Section 4.3 Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

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

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

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

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

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion 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
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Eunice Machado
Tel: (416)601-7562
Fax : (416) 868-0673
Email: eunice.machado@ontario.ca

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

Section 9.9 Notices

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

DATED this day of _____, 2011.

TRANSCANADA ENERGY LTD.

_____

By:

Title

TRANSCANADA ENERGY LTD.

_____

By

Title

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

_____

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

Title

ONTARIO POWER AUTHORITY

_____

By:

Title

SCHEDULE "A"

CONFIDENTIALITY AGREEMENT

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

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

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

HER MAJESTY THE QUEEN IN

RIGHT OF ONTARIO and the ONTARIO POWER AUTHORITY

Respondents

-and-

•

("•")

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

4. The undersigned hereby covenant and agree that:

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

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

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

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

5. The undersigned agree that the provisions of this Agreement will apply retroactively to any disclosure of Confidential Information that has been made to any person or entity as at the time of signing of this Agreement, and that such persons or entities will be provided with a copy of this Agreement and will be required to agree to be bound by the terms hereof to the same extent as if they were parties hereto. If such person or entity to which disclosure has been made does not agree to be bound by the terms of this Agreement, the undersigned agree to take all reasonable, necessary and

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

6. In the event that either of the undersigned is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the undersigned agrees to provide the other party with prompt written notice of any such request or requirement in order to permit sufficient time for an application to Court for a protective order or other appropriate remedy.

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

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

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

10. Notwithstanding anything to the contrary in this Agreement, the undersigned each acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with this Arbitration, or any part thereof or any information therein, may be required to be released pursuant to the provisions of the

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

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

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

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Per: _____
Name:
Title:

ONTARIO POWER AUTHORITY

Per: _____
Name:
Title:

TRANSCANADA ENERGY LTD.

Per: _____
Name:

Title:

•

Per: _____
Name:
Title:

SCHEDULE "B"

FULL AND FINAL RELEASE

WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER 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") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. 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, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

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

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

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

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

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, August 02, 2011 11:38 AM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: BOD 2 Aug 2011 Presentation - REVISED ....
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Importance: High

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ONTARIO POWER AUTHORITY

Arbitration Agreement with TCE

Presentation to Board of Directors Prepared in Contemplation of Litigation: Solicitor/Client Privilege

