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

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

There are a number of benefits to this approach:

(i) the Peaking Project would be developed at a cost to the ratepayer that has been competitively bid and therefore, represents better value than a negotiated price;

(ii) by tendering the Peaking Project, the OPA could decide on the appropriate level of risk sharing between it and the developer without having to resolve TCE's unwillingness to take on an appropriate level of permitting or development risk;

(iii) the dispute between the OPA and TCE would be narrowed to the issue of quantum of damages rather than having to resolve a number of other issues in connection with negotiating a Replacement Contract; and

(iv) the further this option is pursued, the more TCE is motivated to negotiate a Replacement Contract, such that if the OPA were to revert to that option it would do so from a position of greater leverage.

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

Crystal Pritchard

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

FYI

Michael Lyle
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Sent: June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
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Michael and Michael,

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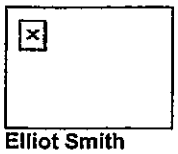
Elliot



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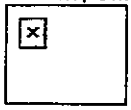

Memorandum

Privileged & Confidential

To:	Michael Lyle, *OPA*	**Date:**	June 16, 2011
	c: Michael Killeavy, *OPA*		
From:	Elliot Smith and Paul Ivanoff	**Tel:**	416.862.6435 and 416.862.4223
Subject:	Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Inc. ("TCE") and Ontario Power Authority ("OPA") dated October 9, 2009	**Matter No:**	1126205

1. Background

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

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

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

2. Conditions for TCE to Agree to Arbitration

(a) Arbitration Must Include the Crown

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

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

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

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

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

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

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

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

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

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

3. Potential OPA Conditions to Agree to Arbitration

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

(a) Assignment of Turbines

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

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

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

Impediments by TCE to the Assignment of the Turbines

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

Impediments by MPS to the Assignment of the Turbines

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

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

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

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

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

(b) Replacement Contract with TCE

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

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

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

4. Conclusion

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

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

There are a number of benefits to this approach:

(i) the Peaking Project would be developed at a cost to the ratepayer that has been competitively bid and therefore, represents better value than a negotiated price;

(ii) by tendering the Peaking Project, the OPA could decide on the appropriate level of risk sharing between it and the developer without having to resolve TCE's unwillingness to take on an appropriate level of permitting or development risk;

(iii) the dispute between the OPA and TCE would be narrowed to the issue of quantum of damages rather than having to resolve a number of other issues in connection with negotiating a Replacement Contract; and

(iv) the further this option is pursued, the more TCE is motivated to negotiate a Replacement Contract, such that if the OPA were to revert to that option it would do so from a position of greater leverage.

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

Crystal Pritchard

From: Michael Lyle
Sent: Friday, June 17, 2011 11:17 AM
To: Brett Baker
Subject: FW: Memo re Strategic Options for Arbitration with TCE
Attachments: Memo re Strategic Considerations for Arbitration with TCE 20838721_2.DOC

Sorry. I should have forwarded this to you as well.

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

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

FYI

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
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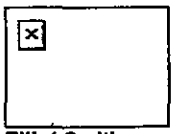
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: June 16, 2011 1:59 PM
To: Michael Lyle; Michael Killeavy
Cc: Ivanoff, Paul; Sebastiano, Rocco
Subject: Memo re Strategic Options for Arbitration with TCE

Michael and Michael,

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

Elliot



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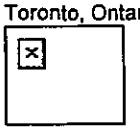

Memorandum

Privileged & Confidential

To:	Michael Lyle, *OPA*	**Date:**	June 16, 2011
	c: Michael Killeavy, *OPA*		
From:	Elliot Smith and Paul Ivanoff	**Tel:**	416.862.6435 and 416.862.4223
Subject:	Southwest GTA Energy Supply Contract (the "Contract") between TransCanada Energy Inc. ("TCE") and Ontario Power Authority ("OPA") dated October 9, 2009	**Matter No:**	1126205

1. Background

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

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

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

2. Conditions for TCE to Agree to Arbitration

(a) Arbitration Must Include the Crown

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

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

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

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

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

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

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

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

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

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

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

3. Potential OPA Conditions to Agree to Arbitration

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

(a) Assignment of Turbines

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

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

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

Impediments by TCE to the Assignment of the Turbines

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

Impediments by MPS to the Assignment of the Turbines

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

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

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

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

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

(b) Replacement Contract with TCE

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

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

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

4. Conclusion

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

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

There are a number of benefits to this approach:

(i) the Peaking Project would be developed at a cost to the ratepayer that has been competitively bid and therefore, represents better value than a negotiated price;

(ii) by tendering the Peaking Project, the OPA could decide on the appropriate level of risk sharing between it and the developer without having to resolve TCE's unwillingness to take on an appropriate level of permitting or development risk;

(iii) the dispute between the OPA and TCE would be narrowed to the issue of quantum of damages rather than having to resolve a number of other issues in connection with negotiating a Replacement Contract; and

(iv) the further this option is pursued, the more TCE is motivated to negotiate a Replacement Contract, such that if the OPA were to revert to that option it would do so from a position of greater leverage.

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

Crystal Pritchard

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

Importance: High

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

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

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

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416-967-1947 (FAX)

Crystal Pritchard

From: James Hinds [jim_hinds@irish-line.com]
Sent: Tuesday, June 21, 2011 8:51 AM
To: JoAnne Butler
Cc: Colin Andersen; Michael Lyle
Subject: Privileged - KW Peaker

Jo,

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

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

Jim Hinds
(416) 524-6949

Crystal Pritchard

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

PRIVILEDGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION ON LITIGATION

Jim,

I hope that these are what you are looking for.

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

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

Please let me know if you need anything else.

Jo

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

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

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joanne.butler@powerauthority.on.ca

-----Original Message-----
From: James Hinds [mailto:jim hinds@irish-line.com]
Sent: Martes, 21 de Junio de 2011 08:51 a.m.
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Cc: Colin Andersen; Michael Lyle
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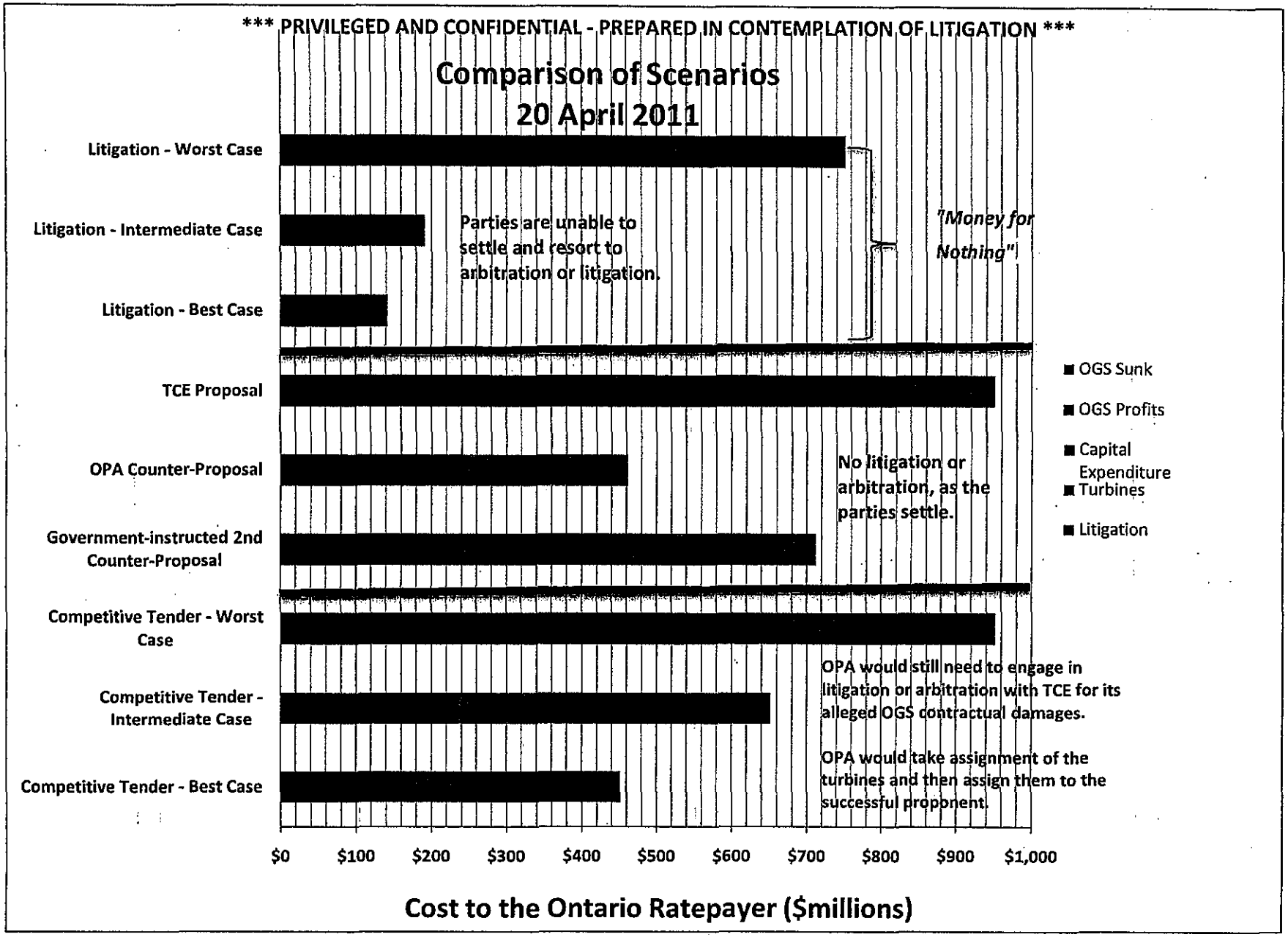
*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***



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, 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.

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 model with us?
8.

Crystal Pritchard

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

Importance: High

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

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

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

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

Michael

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

Plant Capacity	450 MW
Convert to KW	1000

TCE Bilateral Deal vs. K-C Competitive Procurement

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

TCE Bilateral Deal Premium

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

Note:

VERESEN:

Total Project Cost for YEC (including turbines)	**$ 340,000,000**
SMS Energy Engineering Estimated:	**Low**
Total Project Costs (including turbines)	$ 398,317,999
Cost of Turbines (OPA)	$ 210,000,000
Capex [Proj. Total with Equipment - Cost of Turbines (OPA)]	**$ 188,317,999**
OPA's analysis based on data from CERA	**High**
Total Project Costs (including turbines)	$ 525,443,218
CERA costs of Turbines	$ 195,473,218
Cost of Turbines (OPA)	$ 210,000,000
Capex [Total CERA Costs (including turbines) - Cost of Turbines (OPA)]	**$ 315,443,218**

Other Supplementary Information

Halton Hills Generating Station

CTG Supply	$ 82,037,749
Total Project Cost (including turbines)	$ 670,877,811

The 641.5 MW Halton Hills is a combine cycle plant that implemented two Siemens SGT6 5000F turb

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

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

LITIGATION ***

Input

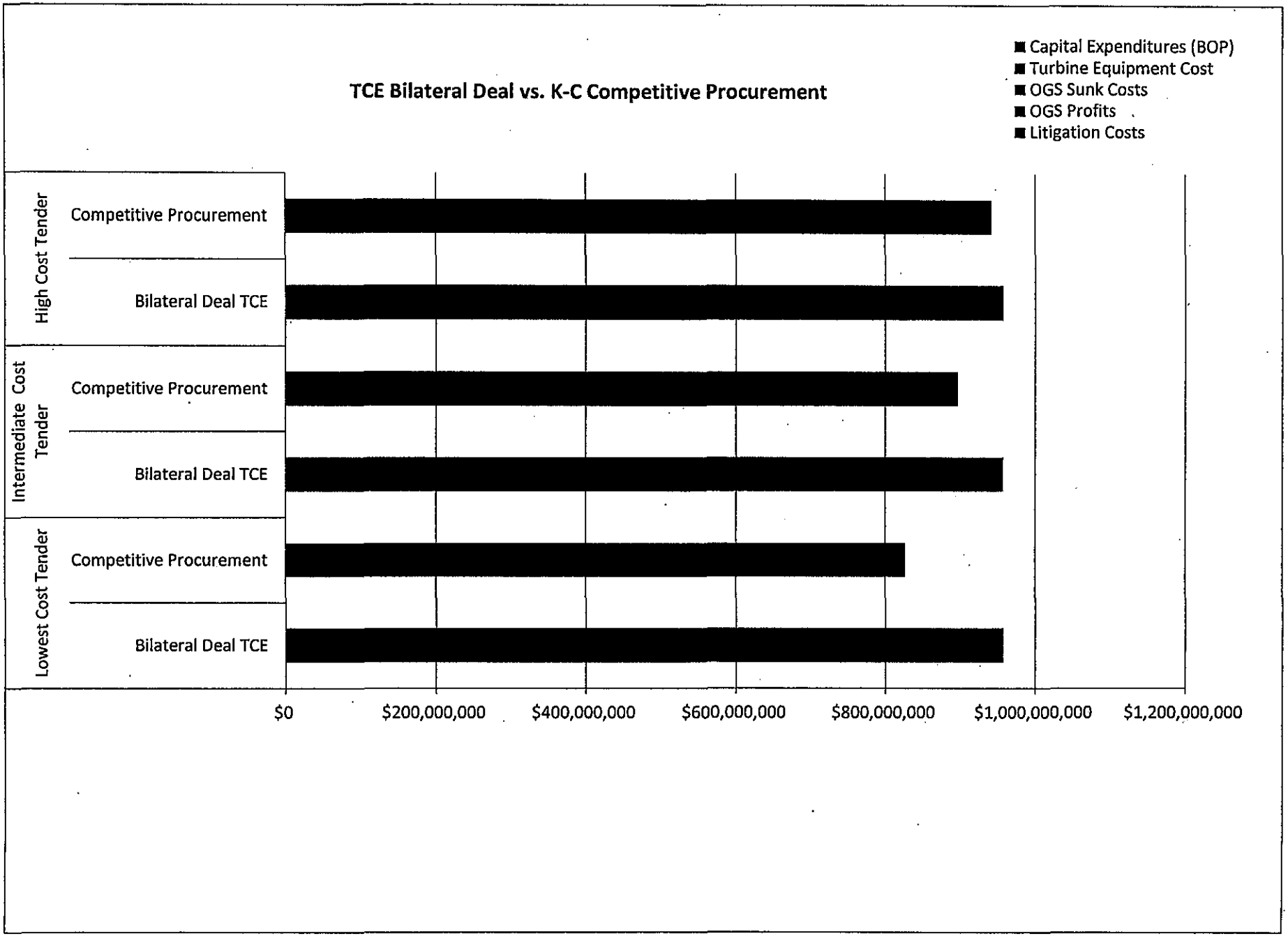
Cost Tender	High Cost Tender	
Competitive Procurement	Bilateral Deal TCE	Competitive Procurement
$270,000,000	$330,000,000	$315,000,000
$210,000,000	$210,000,000	$210,000,000
$37,000,000	$37,000,000	$37,000,000
$375,000,000	$375,000,000	$375,000,000
$5,000,000	$5,000,000	$5,000,000
$897,000,000	**$957,000,000**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

Intermediate
$ 480,356,628
$ 195,473,218
$ 210,000,000
$ 270,356,628

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

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

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


TCE Bilateral Deal vs. K-C Competitive Procurement
Capital Expenditures (BOP)
Turbine Equipment Cost
OGS Sunk Costs
OGS Profits
Litigation Costs
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Bilateral Deal TCE
Intermediate Cost Tender
Competitive Procurement
Bilateral Deal TCE
Lowest Cost Tender
Competitive Procurement
Bilateral Deal TCE
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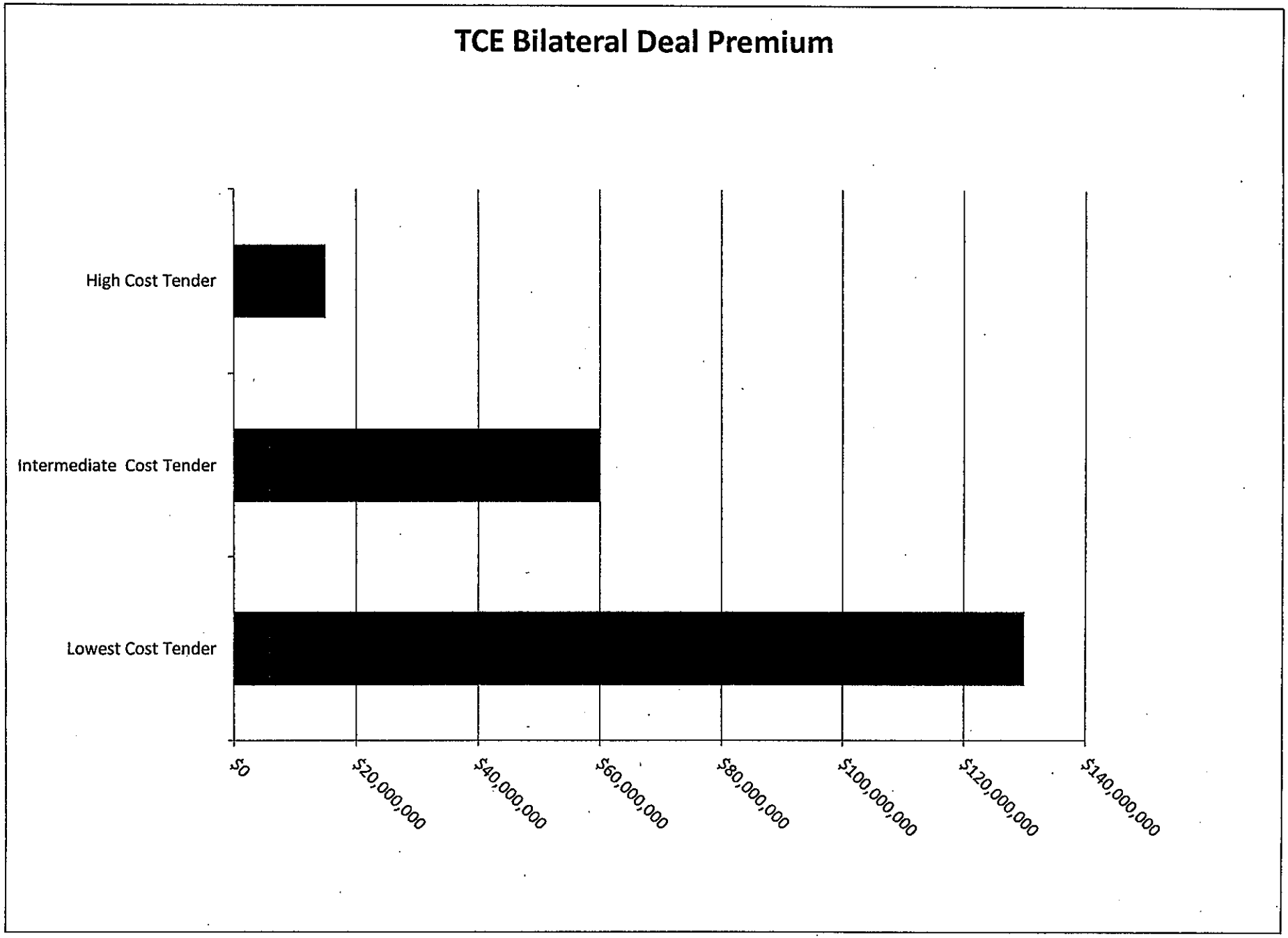
$1,200,000,000


TCE Bilateral Deal Premium
High Cost Tender
Intermediate Cost Tender
Lowest Cost Tender
$0
$20,000,000
$40,000,000
$60,000,000
$80,000,000
$100,000,000
$120,000,000
$140,000,000

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

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

Halton Hills
642 MW
"F" Class
2
2x1 configuration
$82,037,749
$670,877,811

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

Source: IHS CERA.

Table ES-1

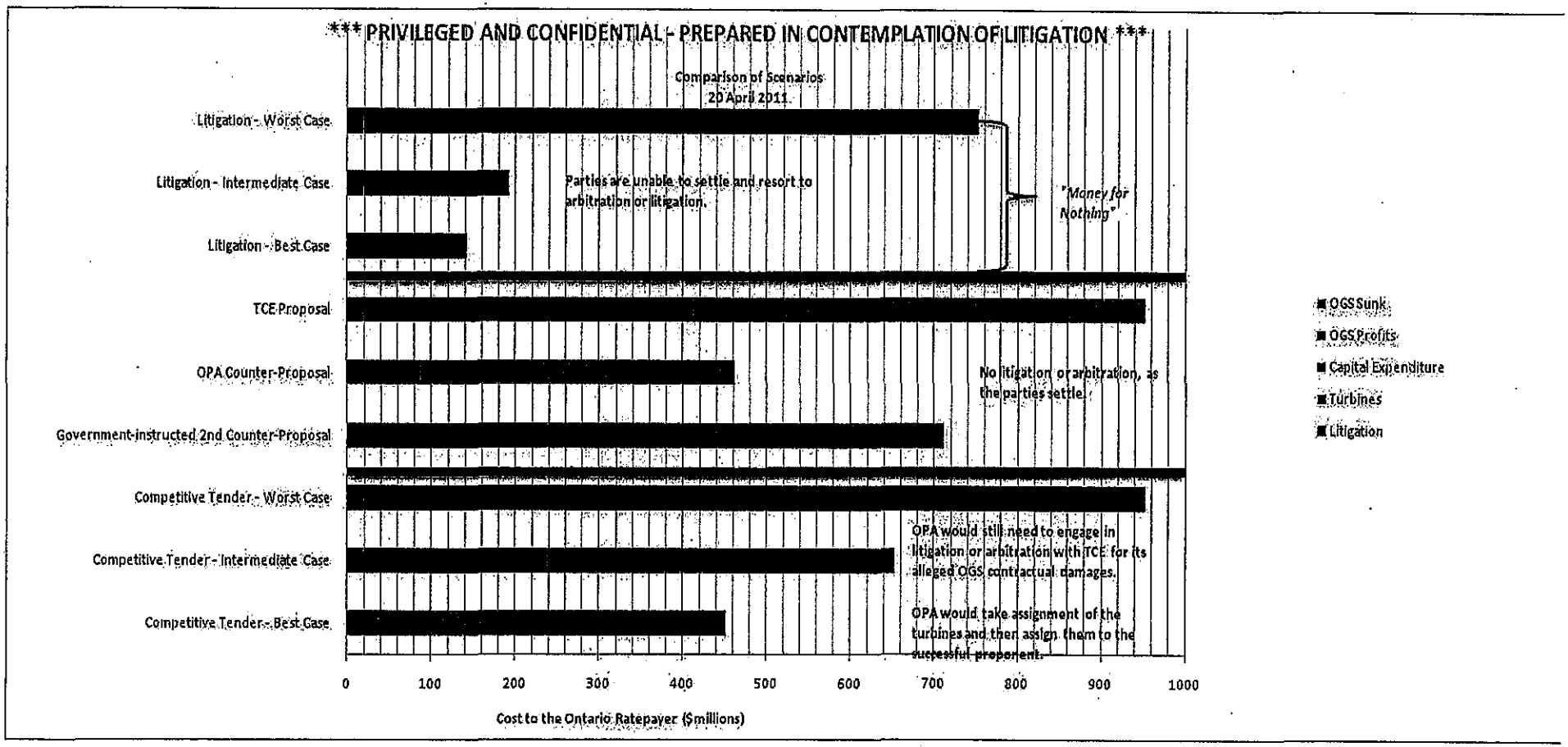
\F–P Market Index and 12-month Outlook

Market Index

2005	2006	2007	2008	Q1 2009	Q2 2009	Q3 2009	Q4 2009	Q1 2010
159	189	201	311	222	222	214	207	218
141	188	231	235	228	220	220	220	220
160	168	195	216	213	213	198	198	198
122	134	140	149	146	146	147	147	148
173	320	331	270	188	209	213	234	246
137	156	165	176	167	167	167	165	167
140	217	339	296	292	288	280	278	278
117	135	163	175	175	172	168	165	161
129	142	150	167	167	164	162	160	160
153	365	753	559	548	542	537	537	537
152	177	191	199	199	194	189	185	180
151	178	199	230	217	217	212	206	204
136	181	233	224	213	214	213	213	215
135	164	177	189	174	175	174	174	176
137	164	186	195	182	180	182	182	182
132	166	183	195	176	181	176	176	176
135	163	174	185	172	172	172	172	174
137	196	282	256	248	250	248	248	251
150	180	197	225	198	202	198	194	192

! Review—Extended Glide.

Q2 2010	Q3 2010	Q3 2011
233	224	213
220	223	225
198	198	202
148	150	153
239	243	251
171	168	170
278	275	272
158	157	153
159	157	156
542	537	532
173	167	159
204	202	198
215	215	217
176	176	176
182	181	181
176	174	174
174	174	176
251	251	253
192	190	187


*** PRIVILEGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION OF LITIGATION ***
Comparison of Scenarios
20 April 2011
Litigation - Worst Case
Litigation - Intermediate Case
Litigation - Best Case
TCE Proposal
OPA Counter-Proposal
Government-instructed 2nd Counter-Proposal
Competitive Tender - Worst Case
Competitive Tender - Intermediate Case
Competitive Tender - Best Case
Parties are unable to settle and resort to arbitration or litigation.
"Money for Nothing"
No litigation or arbitration, as the parties settle.
OPA would still need to engage in litigation or arbitration with TCE for its alleged OGS contractual damages.
OPA would take assignment of the turbines and then assign them to the successful proponent.
0
100
200
300
400
500
600
700
800
900
1000
Cost to the Ontario Ratepayer ($millions)
OGS Sunk
OGS Profits
Capital Expenditure
Turbines
Litigation

Crystal Pritchard

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

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

Sent from my BlackBerry device on the Rogers Wireless Network

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

PRIVILEDGED AND CONFIDENTIAL - PREPARED IN CONTEMPLATION ON LITIGATION

Jim,

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Please let me know if you need anything else.

Jo

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

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

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

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From: James Hinds [mailto:jim hinds@irish-line.com]
Sent: Martes, 21 de Junio de 2011 08:51 a.m.
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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Robert Godhue
Sent: Tuesday, June 21, 2011 2:50 PM
To: Michael Lyle
Cc: Nimi Visram
Subject: TCE Memo
Attachments: SWGTA Briefing Note_100913.doc

Is this what you are looking for?

Robert Godhue
Administrative Assistant to
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Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
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BRIEFING NOTE

PRIVILEGED AND CONFIDENTIAL
SOLICITOR AND CLIENT PRIVILEGE

Procurement Issues:

None.

Original procurement was completed properly and OPA obligations under initial procurement/RFP were fully satisfied by the execution of the current SWGTA contract. (This would not, however, prevent someone from commencing litigation for tactical reasons.)

Ability for OPA to Unilaterally Terminate Contract:

Not available.

The OPA may terminate the contract only if there is a Supplier Event of Default. TransCanada has not committed a Supplier Event of Default. As such, no current basis on which to terminate contract.

Damages for a contractual termination by OPA (which would be a contractual breach) estimated at approximately $1.4 billion.

Ability for OPA to negotiate a Termination of the Contract:

Legally possible.

TransCanada would likely seek compensation for termination of contract. Negotiated cost to terminate unknown as this time but would be cheaper than the cost of an OPA contractual breach (both financially and reputationally).

Options to Move Site (with TransCanada continuing as Supplier):

- Use current contract and amend details of Contract Facility (this would be a major/material) Contract Facility Amendment and, would in substance, (i) be tantamount to a new contract and (ii) be tantamount to a sole source procurement of a new facility.

- Negotiate a termination of existing contract and sole source procure TransCanada as the Supplier for the new site. This would be legally possible but would create procurement policy issues and could have other (for example, financial) implications.

Prepared by : Susan Kennedy, Director, Corporate/Commercial Law Group
Date : September 13, 2010

Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, June 21, 2011 4:06 PM
To: Michael Lyle
Subject: TCE Matter - Aird & Berlis Memorandum ....
Attachments: Memo re_ Termination of SWGTA Contract.DOCX

Mike,

This is the only document I can find that refers to the exclusion of any *"special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits ..., loss of use of property or claims of customers or contractors of the Parties for any such damages."*

I wasn't involved in briefing anyone outside the OPA, so I am unaware if the contents of this memorandum was shared with other decision-makers in whole or in summary form.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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AIRD & BERLIS LLP

Barristers and Solicitors

MEMORANDUM

STRICTLY PRIVILEGED AND CONFIDENTIAL

TO: Ontario Power Authority (the "OPA")

FROM: Aird & Berlis LLP

DATE: February 17, 2010

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

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

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I. Introduction

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

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

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

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

II. Executive Summary

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

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

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

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

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

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

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

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

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

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

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

III. Discussion

a. Supplier's contractual remedies for breach by OPA

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

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

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

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

Article 14, Liability and Indemnification, provides:

> 14.1 Exclusion of Consequential Damages
>
> Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits (save and except as provided in section 13.2), loss of use of any property or claims of customers or contractors of the Parties for any such damages

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

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

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

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

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

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

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

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

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

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

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

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

> [122] The first issue, of course, is whether as a matter of interpretation the exclusion clause even applies to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (Hunter, at p. 462). This second issue has to do with contract formation, not breach.
>
> [123] If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Conclusions re: Potential Liability

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

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

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

e. Discriminatory Action

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

> (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a government bill in the Legislative Assembly of Ontario or causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date of the submission of the Proposal in response to the RFP: or
>
> (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier.

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

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

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

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

> 13.2 If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the "Discriminatory Action Compensation") from the Buyer for:
>
> (a) the amount of the increase in the costs that the Supplier would reasonably be expected to incur in respect of Contracted Facility Operation as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first Calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion

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

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

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

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

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

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

Force Majeure is defined in Section 11.3 as:

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

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

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

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

Commercially Reasonable Efforts are defined as meaning:

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

g. Exclusions to Force Majeure

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

1) if the OPA has caused the Force Majeure by its own fault or negligence (s. 11.2(a)); and

2) if and to the extent the OPA has not used Commercially Reasonable Efforts to remedy or remove the Force Majeure.

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

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

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

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

It is an open question whether the OPA would be considered equivalent to the Ministry if a Provincial permit were denied. The Supplier may raise arguments that the OPA and the Ontario Ministry are so closely related that they should be treated as a single entity for the purposes of relying on Force Majeure to cancel the contract. There may be other administrative law issues that are raised if an Ontario Ministry were to deny a permit, rather than the arms-length actions of a third party. Our advice is to assume that it is necessary that a third party block the issuance of a permit to ensure that section11.3(h) is available to the OPA.

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

j. Quantum of Potential Damages

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

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

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

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

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

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, July 13, 2011 8:20 PM
To: Michael Killeavy
Subject: TCE
Attachments: TCEsettlement.docx

See attached.

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

Terms

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

Arbitration

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

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, July 13, 2011 9:39 PM
To: Michael Killeavy
Subject: Re: TCE

Agreed

From: Michael Killeavy
Sent: Wednesday, July 13, 2011 09:38 PM
To: Michael Lyle
Subject: Re: TCE

This looks good to me. I want to brief Osler before sending this. I think they need the context. Are you alright with this approach?

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

From: Michael Lyle
Sent: Wednesday, July 13, 2011 08:20 PM
To: Michael Killeavy
Subject: TCE

See attached.

Michael Lyle
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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: Nimi Visram
Sent: Thursday, July 14, 2011 2:39 PM
To: Michael Lyle
Cc: Nimi Visram
Subject: FW: TCE Potential Litigation

Mike, this dropped of my radar last week when finalizing the board material.

We have the information extracted from emails. Attached is the hyperlink. Please let me know if you need a further search done.

F:\OPA FILE SHARING\Legal, Regulatory & Aboriginal Affairs\Legal\New Folder

Nimi

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

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From: Paul Schofield
Sent: June 29, 2011 12:37 PM
To: Nimi Visram
Subject: RE: TCE Potential Litigation

I started to extract individual mails for you from the pst files. In the same location there will be a folder for each user as I extract them....

From: Nimi Visram
Sent: Wednesday, June 29, 2011 10:22 AM
To: Paul Schofield
Subject: RE: TCE Potential Litigation

Thank you Paul. Not sure what I'm doing wrong, but each folder I open is blank. Can I call you about how to do this.

thnx

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Paul Schofield
Sent: June 29, 2011 10:05 AM
To: Nimi Visram
Subject: RE: TCE Potential Litigation

Ok, they are there for you.

They are .pst files, basically a filtered backup of the users mailbox. You can open them in outlook, click on file, then select open, then choose Outlook Data File then select the .PST file you want to open and click ok. It will then appear as Personal Folders in the Mail Folders window in Outlook. The users folder structure has been preserved, so when you

expand the Personal Folders you will have to click on some of the subfolders to access all the messages. Sent items and Deleted items are also there and a good place to look.

I still have the original extracts I did if we need to search on any other keywords.

Paul

From: Nimi Visram
Sent: Wednesday, June 29, 2011 9:58 AM
To: Paul Schofield
Subject: RE: TCE Potential Litigation

If you put them on the F drive – link attached, I'll pull them from there. Are they specific instructions on how to read these files?

F:\OPA FILE SHARING\Legal, Regulatory & Aboriginal Affairs\Legal\New Folder

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Paul Schofield
Sent: June 29, 2011 9:50 AM
To: Nimi Visram; Tim Aliev
Subject: RE: TCE Potential Litigation

Hi Nimi,

I have some PST files with data that matches the filters for you. Is there anywhere specific you would like me to put them?

Paul

From: Nimi Visram
Sent: Wednesday, June 29, 2011 9:35 AM
To: Paul Schofield; Tim Aliev
Subject: RE: TCE Potential Litigation

Following up - do you have any update on this?

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Paul Schofield
Sent: June 17, 2011 8:30 AM
To: Nimi Visram; Tim Aliev
Subject: RE: TCE Potential Litigation

Hi Nimi,

I should have the new results ready for you by the end of day on Monday.

Paul

From: Nimi Visram
Sent: Friday, June 17, 2011 7:52 AM
To: Tim Aliev
Cc: Paul Schofield
Subject: Re: TCE Potential Litigation

Good morning Tim,

No I have not seen the info from the email request sent to Paul on Monday - Paul - unless you've sent the search results directly to Mike Lyle.

Thnx
Nimi
Reply sent from Blackberry

From: Tim Aliev
Sent: Thursday, June 16, 2011 11:55 PM
To: Nimi Visram
Cc: Paul Schofield
Subject: RE: TCE Potential Litigation

Hi Nimi,
Have we provided all the information that you were looking for? Just following up to see if this work item can be closed.
Thank you,
Tim

From: Nimi Visram
Sent: June 7, 2011 3:20 PM
To: Michael Lyle; Paul Schofield
Cc: Tim Aliev; Aaron Cheng; Nimi Visram
Subject: RE: TCE Potential Litigation

Thank you Paul.

Mike: please advise if you would like to review all the emails or if you'd like Paul to sort the emails by specific filters – please advise what filters you would like the emails to be sorted by.

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Paul Schofield
Sent: June 7, 2011 3:14 PM
To: Nimi Visram; Tim Aliev
Cc: Aaron Cheng; Michael Lyle
Subject: RE: TCE Potential Litigation

Hi Nimi,

I have an extract of each users mailbox covering 22/09/2010 – 8/10/2010, I haven't applied any filters at this point, so all mail from that period is captured.

Regards,
Paul

From: Nimi Visram
Sent: Monday, May 30, 2011 12:39 PM
To: Nimi Visram; Tim Aliev
Cc: Paul Schofield; Aaron Cheng; Michael Lyle
Subject: RE: TCE Potential Litigation

Please also include Susan Kennedy

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Nimi Visram
Sent: May 30, 2011 12:13 PM
To: Tim Aliev
Cc: Paul Schofield; Aaron Cheng; Michael Lyle; Nimi Visram
Subject: RE: TCE Potential Litigation

Hello Tim,

OPA Staff emails for review of any material (in subject line or as subject of email) that relate to TCE that should be reviewed for two weeks prior to October 7, 2010. Emails should include both email sent or received at OPA.

Deborah Langelaan
Michael Killeavy
JoAnne Butler
Amir Shalaby

Also include :
Craig.MacLennan@ontario.ca

I will get back to you with another list to search that includes TransCanada.

Nimi Visram | Executive Assistant and Board Coordinator| Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority

---

From: Tim Aliev
Sent: May 30, 2011 9:05 AM
To: Nimi Visram
Cc: Paul Schofield; Aaron Cheng
Subject: FW: TCE Potential Litigation

Hi Nimi,
Just following up about the search. Did you have a chance to get additional detail? Greg is on vacation this week - Paul Schofield is Greg's backup and he will be able to assist you.
Thanks,
Tim

From: Aaron Cheng
Sent: May 26, 2011 10:14 AM
To: Nimi Visram
Cc: Michael Lyle; Kim Marshall; Tim Aliev
Subject: RE: TCE Potential Litigation

Noted – thanks. Tim Aliev will forward you the info shortly.