August 2, 2010

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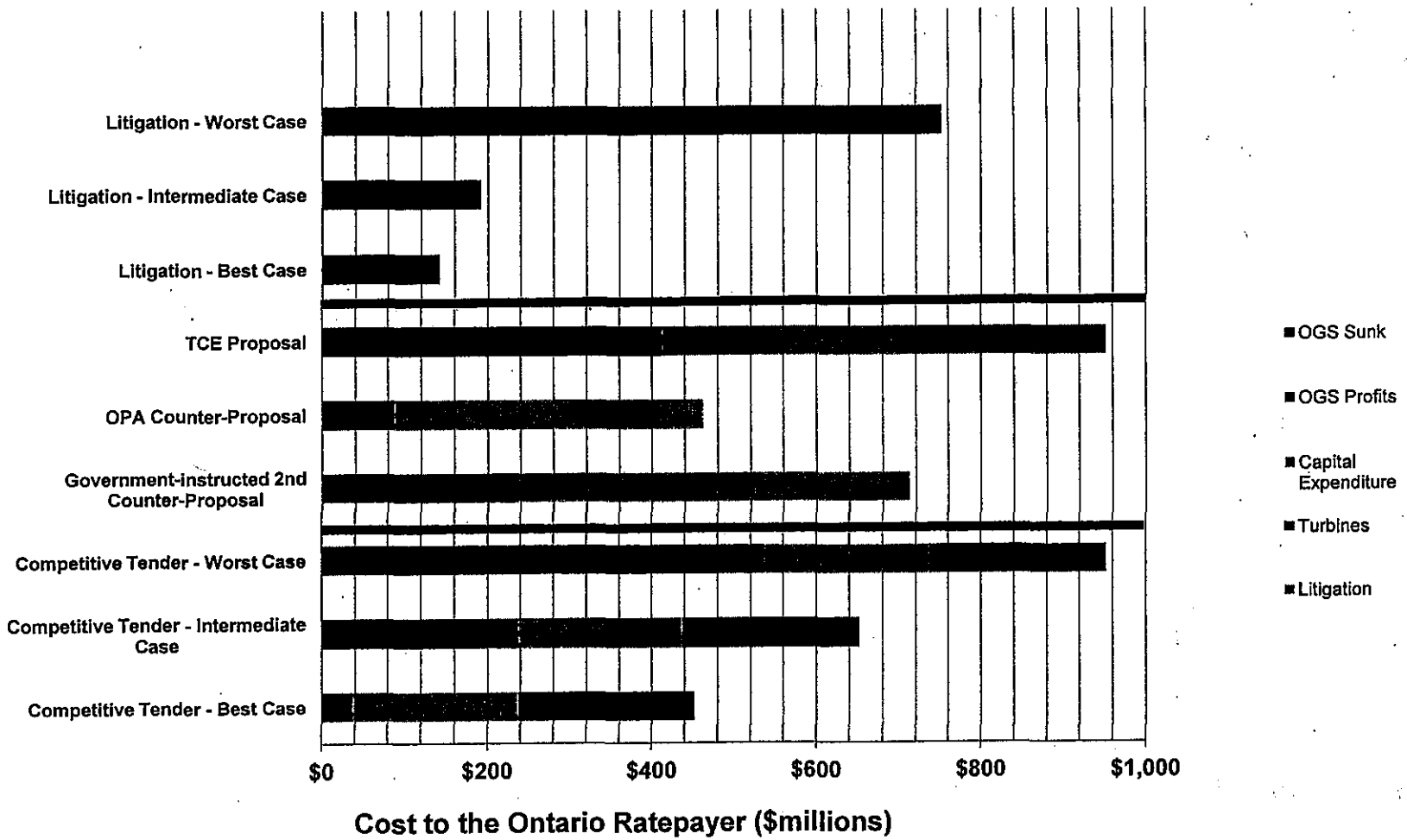

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Planning Aspects

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- 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.

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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

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 11:53 AM
To: Michael Killeavy; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED ....
Attachments: TCE Board Presentation 2 Aug 2011 v3.pptx

Some changes in light of more info on the Lennox side of the deal.