Aaron Cheng
Director, Information Technology
Ontario Power Authority
416-969-6345

From: Nimi Visram
Sent: May-26-11 10:03 AM
To: Aaron Cheng
Cc: Michael Lyle; Kim Marshall; Nimi Visram
Subject: FW: TCE Potential Litigation

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

Crystal Pritchard

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

Importance: High

David,

Attached please find our briefing materials for next Tuesday afternoon's briefing.

Michael

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

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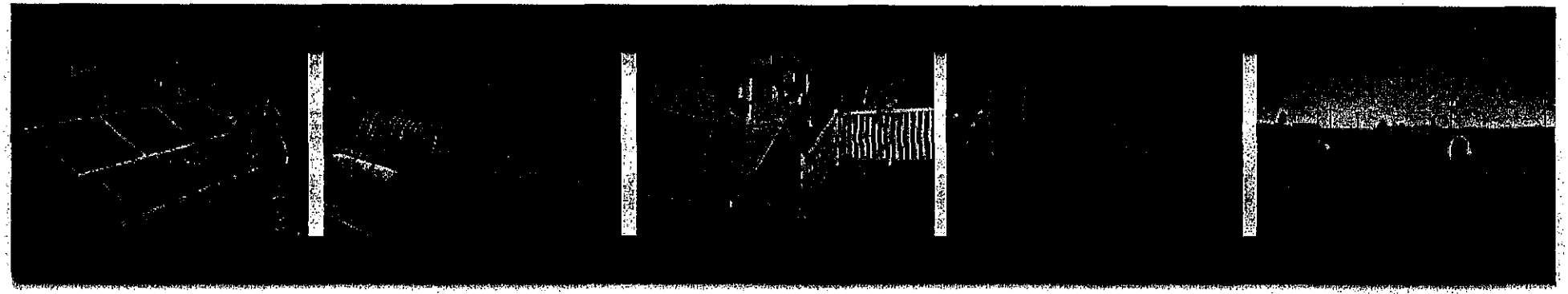

Winding Up of the Oakville Generating Station (OGS) Contract

Background Briefing

July 15, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Southwest Greater Toronto Area (SW GTA) Supply

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

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Southwest Greater Toronto Area (SW GTA) Supply

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

OPA Procurement Process – Ministry Directive

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

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OPA Procurement Process – RFQ & RFP

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

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Procurement Process - Contract

- SW GTA Contract based on Clean Energy Supply (CES) Contract
  - 20 year term
  - Contract-for-Differences based on Deemed Dispatch logic:
    - Generator guaranteed Net Revenue Requirement (NRR)
    - Market Revenues < NRR = Payment from OPA
    - Market Revenues > NRR = Payment from Generator

- TransCanada Energy Ltd. ("TCE") was the succeful proponent in the RFP and was awarded SW GTA CES Contract on October 2009

Opposition to Gas-Fired Generation

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

Opposition to Gas-Fired Generation

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

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Government Cancellation

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

Termination Negotiations

- Subsequent to the announcement of the cancellation of the Oakville GS project the OPA and TCE entered into negotiation to terminate the contract on mutually acceptable terms.

- These discussions began in October 2011 and continued until April 2011.

- All these discussions we on a confidential and without prejudice basis.

TCE Initial Concerns

- TCE identified 3 immediate concerns:
  1. Canadian Securities Administrators (CSA) disclosure requires TCE to report a write down on the project if out-of-pocket costs not resolved by year-end (~$37 MM)
  2. Handling of Mitsubishi (MPS Canada, Inc.) gas turbine order ($210 MM)
  3. Financial value of OGS
- TCE met with Premier's Office and advised that Ontario has other generation needs; TCE is a good counterparty; and asked TCE to be patient and not sue immediately

ONTARIO POWER AUTHORITY

Confidentiality Agreement

- All OPA and TCE discussions related to the termination of the contract have occurred on a "without wrejudice" basis.

- Oct. 8th OPA and TCE entered into Confidentiality Agreement to ensure certain communications remain confidential, without prejudice and subject to settlement privilege.

- This agreement has a term of five years.

MOU

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

Replacement Project

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

Replacement Project Negotiations

- Negotiations focused on the following issues:
  - Capital costs of Replacement Project
  - Financial value of OGS
  - Disposition of Mitsubishi gas turbines
  - Proper allocation of project risk, i.e., who bears the approvals and permitting risk for the Replacement Project.

- The negotiations were premised on the financial value of OGS being "built" into the return that TCE would get from the Replacement Project.

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.

- Third party technical and financial consultants were hired to support this effort.

- The OPA believes that TCE's projected capital expenditure for the Replacement Project is far too high.

- TCE estimated that the CAPEX was on the order of $540 million. Our estimate is $375 million.

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Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

- Cash flows over the term of the contract amount to $262 million. Almost half of the claimed value of OGS comes from a very speculative residual value.

- TCE maintains that the residual value of the OGS after the expiry of the term was high because it would get a replacement contract. We disagree with this assertion.

TCE Current Position on OGS Financial Value

- In February 2011 TCE revised its initial position on the residual value of the OGS.

- It stated that the residual cash flows ought to be discounted at 8%, which would yield a OGS NPV of $385 million and not the earlier claimed $503 million.

- Our independent expert believed that the NPV of OGS could be on the order of $100 million. Given the problems in developing OGS the value is likely much lower.

Ministry of Energy Directive

- OPA has worked closely with Ministry of Energy on the drafting of a Directive to authorize negotiations with TCE for the replacement project
- OPA requires a Directive to enter into the Definitive Agreement
- Ministry wants the Directive to be silent on including the financial value of the OGS Contract into the revenue requirement for the replacement project
- Directive remains outstanding

Settlement Proposals

- March 10th OPA received TCE's Potential Project Pricing and Terms Proposal
  - Commercial parameters for the proposed peaking plant along with proposed revisions to the peaking contract
- TCE proposing to pass through majority of risk to Ontario ratepayer
- OPA retained Financial Consultant to assist with due diligence of TCE's Proposal
- March 28th OPA made a counter-proposal to TCE
- April 6th TCE rejected OPA's counter-proposal

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Settlement Proposals

- April 21st OPA made Government-instructed Second Counter-Proposal

- April 29th TCE rejected OPA's Government-instructed Second Counter-Proposal

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Comparison of Settlement Proposals

	$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.
	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.
	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.
	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
	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	Amortize over 25 years – no returns	Unknown	$37MM to be audited by Ministry of Finance for substantiation and reasonableness
	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%.
	$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.
	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.
	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.

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Status of Negotiations

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

Arbitration

- Both TCE and OPA have an interest in resolving the dispute by way of arbitration rather than litigation as this could permit a resolution on a confidential basis.

- OPA request for mediation was rejected by TCE. TCE has since proposed arbitration.

- TCE has set out 3 conditions to arbitration:
  - Must include the Crown
  - Must recognize the terms of the OPA October 7 letter
  - Must not be an impediment to TCE participating in future OPA procurements

Litigation

- OPA retained litigation counsel (Osler, Hoskin & Harcourt).

- OPA has not been served with a statement of claim.

Competitive Procurement

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

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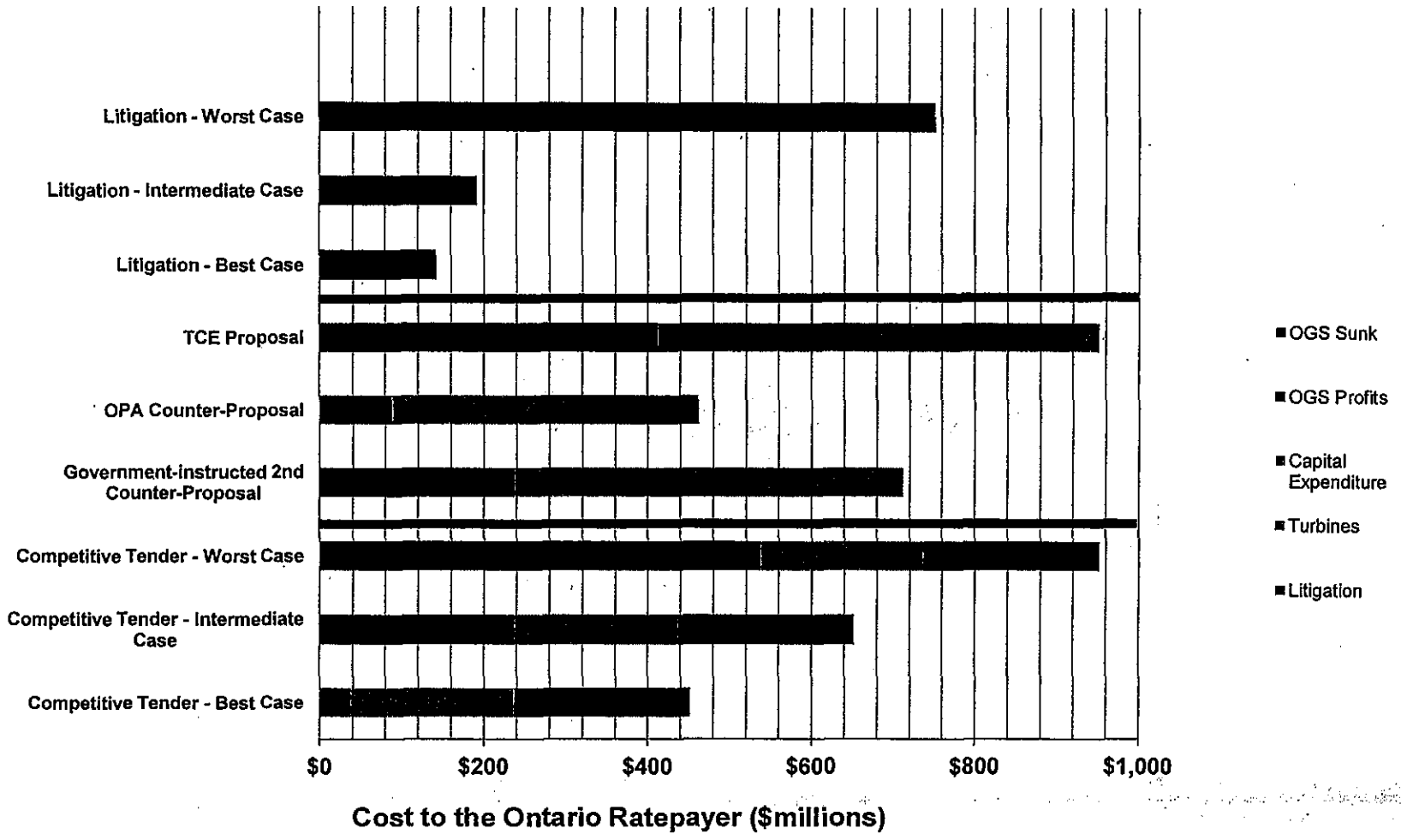
Potential Outcomes

- The following graphic sets out several cases for litigation/arbitration and settlement.

- TCE's proposal to build the Replacement Project costs the ratepayer more than our potentially worst case if we were to go to litigation.

- The cost of the OPA's Government-instructed Second Counter-Proposal is close to the worst case if we were to go to litigation.

Financial Value of Potential Outcomes



ONTARIO POWER AUTHORITY

APPENDIX

ONTARIO POWER AUTHORITY

OPA Negotiating Team

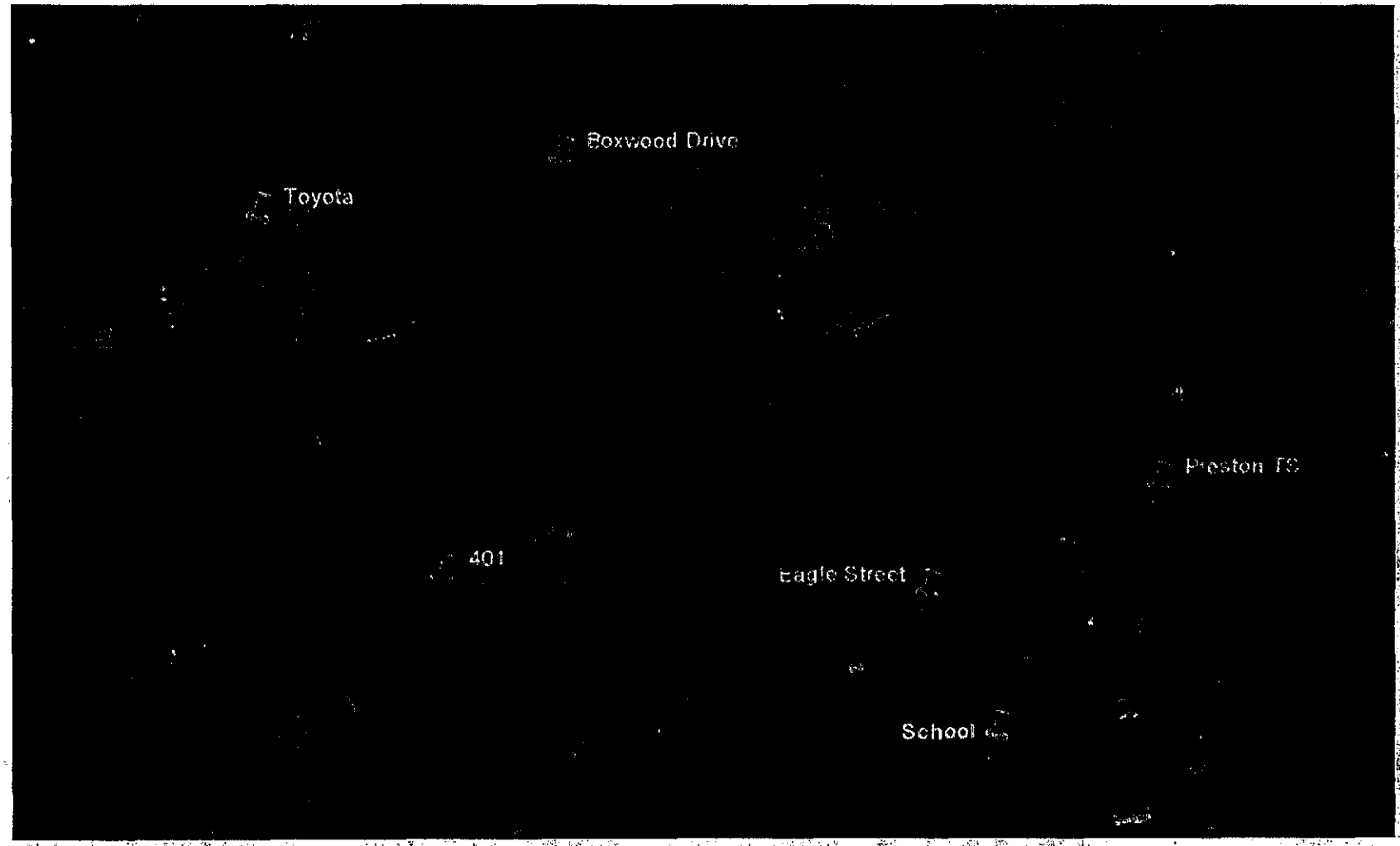
- JoAnne Butler, VP Electricity Resources
- Michael Killeavy, Director Contract Management
- Deborah Langelaan, Manager Contract Management
- Rocco Sebastiano, Partner, Osler, Hoskin & Harcourt LLP
- Elliot Smith, Associate, Osler, Hoskin & Harcourt LLP
- Safouh Soufi, SMS Energy Engineering

TransCanada Energy (TCE) Negotiating Team

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

ONTARIO POWER AUTHORITY

Boxwood Site



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Mitsubishi (MPS) Gas Turbines (GT's)

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

ONTARIO POWER AUTHORITY

Mitsubishi (MPS) Gas Turbines (GT's)

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

Crystal Pritchard

From: Michael Killeavy
Sent: Friday, July 15, 2011 1:09 PM
To: Michael Lyle
Subject: FW: TCE
Attachments: TCEsettlement.docx

Importance: High

Mike,

Here's Osler's comments on the drafting.

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: Smith, Elliot [mailto:ESmith@osler.com]
Sent: July 15, 2011 12:11 PM
To: Michael Killeavy; Ivanoff, Paul; Sebastiano, Rocco
Subject: RE: TCE

Michael,
Please find attached our comments on the revised language you sent us. Note we marked up a third paragraph which dealt with the same substance as the two paragraphs you had marked up.

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: Thursday, July 14, 2011 1:18 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Subject: Fw: TCE

In light of today's meeting can you please review the attached revised language for the document provided to you today.

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, July 13, 2011 08:20 PM
To: Michael Killeavy
Subject: TCE

See attached.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
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Terms

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

Arbitration

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

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

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

Terms of Arbitration

Per the terms of the letter of October 7, 2010 from OPA to TCE, the arbitration shall provide an assessment of any damages to TCE resulting from the cancellation of the OGS project~~determine the reasonable damages which TCE is to be awarded as a result of the termination of the CES Contract~~.

Crystal Pritchard

From: Michael Lyle
Sent: Friday, July 15, 2011 4:09 PM
To: Michael Killeavy
Subject: Re: TCE

Yes please

From: Michael Killeavy
Sent: Friday, July 15, 2011 04:07 PM
To: Michael Lyle
Subject: Re: TCE

Do you want me to send this to David L?

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, July 15, 2011 03:58 PM
To: Michael Killeavy
Subject: Re: TCE

I am fine with this. Doubt that TCE will agree to the last one.

From: Michael Killeavy
Sent: Friday, July 15, 2011 01:08 PM
To: Michael Lyle
Subject: FW: TCE

Mike,

Here's Osler's comments on the drafting.

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: Smith, Elliot [mailto:ESmith@osler.com]
Sent: July 15, 2011 12:11 PM
To: Michael Killeavy; Ivanoff, Paul; Sebastiano, Rocco
Subject: RE: TCE

Michael,
Please find attached our comments on the revised language you sent us. Note we marked up a third paragraph which dealt with the same substance as the two paragraphs you had marked up.

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: Thursday, July 14, 2011 1:18 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot
Subject: Fw: TCE

In light of today's meeting can you please review the attached revised language for the document provided to you today.

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, July 13, 2011 08:20 PM
To: Michael Killeavy
Subject: TCE

See attached.

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

Importance: High

David,

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

Michael

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

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

Arbitration

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

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

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

Terms of Arbitration

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

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Thursday, July 28, 2011 4:19 PM
To: Michael Lyle
Cc: David Livingston
Subject: TCE
Attachments: Draft Arbitration Agreement_FINAL6_IO.DOC

Michael:

Please find attached the latest draft Arbitration Agreement. This is not yet an agreed text with TCE but is getting close. I would be happy to discuss with you at your convenience.

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

NOW THEREFORE, in consideration of the Parties each waiving the right to pursue this matter in the Courts and TCE agreeing to execute an undertaking to waive any right that it may have to pursue the matter further against the OPA, and upon the making of an Interim or Final Award to provide a release to OPA and the Province of Ontario in connection with any claims that it may have, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 The recitals herein and true and correct.

Section 1.2 The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2
ARBITRATOR

Section 2.1 The Arbitration shall be conducted in Toronto, Ontario by ► (the "**Arbitrator**").

ARTICLE 3
JURISDICTION OF ARBITRATOR

Section 3.1 **Final Decision and Award**

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

Section 3.2 **The Disputes**

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

Section 3.3 **Waiver of Defences**

(a) The Respondent agrees to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract. The Respondent's agreement to pay includes:

(i) any liability to the Claimant for the Respondent's own acts and omissions; and,

(ii) the assumption of the liability of the OPA to the Claimant for the termination of the CES Contract.

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

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

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all

government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

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

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated over the twenty year term of the CES Contract undertaking normal operating risks of a generation facility of this nature; and

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

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

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

(iii) each Party reserves its rights to argue whether the Respondent is liable to compensate the Claimant for the Terminal Value of the OGS, if any.

Section 3.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any Interlocutory, Interim or Final Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 3.5 Costs

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

Section 3.5 Section 3.6 Timetable

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

ARTICLE 4
SUBMISSION OF WRITTEN STATEMENTS

Section 4.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before ▶

Section 4.2 Defence

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

Section 4.3 Reply

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

ARTICLE 5
CONDUCT OF THE ARBITRATION

Section 5.1 Documentary Discovery

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

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

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

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

Section 5.2 Evidence by Witness Affidavits

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

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

Section 5.3 Cross Examinations on Affidavits

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

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

Section 5.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) All expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae.

Section 5.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Article 3.5 above.

Section 5.6 Witness Statements

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

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

Section 5.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose,

time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 5.6 **Section 5.8 Applicable Law**

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

Section 5.7 **Section 5.9**

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

Section 5.8 **Section 5.10**

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 6
AWARD

Section 6.1 **Decision(s) Timeline**

Any Interlocutory or Interim Award(s) shall be given in writing, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

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

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

fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 6.2

Subject to the right of appeal in Section 3.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 6.3 [NTD: SUBJECT TO NEGOTIATION BY COMMERCIAL TEAMS]

The Final Award or any interim Final Award may be satisfied by way of an asset transfer equivalent to the cash value of the Final Award or interim Final Award (the "Equivalent Value"). In the event that the Final Award or any interim Final Award is to be satisfied by an asset transfer, the parties will execute and deliver such further documents as may be required to give full effect to such asset transfer. In the event that there is a dispute as to the Equivalent Value, the Equivalent Value shall be determined as follows:

(a) The Parties will each select an appropriately qualified appraiser;

(b) Each appraiser will prepare a valuation of the asset as at the date of the Final Award or interim Final Award;

(c) If the values determined by the appraisers are within 10% of each other, the Equivalent Value shall be the average of the two values;

(d) If the values determined by the two appraisers are not within a range of 10% of each other, the two appraisers shall select a third appraiser who shall determine the Equivalent Value, which shall be a value which is not less than the low appraisal and not more than the high appraisal; and

(e) If the appraisers are unable to agree on a third appraiser, then the appraisals shall be provided to the Arbitrator who shall determine the

Equivalent Value, which shall not be less than the low appraisal and not more than the high appraisal.

(f) Each Party shall bear its own costs associated with the determination of the Equivalent Value in the event of a dispute.

Section 6.4 Release

Upon the making of any Interim or Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondent and OPA in the form attached hereto as Schedule "B".

ARTICLE 7
CONFIDENTIALITY

Section 7.1 Section 7.1

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

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

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendment

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

Section 8.2 Governing Law

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

Section 8.3 Binding the Crown

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

Section 8.4 Extended Meanings

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

Section 8.5 Statutory References

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

Section 8.6 Counterparts

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

Section 8.7 Electronic Execution

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

Section 8.8 Counsel

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

Counsel for the Claimant,
TransCanada Energy Ltd.

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

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

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry - Scott Building
720 Bay Street, 11th

Michael E. Barrack
Tel: (416) 304-1616
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Toronto, ON
M7A 2S9

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

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

Section 8.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By:

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

B E T W E E N:

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO

("HMQ")

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("**TCE**") and HMQ concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and HMQ have entered into an Arbitration agreement dated [July 31st, 2011] (the "**Arbitration Agreement**");

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

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

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

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

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

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an

obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process)

to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION HMQ and OPA and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns **(the "Releasees")** from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

Releasor in relation to or in connection with the CES Contract, the Termination Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the Termination Letter. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of HMQ to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

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

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

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, July 28, 2011 4:36 PM
To: 'Dermot Muir'
Cc: 'David Livingston'
Subject: RE: TCE

Thanks. I will call you tomorrow morning after I review the document this evening.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 28, 2011 4:19 PM
To: Michael Lyle
Cc: David Livingston
Subject: TCE

Michael:

Please find attached the latest draft Arbitration Agreement. This is not yet an agreed text with TCE but is getting close. I would be happy to discuss with you at your convenience.

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, July 28, 2011 4:42 PM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'
Subject: FW: TCE
Attachments: Draft Arbitration Agreement_FINAL6_IO.DOC

As per my voice message with Rocco. Can we set up a call for 9am tomorrow morning? I do not see much point in focusing on the standard arbitration clauses since we are not a party to the arbitration and clearly also they have conceded everything that TCE has asked for on the scope of the arbitration. The key issues from my perspective are: (i) there is some discussion between TCE and IO about whether OPA needs to be a party to the arbitration agreement (I am unclear for what purpose and I would prefer not to be in light of all the circumstances); (ii)Are we satisfied with the form of the release; (iii) repurposing of the turbines (we had broached this subject before with David Livingston but clearly it does not appear in the document). I am sure that you have lots of questions and I will provide more context on the phone call.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 28, 2011 4:19 PM
To: Michael Lyle
Cc: David Livingston
Subject: TCE

Michael:

Please find attached the latest draft Arbitration Agreement. This is not yet an agreed text with TCE but is getting close. I would be happy to discuss with you at your convenience.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8

(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

NOW THEREFORE, in consideration of the Parties each waiving the right to pursue this matter in the Courts and TCE agreeing to execute an undertaking to waive any right that it may have to pursue the matter further against the OPA, and upon the making of an Interim or Final Award to provide a release to OPA and the Province of Ontario in connection with any claims that it may have, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 The recitals herein and true and correct.

Section 1.2 The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2
ARBITRATOR

Section 2.1 The Arbitration shall be conducted in Toronto, Ontario by ► (the "**Arbitrator**").

ARTICLE 3
JURISDICTION OF ARBITRATOR

Section 3.1 Final Decision and Award

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

Section 3.2 The Disputes

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

Section 3.3 Waiver of Defences

(a) The Respondent agrees to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract. The Respondent's agreement to pay includes:

(i) any liability to the Claimant for the Respondent's own acts and omissions; and,

(ii) the assumption of the liability of the OPA to the Claimant for the termination of the CES Contract.

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

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

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all

government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

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

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated over the twenty year term of the CES Contract undertaking normal operating risks of a generation facility of this nature; and

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

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

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

(iii) each Party reserves its rights to argue whether the Respondent is liable to compensate the Claimant for the Terminal Value of the OGS, if any.

Section 3.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any Interlocutory, Interim or Final Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 3.5 Costs

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

Section 3.5 Section 3.6 Timetable

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

ARTICLE 4
SUBMISSION OF WRITTEN STATEMENTS

Section 4.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before ▶

Section 4.2 Defence

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

Section 4.3 Reply

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

ARTICLE 5
CONDUCT OF THE ARBITRATION

Section 5.1 Documentary Discovery

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

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

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

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

Section 5.2 Evidence by Witness Affidavits

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

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

Section 5.3 Cross Examinations on Affidavits

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

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

Section 5.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) All expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae.

Section 5.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Article 3.5 above.

Section 5.6 Witness Statements

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

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

Section 5.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose,

time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 5.6 **Section 5.8 Applicable Law**

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

Section 5.7 **Section 5.9**

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

Section 5.8 **Section 5.10**

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 6
AWARD

Section 6.1 **Decision(s) Timeline**

Any Interlocutory or Interim Award(s) shall be given in writing, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

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

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

fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 6.2

Subject to the right of appeal in Section 3.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 6.3 [NTD: SUBJECT TO NEGOTIATION BY COMMERCIAL TEAMS]

The Final Award or any interim Final Award may be satisfied by way of an asset transfer equivalent to the cash value of the Final Award or interim Final Award (the "Equivalent Value"). In the event that the Final Award or any interim Final Award is to be satisfied by an asset transfer, the parties will execute and deliver such further documents as may be required to give full effect to such asset transfer. In the event that there is a dispute as to the Equivalent Value, the Equivalent Value shall be determined as follows:

(a) The Parties will each select an appropriately qualified appraiser;

(b) Each appraiser will prepare a valuation of the asset as at the date of the Final Award or interim Final Award;

(c) If the values determined by the appraisers are within 10% of each other, the Equivalent Value shall be the average of the two values;

(d) If the values determined by the two appraisers are not within a range of 10% of each other, the two appraisers shall select a third appraiser who shall determine the Equivalent Value, which shall be a value which is not less than the low appraisal and not more than the high appraisal; and

(e) If the appraisers are unable to agree on a third appraiser, then the appraisals shall be provided to the Arbitrator who shall determine the

Equivalent Value, which shall not be less than the low appraisal and not more than the high appraisal.

(f) Each Party shall bear its own costs associated with the determination of the Equivalent Value in the event of a dispute.

Section 6.4 Release

Upon the making of any Interim or Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondent and OPA in the form attached hereto as Schedule "B".

ARTICLE 7
CONFIDENTIALITY

Section 7.1 Section 7.1

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

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

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendment

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

Section 8.2 Governing Law

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

Section 8.3 Binding the Crown

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

Section 8.4 Extended Meanings

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

Section 8.5 Statutory References

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

Section 8.6 Counterparts

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

Section 8.7 Electronic Execution

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

Section 8.8 Counsel

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

Counsel for the Claimant,
TransCanada Energy Ltd.

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

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

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th

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

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

Toronto, ON
M7A 2S9

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

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

Section 8.9 **Notices**

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By:

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

B E T W E E N:

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO

("HMQ")

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("**TCE**") and HMQ concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and HMQ have entered into an Arbitration agreement dated [July 31st, 2011] (the "**Arbitration Agreement**");

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

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

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

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

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

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an

obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process)

to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

•

Per:_____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION HMQ and OPA and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns **(the "Releasees")** from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

Releasor in relation to or in connection with the CES Contract, the Termination Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the Termination Letter. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of HMQ to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

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

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

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Thursday, July 28, 2011 8:47 PM
To: Michael Lyle
Cc: Sebastiano, Rocco
Subject: RE: TCE
Attachments: WSComparison_V1-v2.pdf

Mike,
Please see the attached mark-up of the draft Release.
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: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, July 28, 2011 4:42 PM
To: Sebastiano, Rocco; Ivanoff, Paul
Subject: FW: TCE

As per my voice message with Rocco. Can we set up a call for 9am tomorrow morning? I do not see much point in focusing on the standard arbitration clauses since we are not a party to the arbitration and clearly also they have conceded everything that TCE has asked for on the scope of the arbitration. The key issues from my perspective are: (i) there is some discussion between TCE and IO about whether OPA needs to be a party to the arbitration agreement (I am unclear for what purpose and I would prefer not to be in light of all the circumstances); (ii)Are we satisfied with the form of the release; (iii) repurposing of the turbines (we had broached this subject before with David Livingston but clearly it does not appear in the document). I am sure that you have lots of questions and I will provide more context on the phone call.

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
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From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 28, 2011 4:19 PM
To: Michael Lyle
Cc: David Livingston
Subject: TCE

Michael:

Please find attached the latest draft Arbitration Agreement. This is not yet an agreed text with TCE but is getting close. I would be happy to discuss with you at your convenience.

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (the "HMQ") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (**"CES Contract"**) [NTD: HMQ is not a party to the CES Contract. Is OPA to be referred to here as well as agreeing to settle?] and the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract [NTD: "termination" has not been admitted by the OPA. In any event, it is not necessary to describe it as a Termination Letter in the Release. Why not just refer to the letter from the OPA to TCE as the October 7th Letter; there is no reason to cast it as a "termination" letter in the Release] and acknowledged that TCE was entitled to its reasonable damages [NTD: it is not necessary to describe this as an acknowledgement to damages, particularly when in the latter part of this draft Release there is an acknowledgement that liability is not admitted] (the "Termination Letter") [NTD: call it the "October 7th Letter" instead of the Termiantion Letter];

IN CONSIDERATION of the payment of the settlement amount agreed by the parties [NTD: which "parties"? do they mean to include OPA?] for all claims arising from the CES Contract and the Termination Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] [NTD: What is the consideration being given from the OPA in connection with this Release?] and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and HMQ pursuant to an Arbitration Agrement dated ►, and the payment by **HMQ** [NTD: add the OPA?]to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, administrators,

successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "**Releasor**");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION HMQ and OPA and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns [NTD: HMQ may want to consider whether this list adequately addresses Ministers etc.](the "**Releasees**") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds [NTD: OPA is holding a bond/security re the OGS project? How is that to be handled?], covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor in relation to or in connection with the CES Contract, the Termination Letter [NTD: replace with "October 7th Letter"] or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, and the Termination Letter [NTD: replace with "October 7th Letter"]. Notwithstandnig the foregoing, nothing in this Full and Final Release will limit, restrict or alter the obligations of HMQ to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the Termination Letter [NTD: replace with "October 7th Letter"], but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have

been made at the Arbitration [NTD: add "or in any legal proceeding"] by the Releasor against the Releasees, in respect of ~~and~~or arising from the CES Contract and the Termination Letter [NTD: replace with "October 7th Letter"], and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

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

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

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

IT IS FURTHER UNDERSTOOD AND AGREED that ~~neither the Releasor nor~~none of the Releasees admits liability or obligation of any kind whatsoever in respect of

the ~~CES Contract and the Termination Letter~~matters which are the subject of this Full and Final Release and that such liabiltiy is expressly denied.

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

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

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

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

~~**DATED this** _____ day of _____, 2011.~~ IN WITNESS WHEREOF the Releasor has executed under seal this Full and Final Release by the hand of its properly authorized signing officer this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____ c/s

Title

Crystal Pritchard

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, July 29, 2011 11:42 AM
To: Michael Lyle
Cc: Sebastiano, Rocco
Subject: RE: TCE

Mike,
If the release granted by TCE is under seal and supported by a nominal payment from OPA (such as $5), it is strongly the better view that this should insulate the release from any subsequent challenge by TCE on the grounds that there was no consideration given for it. If, in addition, there is a mutual agreement to terminate the contract with mutual releases and return of security, and it is clear that the release granted by OPA extends to any claim for legal costs that OPA may have had in the litigation that was anticipated based on TCE's notice to the Crown under the *Crown Liability and Proceedings Act*, we think there is no practical risk that TCE's release would be treated as void for want of consideration.

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: Friday, July 29, 2011 9:31 AM
To: Ivanoff, Paul
Cc: Sebastiano, Rocco
Subject: RE: TCE

Assuming for a moment that we can keep the OPA as a non-party to the arbitration, would a mutual agreement to terminate the contract with mutual releases and return of security adequately address your consideration concern?

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: July 28, 2011 8:47 PM
To: Michael Lyle
Cc: Sebastiano, Rocco
Subject: RE: TCE

Mike,
Please see the attached mark-up of the draft Release.
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: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, July 28, 2011 4:42 PM
To: Sebastiano, Rocco; Ivanoff, Paul
Subject: FW: TCE

As per my voice message with Rocco. Can we set up a call for 9am tomorrow morning? I do not see much point in focusing on the standard arbitration clauses since we are not a party to the arbitration and clearly also they have conceded everything that TCE has asked for on the scope of the arbitration. The key issues from my perspective are: (i) there is some discussion between TCE and IO about whether OPA needs to be a party to the arbitration agreement (I am unclear for what purpose and I would prefer not to be in light of all the circumstances); (ii)Are we satisfied with the form of the release; (iii) repurposing of the turbines (we had broached this subject before with David Livingston but clearly it does not appear in the document). I am sure that you have lots of questions and I will provide more context on the phone call.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
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From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 28, 2011 4:19 PM
To: Michael Lyle
Cc: David Livingston
Subject: TCE

Michael:

Please find attached the latest draft Arbitration Agreement. This is not yet an agreed text with TCE but is getting close. I would be happy to discuss with you at your convenience.

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

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

We can use the Monday slot to provide information to Board on TCE . We can keep the Wednesday slot for decision on TCE if it suits

Jim Hinds
(416) 524-6949

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

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

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

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

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

Mike,

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

Thanks.

David

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

Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

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

Regards

Dermot

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

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Saturday, July 30, 2011 11:24 AM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Michael:

Would the following work for you?

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

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Saturday, July 30, 2011 9:51 AM
To: Dermot Muir
Subject: Re: Arbitration Agreement

Sure

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Saturday, July 30, 2011 09:37 AM
To: Michael Lyle
Subject: Re: Arbitration Agreement

Does 11:00 work?

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Dermot Muir
Sent: Sat Jul 30 09:26:08 2011
Subject: Re: Arbitration Agreement

Let me know when is a good time this morning to give you a call.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Friday, July 29, 2011 08:13 PM
To: Michael Lyle
Cc: David Livingston <David.Livingston@infrastructureontario.ca>
Subject: Re: Arbitration Agreement

Thanks Michael

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Dermot Muir
Cc: David Livingston
Sent: Fri Jul 29 20:11:38 2011
Subject: Re: Arbitration Agreement

I have forwarded this to Colin as per your request. I am on the road right now to a family wedding so I will not be able to get back to you tonight but will look at it first thing tomorrow morning. I will be back in my office by mid Sunday afternoon for rest of weekend on another matter so will be easy to reach then.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Friday, July 29, 2011 07:18 PM
To: Michael Lyle
Cc: David Livingston <David.Livingston@infrastructureontario.ca>
Subject: FW: Arbitration Agreement

Michael:

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

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Sunday, July 31, 2011 11:23 AM
To: Michael Lyle
Subject: Re: Arbitration Agreement

Michael:

David has suggested that we have a chat about the business terms.

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Subject: Re: Arbitration Agreement

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Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 12:27 PM
To: 'Dermot.Muir@infrastructureontario.ca'
Subject: Re: Arbitration Agreement

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SOLICITOR/CLIENT PRIVILEGE

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Sent: Sunday, July 31, 2011 12:34 PM
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Sent: Sun Jul 31 12:33:08 2011
Subject: Re: Arbitration Agreement

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SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Sunday, July 31, 2011 3:53 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement
Attachments: Draft Arbitration Agreement_FINAL9_IO.docx; Blackline Draft Arbitration Agreement_FINAL8 _IO vs Draft Arbitration Agreement_FINAL9_IO.docx

Michael:

Please find attached the latest draft. This is very close to being in a form that will be accepted by TCE as final. A new confidentiality agreement is being drafted by TCE and I have asked them to ensure that the issue that you raised is addressed. Section 7.3 is still being discussed and should be resolved shortly.

I look forward to speaking to you this evening.

Regards

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SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent to satisfy the Final Award or interim final award by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

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

ARTICLE 8
CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6 Counterparts

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

Section 9.7 Electronic Execution

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

Section 9.8 Counsel

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

Counsel for the Claimant,
TransCanada Energy Ltd.

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

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

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

Counsel for the Respondent,
The Ontario Power Authority

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

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

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

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

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

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

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

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

Title

ONTARIO POWER AUTHORITY

_____

By:

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

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

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

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

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the **"Releasees"**) from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries **howsoever arising which hereto may have been or may hereafter be sustained by the**

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

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

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

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

Style Definition: Heading 2: Tab stops: Not at 1.87"

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 **Waiver of Defences**

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

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

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

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

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

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

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

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

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

(c) each Party reserves its rights to argue whether the Respondent is liable to compensate the Claimant for the ~~Terminal Value of the OGS, if any. [NTD: Terminal value language is still under discussion.]~~ terminal value of the OGS, if any, where terminal value is understood to mean the

economic value of the OGS that may be realized by Claimant in the period after the expiration of the twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 34.5 Costs

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

accounts and the Expenses shall be ultimately determined with reference to the *Rules* and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section ~~3~~4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October ~~31, 2011~~6, 2012

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 **Decision(s) Timeline**

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

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

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

Section 7.2

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

~~Section 7.2 [NTD: SUBJECT TO NEGOTIATION BY COMMERCIAL TEAMS]~~

Section 7.3 ~~Subject~~

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

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(a) Upon the request of the Respondent to satisfy the Final Award or interim final award by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

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

ARTICLE 8
CONFIDENTIALITY

Section ~~7~~8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the

purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

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

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 **Statutory References**

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

Section 9.6 **Counterparts**

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

Section 9.7 **Electronic Execution**

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

Section 9.8 **Counsel**

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

Counsel for the Claimant,
TransCanada Energy Ltd.

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

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

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

Counsel for the Respondent,
The Ontario Power Authority

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

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

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

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

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

Paul A. Ivanoff
Tel: (416) 862-4223
Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 **Notices**

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: Signatory to be determined in consultation with MAG

Title

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ONTARIO POWER AUTHORITY

By: _____

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

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

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

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

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

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

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

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

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 5:50 PM
To: 'Dermot Muir'
Subject: RE: Arbitration Agreement

I am working through this and will have a mark up with comments back in the next couple of hours. In the meantime, with respect to the call with David I am fairly flexible re time. Just give me a 15 minutes heads up.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 31, 2011 3:53 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. This is very close to being in a form that will be accepted by TCE as final. A new confidentiality agreement is being drafted by TCE and I have asked them to ensure that the issue that you raised is addressed. Section 7.3 is still being discussed and should be resolved shortly.

I look forward to speaking to you this evening.

Regards

Dermot

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

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

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Sunday, July 31, 2011 6:16 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement
Attachments: Draft Arbitration Agreement_FINAL10_IO.docx; Blackline Draft Arbitration Agreement_FINAL9 _IO vs Draft Arbitration Agreement_FINAL10_IO.docx

Michael:

Please find attached the latest draft. Two minor changes to 7.3 as noted in the blackline.

I'll be back to you shortly to confirm a time for our conversation.

Regards

Dermot

From: Dermot Muir
Sent: Sunday, July 31, 2011 3:53 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. This is very close to being in a form that will be accepted by TCE as final. A new confidentiality agreement is being drafted by TCE and I have asked them to ensure that the issue that you raised is addressed. Section 7.3 is still being discussed and should be resolved shortly.

I look forward to speaking to you this evening.

Regards

Dermot

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

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

Regards

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent to satisfy the Final Award or interim final award by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

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

ARTICLE 8
CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6 Counterparts

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

Section 9.7 Electronic Execution

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

Section 9.8 Counsel

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

Counsel for the Claimant,
TransCanada Energy Ltd.

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

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

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

Counsel for the Respondent,
The Ontario Power Authority

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

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

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

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

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Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

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

Title

ONTARIO POWER AUTHORITY

_____

By:

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

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

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

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

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

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

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

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the **"Releasees"**) from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries **howsoever arising which hereto may have been or may hereafter be sustained by the**

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

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

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

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

Style Definition: Heading 2: Tab stops: Not at 1.87"

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 **Waiver of Defences**

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 **Decision(s) Timeline**

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent to satisfy the Final Award or interim final award by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

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

ARTICLE 8
CONFIDENTIALITY

Section 8.1

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

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

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

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

Section 9.2 Governing Law

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

Section 9.3 Binding the Crown

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

Section 9.4 Extended Meanings

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

Section 9.5 Statutory References

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

Section 9.6 **Counterparts**

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

Section 9.7 **Electronic Execution**

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

Section 9.8 **Counsel**

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

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
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Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
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Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

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Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: Signatory to be determined in consultation with MAG

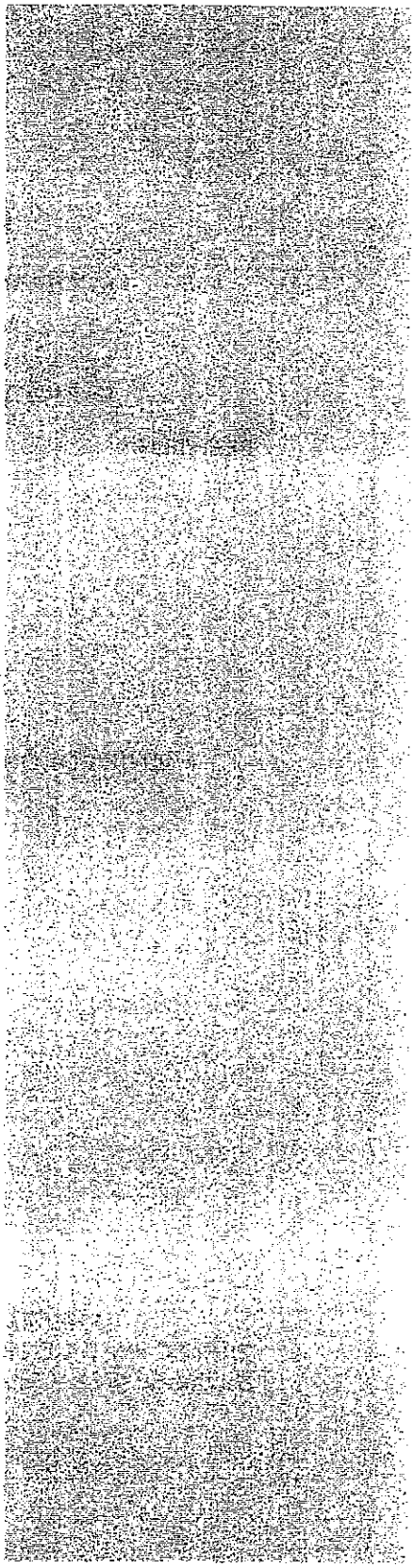
Title

ONTARIO POWER AUTHORITY

_____

By:

Title



SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31, 2011 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the " **Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 6:18 PM
To: 'Dermot Muir'
Subject: RE: Arbitration Agreement

Ok. I have started to insert my comments into your previous draft so please take that into account when you receive it.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 31, 2011 6:16 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. Two minor changes to 7.3 as noted in the blackline.

I'll be back to you shortly to confirm a time for our conversation.

Regards

Dermot

From: Dermot Muir
Sent: Sunday, July 31, 2011 3:53 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

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I look forward to speaking to you this evening.

Regards

Dermot

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

Please find attached the latest version of the arbitration agreement. I have blacklined it to the version circulated last night. If possible I would appreciate speaking to you later this evening or tomorrow once you have had a chance to review. Please feel free to call me on my bb 416-473-5667.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 6:21 PM
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Subject: RE: Arbitration Agreement

This evening may work better as I will then be able to brief my Chair in the morning. I will let you know whether or not I will still be in the office or at home by then.

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Michael is available to speak to us this evening. What time would work for you?

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Sent: Sunday, July 31, 2011 5:50 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

I am working through this and will have a mark up with comments back in the next couple of hours. In the meantime, with respect to the call with David I am fairly flexible re time. Just give me a 15 minutes heads up.

Michael Lyle
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Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Sunday, July 31, 2011 6:22 PM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Ok, thanks. I'll forward the tele-con number.

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Sunday, July 31, 2011 6:21 PM
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Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 7:59 PM
To: 'Dermot Muir'
Subject: RE: Arbitration Agreement
Attachments: Draft Arbitration Agreement_FINAL9_IO(OPA comments).docx

See my comments. Please provide conference call info for 9:30 call.

Michael Lyle
General Counsel and Vice President
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Ontario Power Authority
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SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("**TCE**" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") ~~for the construction~~ with respect to the development and operation of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

Comment [A1]: Better reflects what the contract is about

AND WHEREAS by letter dated October 7, 2010 (the "October 7 letter") the OPA ~~terminated the CES Contract~~ stated that it would like to begin negotiations with TCE to reach mutual agreement to terminate the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondent OPA have mutually agreed to terminate the CES Contract and the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under

section 7 of the *Proceedings Againsnt the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of the mutual agreement to terminate the CES Contract, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Comment [A2]: Is it the intention to over-ride 14.1 in its entirety including to allow for punitive damages?

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 Consideration

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 The Disputes

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 **Waiver of Defences**

(a) The Respondents agree that in light of the October 7 letter they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract which is understood to include the following components:

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the Respondents ~~is~~are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the expiration of the

Comment [A3]: Same comment as earlier re over-ride of 14.1 in its entirety

twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "Expenses"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

Comment [A4]: We are unclear why there is a desire to limit the scope of discovery. A full understanding of TCE's position on damages requires broad disclosure. As TCE is the party with the most information on damages this is clearly a provision that favours them.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

Comment [A5]: Unclear why affidavits necessary. Normal procedure is [illegible]

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Comment [A6]: Significant case with large quantum of damages and TCE with the most information re calculation of damages. This limitation is not appropriate.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an after tax value to TCE, after due consideration for the tax implications of the transaction, equal to or greater than the Final Award [or interim final award] (the "Equivalent Value").

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Comment [A7]: Unclear how this works. Which Respondent? What if award is only ordered against one Respondent?

Comment [A8]: Too short a time period for what could be a very large sum.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8
CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 **Counsel**

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
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Eunice Machado
Tel: (416)601-7562
Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: Signatory to be determined in consultation with MAG

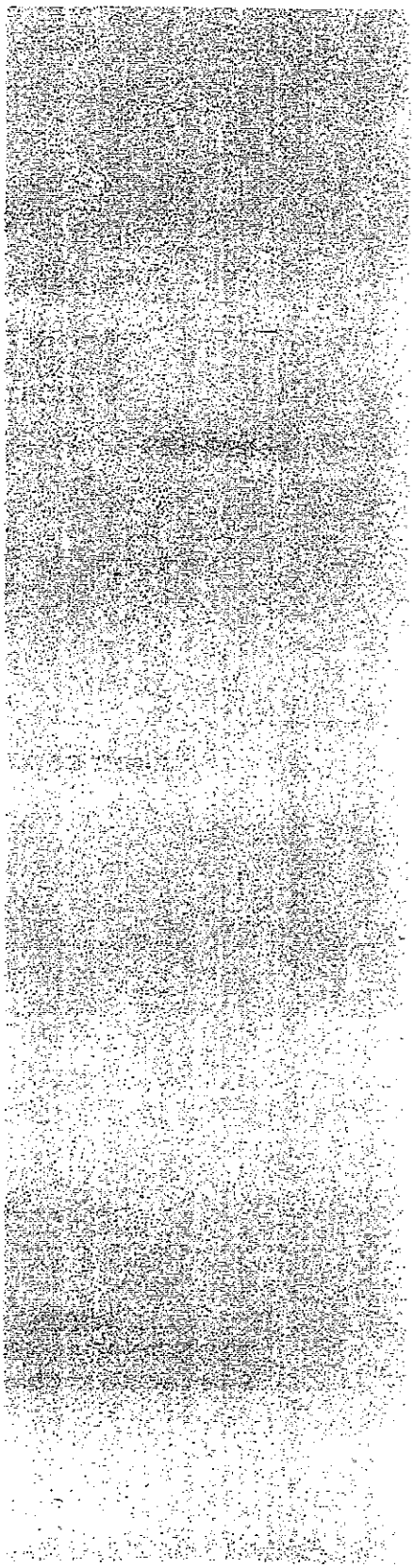
Title

ONTARIO POWER AUTHORITY

_____

By:

Title



SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31st, 2011 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the " **Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

Comment [A9]: Why are legal advisors included?

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 ~~by~~ in which the Ontario Power Authority (the "OPA") stated that it would like to begin negotiations to terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the mutual agreement of TCE and OPA to terminate the CES Contract, the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Arbitration. Notwithstanding the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration or in any legal proceeding by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of ~~and~~ or arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

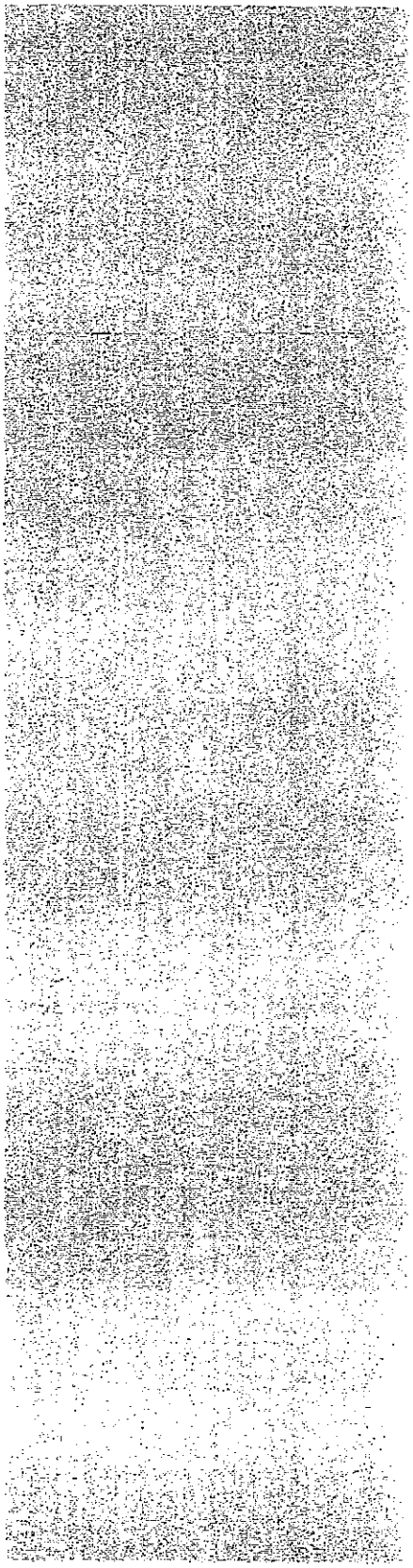
TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title



Crystal Pritchard

From: Michael Lyle
Sent: Sunday, July 31, 2011 8:00 PM
To: 'jim_hinds@irish-line.com'; Colin Andersen; JoAnne Butler; Michael Killeavy
Cc: Susan Kennedy
Subject: TCE
Attachments: Draft Arbitration Agreement_FINAL9_IO(OPA comments).docx

See attached draft of arbitration agreement with OPA comments that has been provided to Infrastructure Ontario.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("TCE" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") ~~for the construction~~ with respect to the development and operation of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

Comment [A1]: Better reflects what the contract is about

AND WHEREAS by letter dated October 7, 2010 (the "October 7 letter") the OPA ~~terminated the CES Contract~~ stated that it would like to begin negotiations with TCE to reach mutual agreement to terminate the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondent OPA have mutually agreed to terminate the CES Contract and the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under

section 7 of the *Proceedings Against the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

Comment [A2]: Is it the intention to over-ride 14.1 in its entirety including to allow for punitive damages?

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of the mutual agreement to terminate the CES Contract, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 Consideration

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 The Disputes

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 Waiver of Defences

(a) The Respondents agree that in light of the October 7 letter they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.[illegible] of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract which is understood to include the following components:

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the Respondents ~~is~~are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the expiration of the

Comment [A3]: Same comment as earlier re over-ride of 14.1 in its entirety

twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "Expenses"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

Comment [A4]: We are unclear why there is a desire to limit the scope of discovery. A full understanding of TCE's position on damages requires broad disclosure. As TCE is the party with the most information on damages this is clearly a provision that favours them.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

Comment [A5]: Unclear why affidavits [illegible] process. No normal procedure [illegible]

Comment [A6]: Significant case with large quantum of damages and TCE with the most information re calculation of damages. This [illegible] limitation is not appropriate [illegible]

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an after tax value to TCE, after due consideration for the tax implications of the transaction, equal to or greater than the Final Award [or interim final award] (the "Equivalent Value").

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondent demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Comment [A7]: Unclear how this works. Which Respondent? What if award is only ordered against one respondent?

Comment [A8]: Too short a time period for what could be a very large sum.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8
CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 **Counsel**

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
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Eunice Machado
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Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: Signatory to be determined in consultation with MAG

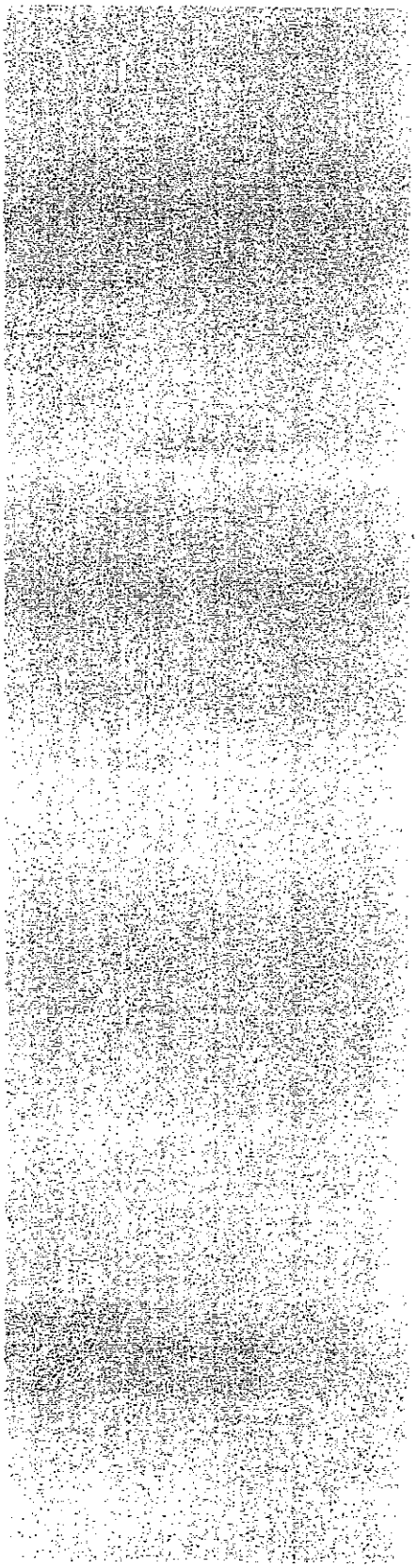
Title

ONTARIO POWER AUTHORITY

_____

By:

Title



SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31st, 2011 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the " **Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

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the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

Comment [A9]: Why are legal advisors included?

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 ~~by~~ in which the Ontario Power Authority (the "OPA") stated that it would like to begin negotiations to terminate~~d~~ the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the mutual agreement of TCE and OPA to terminate the CES Contract, the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Arbitration. Notwithstanding the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration or in any legal proceeding by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of ~~and~~ or arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

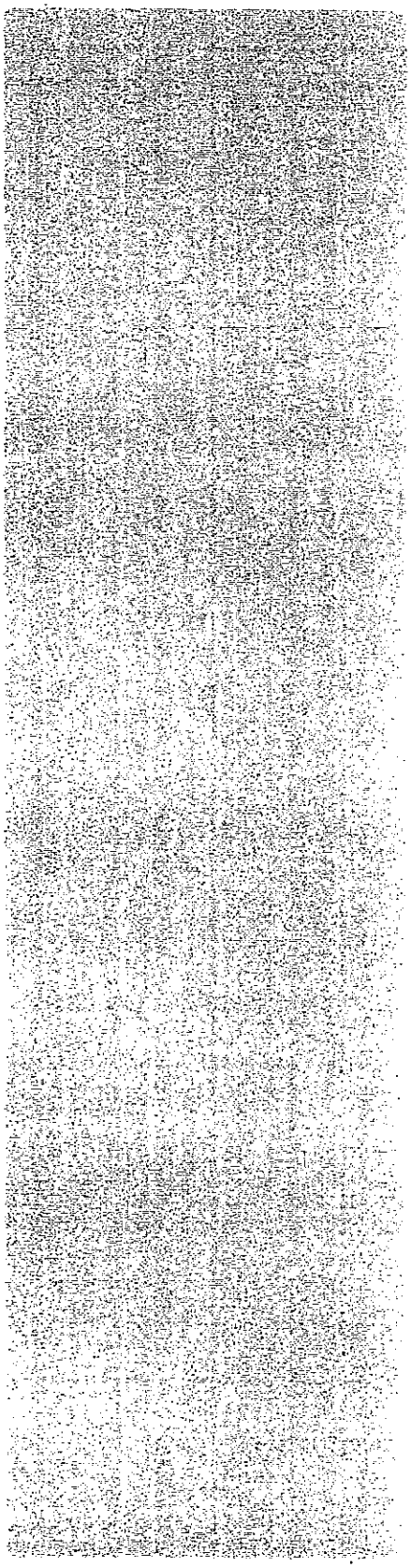
TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title



Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Sunday, July 31, 2011 8:08 PM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Thanks Michael

Here is the call in number:

I included it in the meeting invitation that I have forwarded again.

Local dial in number (416)-212-8014
Toll free dial in number (Canada and US) (866) 500-5845
7 digit Conference ID(participant access code)) 4570737
4 digit Moderator PIN* (chair passcode) 1028

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Sunday, July 31, 2011 7:59 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

See my comments. Please provide conference call info for 9:30 call.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 31, 2011 6:22 PM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Ok, thanks. I'll forward the tele-con number.

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Sunday, July 31, 2011 6:21 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

This evening may work better as I will then be able to brief my Chair in the morning. I will let you know whether or not I will still be in the office or at home by then.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 31, 2011 6:19 PM
To: Michael Lyle
Subject: FW: Arbitration Agreement

Michael:

Can you please let me know which time works best for you.

Thanks

Dermot

From: David Livingston
Sent: Sunday, July 31, 2011 6:16 PM
To: Dermot Muir
Subject: Re: Arbitration Agreement

We are just cooking dinner for 10 so I will not be free now for a while. I can talk say at 9:30 or tomorrow am say 9:30. Please let me know which is best.

From: Dermot Muir
To: David Livingston
Sent: Sun Jul 31 18:01:18 2011
Subject: FW: Arbitration Agreement

David:

Michael is available to speak to us this evening. What time would work for you?

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Sunday, July 31, 2011 5:50 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

I am working through this and will have a mark up with comments back in the next couple of hours. In the meantime, with respect to the call with David I am fairly flexible re time. Just give me a 15 minutes heads up.

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

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.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: July 31, 2011 3:53 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. This is very close to being in a form that will be accepted by TCE as final. A new confidentiality agreement is being drafted by TCE and I have asked them to ensure that the issue that you raised is addressed. Section 7.3 is still being discussed and should be resolved shortly.

I look forward to speaking to you this evening.

Regards

Dermot

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

Please find attached the latest version of the arbitration agreement. I have blacklined it to the version circulated last night. If possible I would appreciate speaking to you later this evening or tomorrow once you have had a chance to review. Please feel free to call me on my bb 416-473-5667.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Monday, August 01, 2011 1:03 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement
Attachments: Blackline Draft Arbitration Agreement_FINAL10_IO vs Draft Arbitration Agreement_FINAL11_IO.docx; Draft Arbitration Agreement_FINAL11_IO.docx

Michael:

As discussed I have made a few corrections as attached.

Regards

Dermot

From: Dermot Muir
Sent: Sunday, July 31, 2011 6:16 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. Two minor changes to 7.3 as noted in the blackline.

I'll be back to you shortly to confirm a time for our conversation.

Regards

Dermot

From: Dermot Muir
Sent: Sunday, July 31, 2011 3:53 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest draft. This is very close to being in a form that will be accepted by TCE as final. A new confidentiality agreement is being drafted by TCE and I have asked them to ensure that the issue that you raised is addressed. Section 7.3 is still being discussed and should be resolved shortly.

I look forward to speaking to you this evening.

Regards

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To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

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Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("**TCE**" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") for the construction of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

AND WHEREAS by letter dated October 7, 2010 the OPA terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under section 7 of the *Proceedings Againsnt the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the

damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 Consideration

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 Final Decision and Award

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 The Disputes

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 Waiver of Defences

(a) The Respondents agree that they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract which is understood to include the following components:

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the ~~Respondent is~~Respondents are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the

expiration of the twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "**Expenses**"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The ~~Respondent~~Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the ~~Statement~~Statements of Defence.

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7
AWARD

Section 7.1 **Decision(s) Timeline**

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications of the transaction, equal to the Final Award [or interim final award] (the "Equivalent Value").

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the ~~Respondent~~Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8
CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 **Counsel**

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
Tel: (416) 601-7887
Email: john.kelly@ontario.ca

Eunice Machado
Tel: (416)601-7562
Fax: (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: Signatory to be determined in consultation with MAG

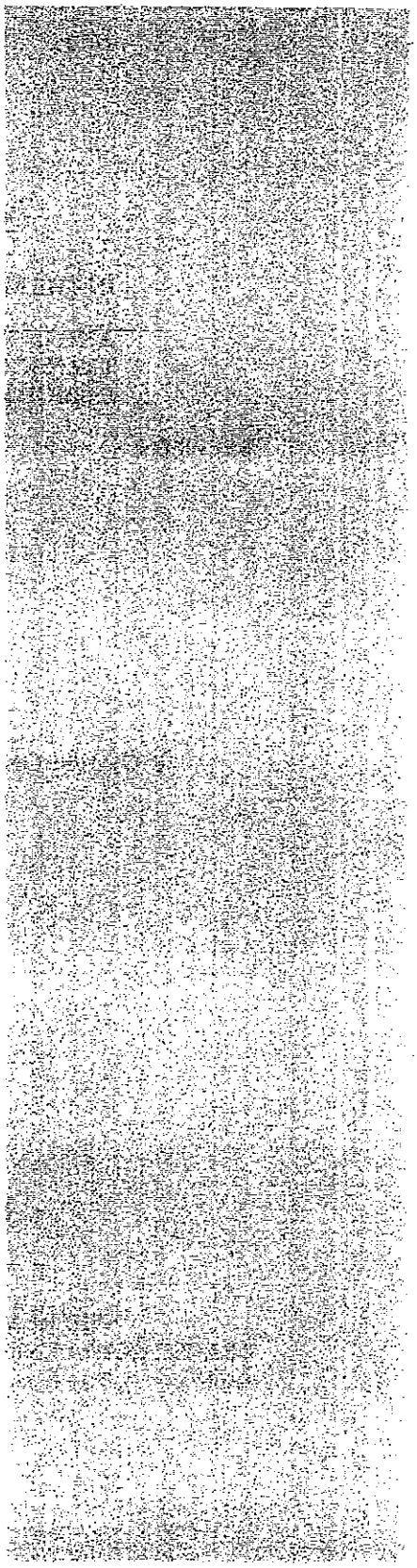
Title

ONTARIO POWER AUTHORITY

_____

By:

Title



SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31, 2014 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the " **Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

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Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

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IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("**TCE**" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") for the construction of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

AND WHEREAS by letter dated October 7, 2010 the OPA terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under section 7 of the *Proceedings Againsnt the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the

damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 **Consideration**

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act,* and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act.*

Section 4.2 **The Disputes**

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 Waiver of Defences

(a) The Respondents agree that they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract which is understood to include the following components:

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the Respondents are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the expiration of the

twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "**Rules**")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the **"Expenses"**), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner and in accordance with the Hearing Procedure. A court reporter will be present at

each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE . Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications of the transaction, equal to the Final Award [or interim final award] (the "Equivalent Value").

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8
CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 Counsel

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry - Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
Tel: (416) 601-7887
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Eunice Machado
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Fax: (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 Notices

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: **Signatory to be determined in consultation with MAG**

Title

ONTARIO POWER AUTHORITY

_____

By:

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("**TCE**") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31st, 2011 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "**Representatives**"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the **"Respondents"**) have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") and the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract and the October 7 Letter [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the 'Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the **"Releasor"**);

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the **"Releasees"**) from all manner of actions, causes of action, suits, proceedings, debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the

Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract and the October 7 Letter, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract and the October 7 Letter, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract and the October 7 Letter or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or

proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract and the October 7 Letter which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract and the October 7 Letter.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

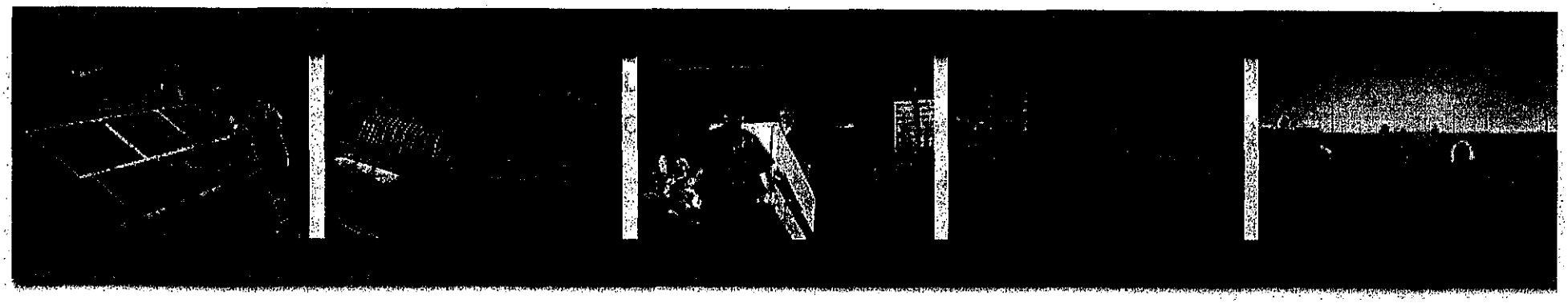
Crystal Pritchard

From: Michael Lyle
Sent: Monday, August 01, 2011 6:26 PM
To: JoAnne Butler; Michael Killeavy; Amir Shalaby
Subject: Draft Deck
Attachments: TCEBoard presentationAug211.ppt

See attached for purposes of discussion tomorrow 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

ONTARIO POWER AUTHORITY



Arbitration Agreement with TCE

Presentation to Board of Directors Prepared in Contemplation of Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

- TCE served Crown with notice of proceedings against the Crown in late April and clock started to tick on 60 day period before TCE could commence litigation against Government
- Subsequently, TCE advised OPA counsel that they had three core demands in order to agree to arbitration
  - » Scope of arbitration limited only to appropriate quantum of damages
  - » Crown and OPA both parties to the arbitration
  - » No impact on ability of TCE to participate in future OPA procurement processes
- Of these three, the limitation on scope of arbitration is by far the most important from TCE's perspective

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE

- Issue was elevated in Government and Infrastructure Ontario ("IO") was asked to take a lead role in negotiations

- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

- Commercial Deal between OPG and TCE where TCE would take ownership stake in Lennox
- Provision also made for subsequent negotiations on potential joint ventures between TCE and OPG on conversion of a coal unit to gas and development of new gas plant
- If commercial deal not finalized by end of August, then matters determined by way of binding arbitration in accordance with the arbitration agreement
- OPA is a party to proposed arbitration agreement

Arbitration Agreement – OPA Key Concerns

- Characterization of October 7 letter – stated that OPA terminated Oakville contract in this letter
- Scope of arbitration process – limits on arbitration process raises concern about ability to obtain information from TCE
- No acknowledgement may be made of the fact that matter has gone to arbitration

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Monday, August 01, 2011 6:52 PM
To: Michael Lyle
Subject: Re: Arbitration Agreement

Thanks Michael

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Dermot Muir
Sent: Mon Aug 01 17:22:37 2011
Subject: RE: Arbitration Agreement

Ok. One other thing I noted as I was reading s.7.3(a). It refers to assets owned by the Province or an agency of the Province. Please note that ss.53.1(2) of the Electricity Act states that OPG is not an agent of the Crown for any purpose.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: August 1, 2011 3:47 PM
To: Michael Lyle
Subject: Re: Arbitration Agreement

Thanks Michael. Let's talk in the morning. I'm not sure how we can deal with this.

Regards

Dermot

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Dermot Muir
Sent: Mon Aug 01 14:45:26 2011
Subject: RE: Arbitration Agreement

Thanks. I promised to get back to you with respect to the characterization of the letter as a letter which terminated the contract. My client continues to strongly object to this characterization and asserts that the description in the agreement should be consistent with the language of the letter.

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

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.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: August 1, 2011 1:03 PM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

As discussed I have made a few corrections as attached.

Regards

Dermot

From: Dermot Muir
Sent: Sunday, July 31, 2011 6:16 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

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I'll be back to you shortly to confirm a time for our conversation.

Regards

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I look forward to speaking to you this evening.

Regards

Dermot

From: Dermot Muir
Sent: Friday, July 29, 2011 7:19 PM
To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: FW: Arbitration Agreement

Michael:

Please find attached the latest version of the arbitration agreement. I have blacklined it to the version circulated last night. If possible I would appreciate speaking to you later this evening or tomorrow once you have had a chance to review. Please feel free to call me on my bb 416-473-5667.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Tuesday, August 02, 2011 9:55 AM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Michael:

Can we have a quick chat about this? Are you free for a few minutes?

Thanks

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Monday, August 01, 2011 2:45 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

Thanks. I promised to get back to you with respect to the characterization of the letter as a letter which terminated the contract. My client continues to strongly object to this characterization and asserts that the description in the agreement should be consistent with the language of the letter.

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: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
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Subject: RE: Arbitration Agreement

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Toronto, Ontario
M5G 2C8
(416) 325-2316
(416) 263-5914 (fax)
Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 10:18 AM
To: Irene Mauricette; Nimi Visram
Subject: FW:
Attachments: Original TS.pdf; Preferred TS.pdf

Can you print off copies of these for the 10:30 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

From: David Livingston [mailto:David.Livingston@infrastructureontario.ca]
Sent: August 2, 2011 9:38 AM
To: Michael Lyle
Cc: Dermot Muir
Subject: FW:

Michael,

Attached are 2 terms sheets; one reflects the deal the Province was discussing with TCE before OPG was formally involved and the second reflects the deal OPG indicated it was prepared to consider, once they became formally involved. Both term sheets are being seriously considered by TCE and discussions with OPG are actively underway. The term sheets are of course confidential, but may give your Board the background you mentioned they would be looking for. I can talk to them tomorrow at the meeting.

Please let me know if you would like to go through them beforehand.

David

Original
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement

Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

TransCanada Energy Ltd. ("TCE"), Province of Ontario (the "Province") and Ontario Power Authority ("OPA")

Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between OPA and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract") for the OGS.

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement described below, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Binding MOU

A binding MOU incorporating these terms, to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before July 31, 2011.

Arbitration

In the event that all of the definitive agreements contemplated between Ontario Power Generation and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated , and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPA and Ontario Power Generation Inc., to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Objective:	TransCanada Energy Ltd. ("TCE") and Ontario Power Generation Inc. ("OPG"), (together, the "Partners") will work together exclusively using best efforts on thermal generation developments as further described in this Schedule A.

Development A

Joint Venture:	The Partners will form a joint venture, partnership or other tax-favourable structure which will have the exclusive right to work together using best efforts on a gas-fired generation facility (the "Project") at one of OPG's existing thermal sites, or other such sites as the Partners agree, secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will use the turbines and ancillary contracts (the "Turbines") already acquired for the OGS .
Ownership:	The Partners will own the Project on a 50/50 equity basis.
Term:	The Partnership will have 2 years to identify a mutually agreeable project and secure a long-term CES Contract with the OPA or other credit-worthy power purchaser.
Funding:	The Project shall be funded as follows: TCE will transfer Oakville gas turbines and associated contracts to the OPG/TCE joint venture upon execution of a CES Contract for the Project. For the first $[450] million of Project capital cost (including Turbines), TCE shall contribute all funding in the form of the Turbines (with a notional value of $[225] million) and up to $[225] million in cash necessary to complete the Project. Project capital costs over $[450] million shall be funded 50/50 by OPG and TCE. In return for TCE's commitment to fund the Project as set out above, TCE shall acquire all of OPG's equity interest in Portlands Energy Centre Inc. and partnership interest

	in Portlands Energy Centre LP. TCE shall also pay OPG $[100] million - $[50] million on closing and $[50] million on first anniversary of closing.
Closing:	To occur as soon as all third party and government approvals are received.
Termination:	In the event that the Partners are unable to develop the Project and secure the CES Contract using the Turbines by the end of the 2 year period or if the Parties obtain a CES Contract but are unable to construct the Project, then TCE will transfer its interest in the Turbines to OPG for no additional consideration and the joint venture shall terminate.
Return:	The Project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
Definitive Document:	Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement and to close the transaction, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011

Development B

Joint Venture:	The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using best efforts on gas-fired generation facilities at a combination of the Coal Power Facilities listed below that will generate 1,000 MW of power. A project developed pursuant to the "Development A" section above and located at a Coal Power Facility shall not be counted as a project under this section. The Partners will work together on other Coal Power Facility power generation initiatives on a non-exclusive, best efforts basis. Each project will be secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will jointly assume the preliminary feasibility and design work already

	performed on the conversion of the Coal Power Facilities to natural gas fuel.
Coal Power Facilities:	The following three coal generation facilities and sites are owned by OPG: Lambton (950 MW) Nanticoke (4,096 MW) Thunder Bay (303 MW)
Ownership:	50/50
Term:	[10] years, subject to extension by mutual agreement of the Partners, plus the term of any CES Contracts (the "Term").
Funding:	The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.
Return:	Each project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
ROFR:	In the event that the OPG intends to sell, lease or otherwise transfer any direct or indirect interest in any of the Coal Power Facilities, it shall grant TCE the right of first refusal on any third party offer.
Definitive Document:	Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

OPG
Prefiled
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement

Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

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Terms

This Summary sets out the terms on which the Parties have agreed to work together to resolve issues arising from the Minister of Energy's announcement that the Oakville Generating Station ("OGS") would not proceed and the subsequent negotiations between Ontario Power Authority ("OPA ") and TCE to reach a mutual agreement on the termination of the South West GTA, Clean Energy Supply Contract ("CES Contract").

In consideration for TCE not commencing a legal action against the Province and the OPA for their termination of the CES Contract and subject to execution and delivery of the Arbitration Agreement which will include TCE releasing the Province and the OPA from legal action, the Parties shall use commercially reasonable efforts to enter into the transactions described in the attached Schedule A.

Arbitration

In the event that all of the definitive agreements contemplated between OPG and TCE in Schedule A are not fully executed and delivered on or before September 1, 2011, then the amount of damages which TCE is to be awarded as a result of the cancellation of the OGS contract shall be determined by binding arbitration. TCE's damages shall include the anticipated financial value of the CES Contract and shall be determined in the arbitration on the basis that OGS was permitted, constructed and operated and without giving effect to any limitation or exclusionary clauses in the CES Contract. Settlement of damages awarded may be by way of asset transfer.

A binding Arbitration Agreement incorporating these terms, to be based on typical agreements for a transaction of this nature, is to be negotiated in good faith and executed on or before July 31, 2011.

Approvals

The Province will take all actions as may be required to allow it, and to cause OPG to implement the transactions contemplated by this document and attached Schedule.

Schedule A

Summary of Principal Terms for a Partnership Development Agreement between TransCanada Energy Ltd. and Ontario Power Generation Inc.

Development A

Joint Venture	Using the PEC existing Limited Partnership, TCE and OPG will develop further business opportunities relating to OPG's existing Lennox plant and Gas Turbines procured by TCE for the Oakville project.
Ownership	Parties will form a new Limited Partnership (Lennox JV) with 100% Class A Limited Partnership Units owned by PEC and 100% Class B Limited Partnership Units owned by TCE.
Contributions	OPG will lease the Lennox facility to the Lennox JV for a nominal value. TCE will contribute the gas turbines and related contracts to the Lennox JV.
PPA	OEFC will enter into a 20 year PPA with the new JV reflecting a full recovery of operating costs plus a capacity charge with a lifetime value of $X **(NTD: to be inserted by IO).**
Operations	OPG and the new JV will enter into a new operating agreement for operation of the Lennox facility.
Distribution Policy	All cash flows relating to the PPA capacity charge will flow as a partner distribution to the Class B Partnership Unit holders.
New Development	The JV will use commercially reasonable efforts to develop and secure a satisfactory PPA to permit the construction of a new CCGT on the Lennox site or other site as the parties may agree.
Definitive Documentation	Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.

Development B

Joint Venture:	The Partners will form a joint venture (or other tax-favourable structure) which will have the exclusive right to work together using commercially reasonable efforts on the gas-conversion of the existing Nanticoke coal fired generating facility
Funding:	The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.
Ownership:	50/50
Return:	Project will give a return to the JV that is equal to than returns earned on similar, privately-owned generating projects.
Term:	Exclusive right expires Dec. 31, 2014.
Definitive Document:	Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Tuesday, August 02, 2011 11:33 AM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement
Attachments: Blackline Draft Arbitration Agreement_FINAL11_IO vs. Draft Arbitration Agreement_FINAL12_IO.docx; Draft Arbitration Agreement_FINAL12_IO.docx

Michael:

Please find attached the latest version with a few small edits from John K and FMC.

Regards

Dermot

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To: 'Michael.Lyle@powerauthority.on.ca'
Cc: David Livingston
Subject: RE: Arbitration Agreement

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Dermot.Muir@infrastructureontario.ca

SOLICITOR/CLIENT PRIVILEGE

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("TCE" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") for the construction of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

AND WHEREAS by letter dated October 7, 2010 the OPA terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under section 7 of the *Proceedings Against the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the

damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 **Consideration**

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

Formatted: Not Highlight

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 **The Disputes**

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.

Section 4.3 **Waiver of Defences**

(a) The Respondents agree that they are liable to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract.

(b) The Respondents acknowledge and agree that in the determination of the reasonable damages which TCE is to be awarded there shall be no reduction of those damages by reason of either:

(i) limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or

(ii) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract.

(c) For greater certainty, the amount of the reasonable damages to which the Claimant is entitled will be based upon the following agreed facts:

(i) that if the CES Contract had not been terminated then TCE would have fulfilled the CES Contract and the generation facility which was contemplated by it would have been built and would have operated; and

(ii) the reasonable damages including the anticipated financial value of the CES Contract ~~which is~~ understood to include the following components;

(a) the net profit to be earned by TCE over the 20 year life of the CES Contract; and

(b) the costs incurred by TCE in connection with either the performance or termination of the CES Contract to the extent that these costs have not been recovered in item (a); and

(c) each Party reserves its rights to argue whether the Respondents are liable to compensate the Claimant for the terminal value of the OGS, if any, where terminal value is understood to mean the economic value of the OGS that may be realized by Claimant in the period after the expiration of the

twenty year term of the OGS Contract for its remaining useful life.

Section 4.4 Arbitrator Jurisdiction

Without limiting the jurisdiction of the Arbitrator at law, the submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to:

(a) determine any question as to the Arbitrator's jurisdiction including any objections with respect to the existence, scope or validity of this Agreement;

(b) determine all issues in respect of the procedure or evidentiary matters governing the Arbitration, in accordance with this Agreement and the *Act*, and make such orders or directions as may be required in respect of such issues;

(c) determine any question of law arising in the Arbitration;

(d) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant and admissible;

(e) make one or more interlocutory or interim orders;

(f) include, as part of any award, the payment of interest from the appropriate date as determined by the Arbitrator; and

(g) proceed in the Arbitration and make any interlocutory or interim Award(s), as deemed necessary during the course of the hearing of the Arbitration, and the Final Award (defined below)

Section 4.5 Costs

The Parties agree that the Arbitrator has the jurisdiction to award costs to any of the Parties, and that the Arbitrator will make a determination with respect to any Party's entitlement to costs by analogy to the *Ontario Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the "Rules")* and with regard to the relevant case law, after hearing submissions from the Parties with respect to costs following the Final Award, or an interim or interlocutory order or award in relation to any interim or interlocutory motion. The Arbitrator's accounts shall be borne equally by the Parties, together with all other ancillary, administrative and technical expenses that may be incurred during the course of the Arbitration, including but not limited to costs for court reporter(s), transcripts, facilities and staffing (the "Expenses"), but the Arbitrator's accounts and the Expenses shall be ultimately determined with reference to the

Rules and the case law, at the same time that other issues with respect to costs are determined following the Final Award.

Section 4.6 Timetable

Any deadlines contained in this Agreement may be extended by mutual agreement of the Parties or order of the Arbitrator, and the Arbitrator shall be advised of any changes to any deadlines.

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

The Claimant shall deliver a Statement of Claim on or before October 6, 2012

Section 5.2 Defence

The Respondents shall each deliver a Statement of Defence within 30 days following the delivery of the Statement of Claim.

Section 5.3 Reply

The Claimant shall deliver a Reply within 30 days following the delivery of the Statements of Defence.

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

The Parties will meet and confer with respect to documentary production within 30 days following the last date by which a Reply is to be delivered. At the meeting with respect to documentary production, counsel for the Parties will discuss and attempt to agree on the format of the documents to be delivered.

The scope of documentary production is to be determined by the Parties when they meet and confer. For greater clarity, the scope of documentary production is not as broad as that contemplated by the *Rules*. Rather, the Parties are required to disclose the documentation that they intend to or may rely on at the arbitration, as well as documents which fall into the categories (relevant to the issues in dispute) identified by opposing counsel at the meet and confer meeting or as may arise out of the examinations for discovery.

In preparation of witnesses for discovery and in connection with documentary production the Parties will use all relevant powers to ensure that all documents in their power, possession or control are produced in the Arbitration.

When they meet and confer, the Parties shall determine a date by which each shall deliver to the other a list identifying any and all records and documents, whether written, electronic or otherwise, being produced for the purpose of this Arbitration, and by which each shall deliver the documents in the format agreed to by the Parties. In the event that the Parties can't come to agreement on these dates they will refer the decision back to the Arbitrator.

Section 6.2 Evidence by Witness Affidavits

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other sworn affidavits of each of their witnesses.

On a date to be determined by the Parties when they meet and confer, the Parties shall deliver to each other responding sworn affidavits from their witnesses.

Section 6.3 Cross Examinations on Affidavits

The Parties agree that cross examinations of the affiants will take place on a date to be agreed, with each Party limited to one day of cross examination per witness, or such other time as may be agreed between the Parties upon review of the affidavits or may be ordered by the Arbitrator.

Within 30 days following cross examinations, the Parties will come to an agreement on hearing procedure with respect to calling *viva voce* evidence, or will attend before the Arbitrator to determine such procedure (the "Hearing Procedure").

Section 6.4 Expert Reports

The Parties agree that experts shall meet prior to the preparation of expert reports to confer and, if possible, agree and settle the assumptions and facts to be used in the expert reports.

The Parties agree on the following timetable for delivery of expert reports:

(a) expert reports of each Party shall be delivered within 45 days after completion of cross examinations.

(b) responding (reply) expert reports of each Party shall be exchanged within 30 days of the exchange of expert reports.

(c) all expert reports delivered and filed in the Arbitration shall include and attach a copy of the expert's Curriculum Vitae and a declaration of independence.

Section 6.5 Arbitration Hearing

The Arbitration Hearing shall take place in Toronto on dates to be agreed by the Parties. The Arbitration Hearing shall be conducted in an expeditious manner

and in accordance with the Hearing Procedure. A court reporter will be present at each day of the Arbitration Hearing and the court reporter will provide the Parties with real-time transcription of the day's evidence, and the court reporter will also provide the Parties with copies of daily transcripts of each day's evidence. The costs of the court reporter will be divided between the Parties during the course of the Arbitration and it will form part of the costs of the Arbitration, which will ultimately be decided with reference to Section 4.5 above.

Section 6.6 Witness Statements

The Parties will attempt to reach agreement with regard to whether the evidence-in-chief of witnesses will be provided by way of Affidavit rather than oral testimony. If the evidence of a witness is to be provided by way of Affidavit, the witness will nevertheless, if requested, be available at the hearing for cross-examination.

Each witness who gives oral testimony at the Arbitration Hearing will do so under oath or affirmation.

Section 6.7 Examinations and Oral Submissions

Unless otherwise agreed, each Party may examine-in-chief and re-examine its own witnesses and cross-examine the other Party's witnesses at the Arbitration Hearing. The Parties shall agree upon, failing which the Arbitrator shall impose, time limits upon both examination-in-chief and cross examination of witnesses. Each Party shall be entitled to present oral submissions at the Arbitration Hearing.

Section 6.8 Applicable Law

The Arbitrator shall apply the substantive law applicable in the Province of Ontario. The Arbitrator shall apply the procedural rules set out in this Arbitration agreement and the *Act* and by analogy to the *Rules*, to the extent that procedures are not dealt with in this Arbitration Agreement or in the *Act*.

Section 6.9

Subject to the terms of this Arbitration Agreement, the Arbitrator may conduct the Arbitration Hearing in such manner as he/she considers appropriate, provided that the Parties are treated with equality, and that at any stage of the proceedings each Party is given full opportunity to present its case.

Section 6.10

Each Party may be represented by legal counsel at any and all meetings or hearings in the Arbitration. Each person who attends the Arbitration Hearing is deemed to have agreed to abide by the provisions of Article 7 of this Arbitration Agreement with respect to confidentiality. Any person who attends on any date

upon which the Arbitration Hearing is conducted shall, prior to attending, execute a confidentiality agreement in the form attached hereto as Schedule "A".

ARTICLE 7
AWARD

Section 7.1 **Decision(s) Timeline**

Any interlocutory or interim award(s) shall be given in writing at Toronto, with reasons and shall be rendered within forty five (45) days of the conclusion of the relevant motion.

The Arbitrator shall provide the Parties with his/her decision in writing at Toronto, with reasons, within six (6) months from the delivery of the communication of the final submissions from the parties (the "**Final Award**"). The Arbitrator shall sign and date the Final Award.

Within fifteen (15) days after receipt of the Final Award, any Party, with notice to the other Parties, may request the Arbitrator to interpret the Final Award; correct any clerical, typographical or computation errors, or any errors of a similar nature in the Final Award; or clarify or supplement the Final Award with respect to claims which were presented in the Arbitration but which were not determined in the Final Award. The Arbitrator shall make any interpretation, correction or supplementary award requested by either Party that he/she deems justified within fifteen (15) days after receipt of such request. All interpretations, corrections, and supplementary awards shall be in writing, and the provisions of this Article shall apply to them.

Section 7.2

Subject to the right of appeal in Section 4.1 above, the Final Award shall be final and binding on the Parties, and the Parties undertake to carry out the Final Award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his/her own initiative as provided under this Article, the Award shall be final and binding on the Parties when such interpretation, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided under this Article for such interpretation, correction or additional award to be made, whichever is earlier. The Final Award shall be enforceable in accordance with its terms, and judgment upon the Final Award entered by any court of competent jurisdiction that possesses jurisdiction over the Party against whom the Final Award is being enforced.

Section 7.3

The Parties agree that it is in their mutual interests that a Final Award [or an interim final award] in favour of the Claimant be satisfied in a manner that furthers both the energy interests of the Province of Ontario and the interests of TCE. Therefore, subject to the foregoing and the following terms and conditions, a Final Award [or an interim final award] in favour of the Claimant may be satisfied by way of the transfer to the Claimant of an asset that has an equivalent value to TCE, after due consideration for the tax implications of the transaction, equal to the Final Award [or interim final award] (the "Equivalent Value").

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "Assets of Interest") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amoungst the Parties. Assets which will provide partial Equivalent Value may be considered. The Assets of Interest shall be assets owned by the Respondent or by entities under the direction or control of the Respondent.

(b) If an asset of interest is mutually agreed as being a suitable asset for transfer to TCE, and the asset is not one in which TCE (or a wholly owned affiliate) owns an equity interest in at that time, then TCE shall be permitted a reasonable and customary period of time for an asset purchase transaction of this type in order to conduct due diligence and to confirm its continued interest in the asset transfer. If TCE remains interested in acquiring the asset after having completed its due diligence then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(c) If an asset of interest is mutually agreed as being a suitable asset for an equivalent exchange and is an asset in which TCE (or a wholly owned affiliate) owns an equity interest at that time, then the Parties shall use commercially reasonable efforts to attempt to agree on the value of the asset to TCE.

(d) In respect of any proposed asset transfer under subsection (b) or (c) above TCE acting reasonably must be satisfied that:

(i) the transfer will be in compliance with all relevant covenants relating to the asset and in compliance with all applicable laws;

(ii) all necessary consents, permits and authorizations are available to transfer the asset to TCE and for TCE to own and operate the asset;

(iii) there are no restrictions on TCE's ability to develop, operate, sell or otherwise dispose of the asset; and

(iv) TCE does not become liable for any pre-closing liabilities relating to the asset.

(e) If the Parties have agreed to the transfer and if the value of the asset to TCE is agreed, then the Parties will use commercially reasonable efforts to negotiate and settle the form of such definitive documents as may be required to give full effect to such asset transfer. Such documents are to be in conventional form for the type of asset to be transferred and will contain conventional representations, warranties, covenants, conditions, and indemnities for an asset transfer between arm's length commercial parties.

(h) If more than ninety (90) days have elapsed after the Final Award [or an interim final award] of the Arbitrator, and the Parties have not agreed on the terms of the asset transfer or settled the form of the definitive documents for transfer, then TCE shall be permitted to issue a demand letter to the Respondents demanding immediate payment of the Final Award [or interim final award] in cash and such payment shall be made within three (3) days of receipt of such demand letter.

Section 7.4 Release

Contemporaneous with compliance by the Respondents with the terms of the Final Award and in consideration therefore, TCE shall deliver a Release in favour of each of the Respondents in the form attached hereto as Schedule "B".

ARTICLE 8
CONFIDENTIALITY

Section 8.1

Except as may be otherwise required by law, all information disclosed in the Arbitration shall be treated by all Parties, including their respective officers and directors, and by the Arbitrator, as confidential and shall be used solely for the purposes of the Arbitration and not for any other or improper purpose. The Parties agree further that for the purposes of this Arbitration, they shall abide by and be bound by the "deemed undertaking" rule as stipulated in Rule 30.1 of the *Rules*.

For greater certainty, the Arbitrator and the Parties, including their respective officers and directors, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time agree that they shall not disclose or reveal any information disclosed in the Arbitration to any other person, except legal, or financial advisors, or experts or consultants retained by a party for the purpose of this arbitration, or as required by law including, for example, the Claimant's obligation to make disclosures under applicable securities law. The Parties also agree that they will use best efforts to ensure that they have effective procedures in place to ensure that information disclosed in the Arbitration is not disclosed or revealed contrary to the provisions of this Article. Each Party agrees to be responsible for any breach by its officers, directors, professional advisors, experts or consultants of the terms and conditions of this Article.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Amendment

This Arbitration Agreement may be amended, modified or supplemented only by a written agreement signed by the Parties.

Section 9.2 Governing Law

This Arbitration Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario.

Section 9.3 Binding the Crown

The Respondent Her Majesty the Queen in Right of Ontario, shall be bound by this agreement.

Section 9.4 Extended Meanings

In this Agreement words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The terms "include", "includes" and "including" are not limiting and shall be deemed to be followed by the phrase "without limitation".

Section 9.5 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulation made thereunder.

Section 9.6 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Section 9.7 Electronic Execution

Delivery of an executed signature page to this Agreement by any party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

Section 9.8 Counsel

The Parties acknowledge and agree that the following shall be the counsel of record for this Arbitration.

Counsel for the Claimant,
TransCanada Energy Ltd.

Thornton Grout Finnigan LLP
3200 – 100 Wellington Street West
CP Tower, TD Centre
Toronto, ON M5K 1K7

Michael E. Barrack
Tel: (416) 304-1616
Email: mbarrack@tgf.ca

John L. Finnigan
Tel: (416) 304-1616
Fax: (416) 304-1313
Email: jfinnigan@tgf.ca

Counsel for the Respondent,
The Ontario Power Authority

Oslers, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Paul A. Ivanoff
Tel: (416) 862-4223

Counsel for the Respondent,
Her Majesty The Queen in Right of Ontario

Ministry of the Attorney General
Crown Law Office -Civil
McMurtry – Scott Building
720 Bay Street, 11th
Toronto, ON
M7A 2S9

John Kelly
Tel: (416) 601-7887
Email: john.kelly@ontario.ca

Eunice Machado
Tel: (416)601-7562
Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

Fax: (416) 862-6666
Email: pivanoff@osler.com

Section 9.9 **Notices**

All documents, records, notices and communications relating to the Arbitration shall be served on the Parties' counsel of record.

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

By: **Signatory to be determined in consultation with MAG**

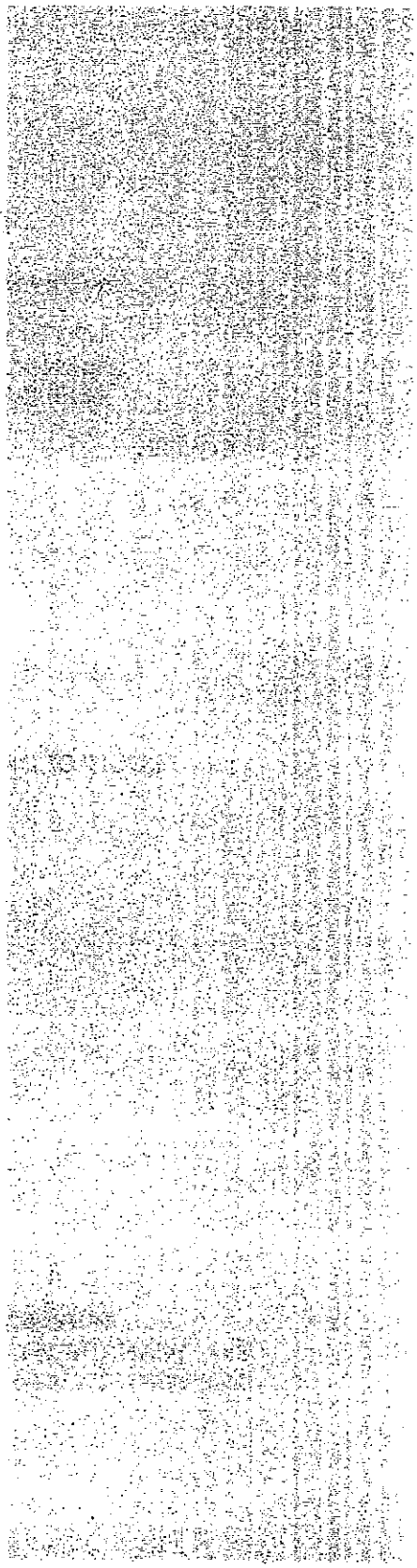
Title

ONTARIO POWER AUTHORITY

_____

By:

Title



SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

IN THE MATTER OF the *Arbitration Act, 1991*, S.O. 1991, c. 17;

AND IN THE MATTER OF an arbitration between
TRANSCANADA ENERGY LTD. and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

WHEREAS, in connection with this Arbitration between TRANSCANADA ENERGY LTD. ("TCE") and the RESPONDENTS concerning the Southwest GTA Clean Energy Supply Contract between the Ontario Power

Authority and TCE dated October 9, 2009 (the "**CES Contract**"), TCE and the Respondents have entered into an Arbitration agreement dated July 31st, 2011 (the "**Arbitration Agreement**");

AND WHEREAS, pursuant to the Arbitration Agreement, • has produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**• Information**");

AND WHEREAS, pursuant to the Arbitration Agreement, the Respondents have produced certain information and documents relating to the issues in this Arbitration and the CES Contract (the "**Respondents Information**");

AND WHEREAS during the course of this Arbitration, the parties may produce additional information and documents relating to the • Information, the Respondents Information or the issues in this Arbitration (collectively referred to with the • Information and the Respondents Information as the "**Confidential Information**");

AND WHEREAS the Confidential Information is either not available to the general public and/or is confidential in nature and, on the basis thereof, the parties have agreed to enter into a confidentiality agreement respecting the Confidential Information;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the production of such information and documents and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned parties hereby agree as follows:

1. The undersigned acknowledge and agree that the statements in the Recitals of this Agreement are true and correct.

2. Each of the undersigned hereby agree on behalf of itself and its directors, officers, employees, agents, partners, associates and advisors (including, without limitation, legal advisors) (collectively, "Representatives"), to receive and treat any of the Confidential Information produced by or on behalf of the other party or its Representatives, or which is made available for review by

the other party or its Representatives now or in the future, as strictly confidential and proprietary information.

3. For clarity, information will not be deemed Confidential Information that (i) becomes available in the public domain other than as a result of disclosure by the undersigned, or (ii) is not acquired from one of the undersigned or persons known by the recipient of the information to be in breach of an obligation of confidentiality and secrecy to one of the undersigned in respect of that information.

4. The undersigned hereby covenant and agree that:

(a) the Confidential Information will not be used by the undersigned or its Representatives, directly or indirectly, for any purpose except in connection with the matters at issue in this Arbitration;

(b) the Confidential Information will be kept confidential and will not be disclosed in any manner whatsoever, in whole or in part, to any person or entity except those directly involved in this Arbitration and, in such event, only to the extent required in connection with the Arbitration and on condition that the persons to whom such Confidential Information is disclosed agree to keep such Confidential Information confidential and who are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto;

(c) all reasonable, necessary and appropriate efforts will be made to safeguard the Confidential Information from disclosure to any person or entity other than as permitted hereby; and

(d) the undersigned shall be responsible for any breach of this Agreement by any of its Representatives and shall, at its sole cost and expense, take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from and prohibited or unauthorized disclosure or use of the Confidential Information.

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

appropriate efforts to re-acquire all Confidential Information that was previously disclosed to that person or entity, as well as any copies thereof or materials created in connection with the Confidential Information.

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

7. Each of the undersigned agrees that the other party does not and shall not have an adequate remedy at law in the event of a breach of this Agreement and that it will suffer irreparable damage and injury which shall entitle the other party to an injunction issued by a Court of competent jurisdiction restraining the disclosure of the Confidential Information or any part or parts thereof. For greater clarity, nothing in this Agreement shall be construed as prohibiting either of the undersigned from pursuing any other legal or equitable remedies available to it, including the recovery of damages.

8. Each of the undersigned agrees to return all Confidential Information which is provided to it by the other party, its Representatives and its witnesses when this Arbitration has been completed, without retaining any copies thereof. Each of the undersigned further agrees to arrange for all of its Representatives and witnesses to return all Confidential Information in the possession of or under the control of any of the Representatives or witnesses to the other party when this Arbitration has been completed, without retaining any copies thereof.

9. The undersigned acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, that provision will be severed and the remaining provisions will remain in full force and effect.

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, as amended.

11. The obligations of the undersigned under this Agreement shall be binding upon the undersigned, its successors and assigns and all of its Representatives, including without limitation, its legal advisors.

In witness whereof, the undersigned have executed this Agreement at , this day of , 2011.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORTIY (the "Respondents") have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") ~~and~~ the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

IN CONSIDERATION of the payment of the settlement amount agreed by the parties for all claims arising from the CES Contract ~~and~~, the October 7 Letter and the Claim [as set out in the [Insert title of document setting out settlement terms/arbitration award]] (the "Arbitration") and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of $5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "Releasor");

THE RELEASOR HEREBY RELEASES, ACQUITS, AND FOREVER DISCHARGES WITHOUT QUALIFICATION the Respondents and their respective directors, officers, employees, agents, successors, subsidiaries, affiliates, insurers and assigns (the "Releasees") from all manner of actions, causes of action, suits, proceedings,

debts, dues, accounts, obligations, bonds, covenants, duties, contracts, complaints, claims and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter, or the Claim. Notwithstandnig the foregoing, nothing in this Release will limit, restrict or alter the obligations of the Respondents to comply with the terms of any settlement agreement with the Releasor or to comply with any Final Award made in favour of the Releasor.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release is intended to cover, and does cover: (a) not only all known injuries, losses and damages, in respect of and arising from the CES Contract ~~and~~, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract ~~and~~, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

AND FOR THE SAID CONSIDERATION it is agreed and understood that, the Releasor will not make any claim in respect of and arising from the CES Contract ~~and~~, the October 7 Letter or the Claim or take any proceedings, or continue any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, from any other party discharged by this Full and Final Release.

IT IS UNDERSTOOD AND AGREED that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasor with respect to the matters covered by this Full and Final Release and arising from the CES Contract, the October 7 Letter or the Claim and the Arbitration. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any party in any subsequent action that the other parties in the subsequent action were not privy to the formation of this Full and Final Release.

AND FOR THE SAID CONSIDERATION the Releasor represents and warrants that it has not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind arising from the CES Contract ~~and,~~ the October 7 Letter or the Claim which it has released by this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that neither the Releasor nor the Releasees admits liability or obligation of any kind whatsoever in respect of the CES Contract ~~and,~~ the October 7 Letter or the Claim.

IT IS FURTHER UNDERSTOOD AND AGREED that the facts and terms of this Full and Final Release and the settlement underlying it will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, unless deemed essential on auditor's or accountants' written advice for financial statements or income tax purposes, or for the purpose of any judicial proceeding, in which event the fact the settlement is made without admission of liability will receive the same publication simultaneously or as may be required by law, including without limitation, the disclosure requirements of applicable securities law.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be binding upon and enure to the benefit of the successors or assigns as the case may be, of all the parties to this Full and Final Release.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. TCE attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute arising from or in connection with or in consequence of this Full and Final Release.

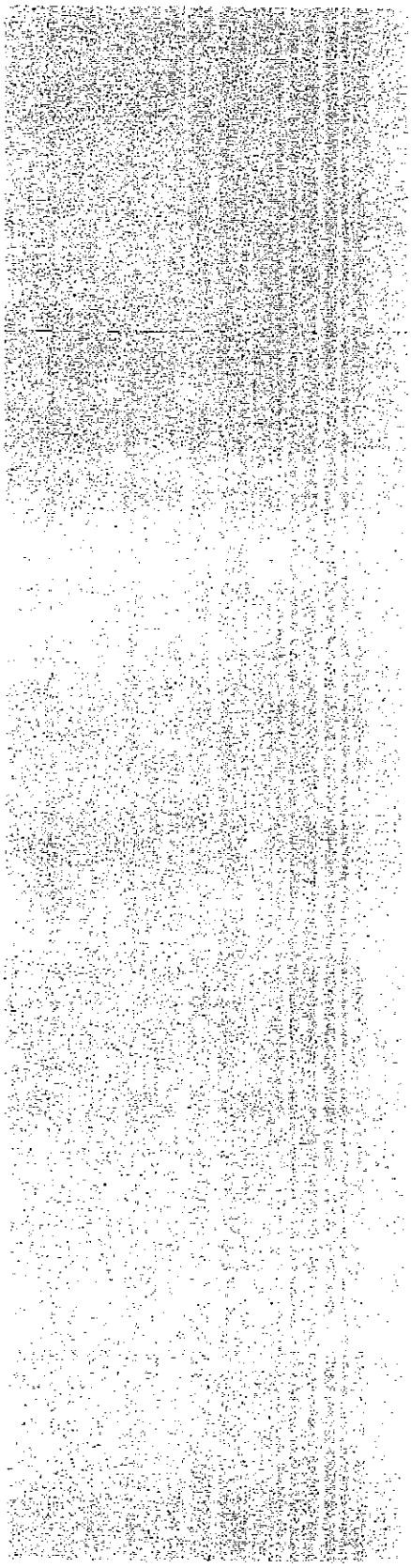
TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full and Final Release.

DATED this _____ day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title



IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

ARBITRATION AGREEMENT

WHEREAS the Ontario Power Authority (the "**OPA**") and the Claimant TransCanada Energy Ltd. ("**TCE**" or the "**Claimant**") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "**CES Contract**") for the construction of a 900 megawatt gas fired generating station in Oakville Ontario (the "**OGS**");

AND WHEREAS by letter dated October 7, 2010 the OPA terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the CES Contract;

AND WHEREAS the Respondents have agreed to pay TCE its reasonable damages arising from the termination of the CES Contract, including the anticipated financial value of the CES Contract;

AND WHEREAS the Claimant and the Respondents wish to submit the issue of the assessment of the reasonable damages suffered by TCE to arbitration in the event they are unable to settle that amount as between themselves;

AND WHEREAS on April 27, 2011, the Claimant provided written notice to Her Majesty the Queen in Right of Ontario (the "**Province of Ontario**"), under section 7 of the *Proceedings Againsnt the Crown Act*, R.S.O., 1990, c. P. 27 ("PACA"), of its intent to commence an action against the Province of Ontario to recover the

damages the Claimant suffered because of the termination of the CES Contract (the "Claim");

AND WHEREAS the Parties have agreed that the Claimant's damages under the Claim will not be limited by: (a) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of sections 10.5 or 14.1 of the CES Contract; or (b) any limitation on or reduction of the amount of damages which might otherwise be awarded as a result of any possibility or probability that TCE may have been unable to obtain any or all government or regulatory approvals required to construct and operate its generation facility as contemplated in and in accordance with the CES Contract;

AND WHEREAS the Parties have agreed that the Respondents will not raise as a defence the Force Majeure Notices filed by the Claimant with the OPA including those issued after the Town of Oakville rejected the Claimant's site plan approval for the Oakville Generating Station and subsequently the rejection of its application for minor variance by the Committee of Adjustment for the Town of Oakville;

AND WHEREAS the Parties have agreed to resolve the issue of the quantum of damages the Claimant is entitled to as a result of the termination of the CES Contract by way of binding arbitration in accordance with *The Arbitration Act*, 1991, S.O. 1991, c.17 (the "*Act*");

AND WHEREAS the Parties have agreed that all steps taken pursuant to the binding arbitration will be kept confidential and secure and will not form part of the public record;

NOW THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

The provisions of the *Act* shall apply to this Arbitration Agreement except as varied or excluded by this Agreement, or other written agreement of the Parties.

ARTICLE 2

Section 2.1 **Consideration**

In consideration of the Parties each agreeing to pursue the resolution of this matter by way of binding arbitration in accordance with the *Act*, and on the understanding that the referral to the arbitration and the satisfaction of any Final Award (as defined) is a settlement of the Claimant's claim that is the subject matter of its April 27, 2011 Notice, pursuant to section 22 (c) of the *PACA*, the Parties agree:

(a) the Claim against the Province of Ontario and the OPA will not be pursued in the Courts; and

(b) contemporaneous with the satisfaction by the Province of Ontario of any Final Award in favour of TCE, TCE will provide a release to the OPA and the Province of Ontario in the form of Schedule "B" attached hereto.

ARTICLE 3

ARBITRATOR

Section 3.1

The Arbitration shall be conducted in Toronto, Ontario by an arbitrator mutually agreed upon by the Parties or chosen by such individual as the Parties may agree (the "**Arbitrator**").

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

The decision and award of the Arbitrator shall be final and binding on the Parties, subject to the right to appeal questions of law to the Ontario Superior Court of Justice as provided in section 45(2) of the *Act*.

Section 4.2 **The Disputes**

The Arbitrator shall fully and finally determine the amount of the reasonable damages to which the Claimant is entitled as a result of the termination of the CES Contract, including the anticipated financial value of the CES Contract.