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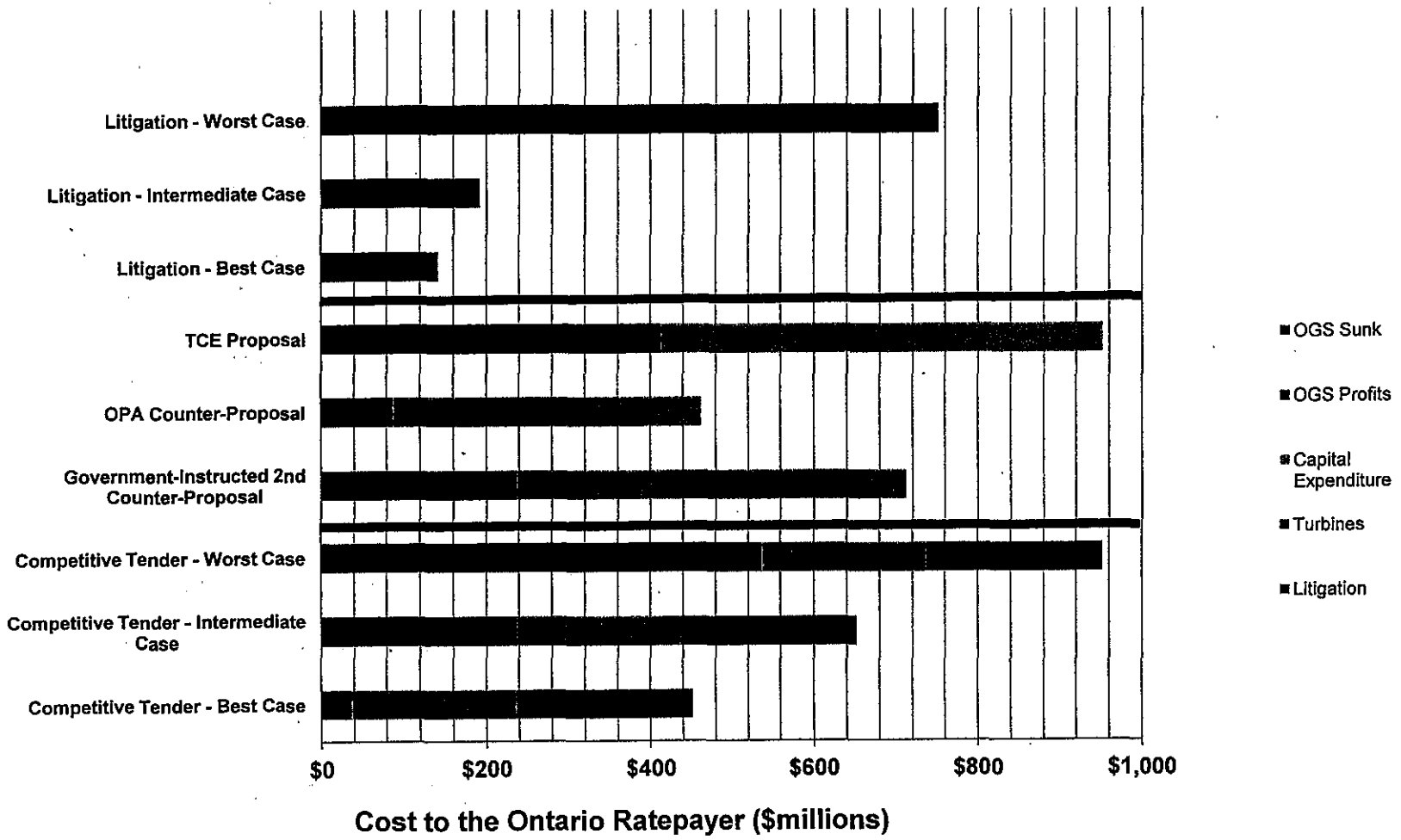

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- The model shows a NPV of after-tax cash flows of $503 million.
- It also shows a discount rate of 5.25% for discounting the cash flows – TCE's purported unlevered cost of equity.

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- 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.

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ONTARIO POWER AUTHORITY

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Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, August 02, 2011 12:03 PM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED ....
Attachments: TCE Board Presentation 2 Aug 2011 v4.pptx

Here is a further updated presentation – I removed "government-instructed" from references to the second counter proposal. I also added the "Privileged and Confidential – Prepared in Contemplation of Litigation" footer to all the slides.

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From: Michael Lyle
Sent: August 2, 2011 11:53 AM
To: Michael Killeavy; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED ....

Some changes in light of more info on the Lennox side of the deal.

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

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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
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  - » Scope of arbitration limited only to appropriate quantum of damages
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- Issue was elevated in Government and Infrastructure Ontario ("IO") was asked to take a lead role in negotiations
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- OPA is a party to proposed arbitration agreement

Arbitration Agreement – Key Elements

- TCE, Crown and OPA are parties in arbitration
- Subject of arbitration agreement is focused on quantum of damages
- OPA and Crown waive defences with respect to:
  - » Exclusion of liability clauses in contract
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- Who should pay arbitration award? – ratepayers or taxpayers?

- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

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- 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

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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 second 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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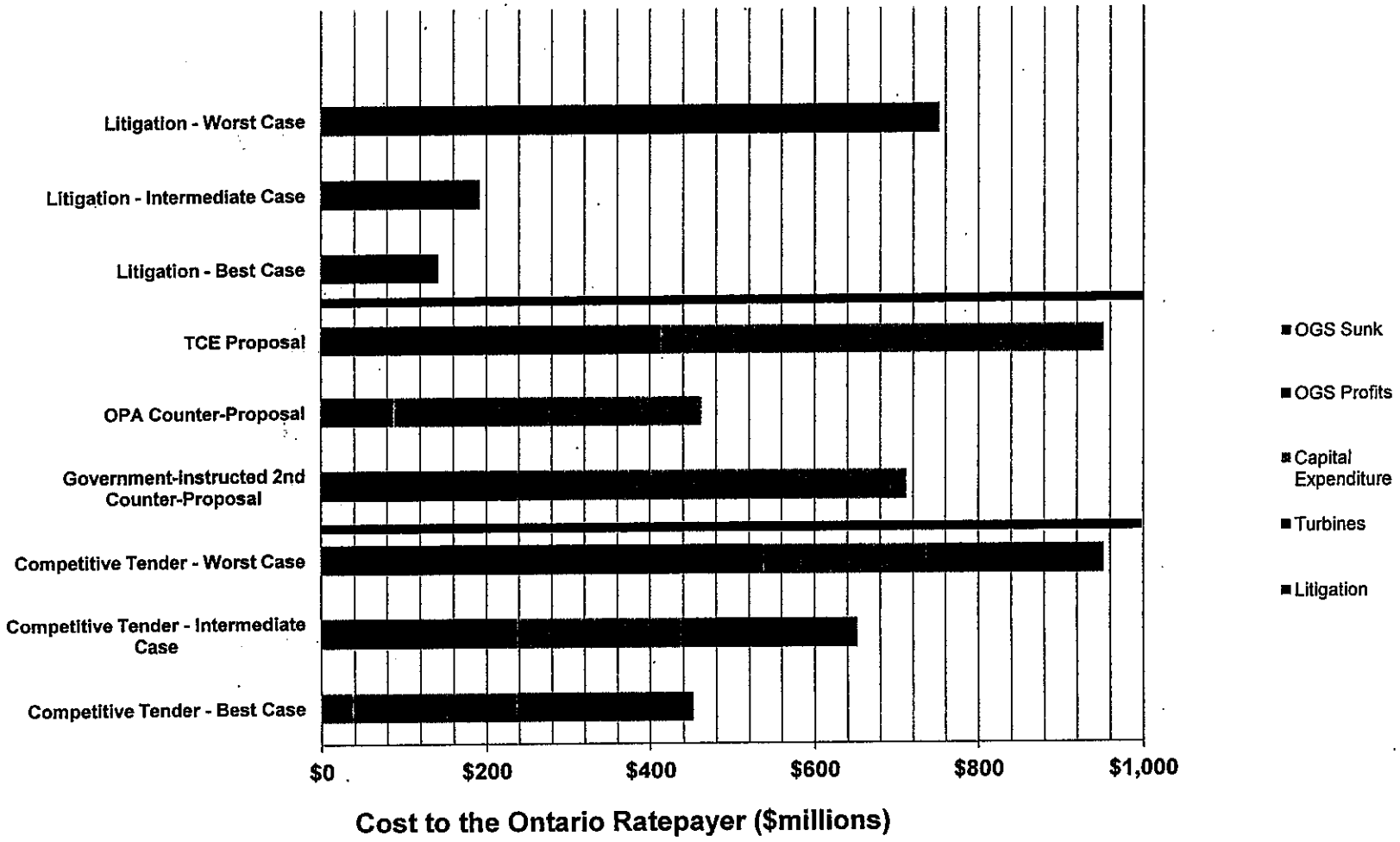
Potential Outcomes

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

Financial Value of Potential Outcomes



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Management Assessment

- Not enough information has been provided and we cannot provide any assessment on whether it is in the best interests of the OPA to enter into this arbitration agreement

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Appendix

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Planning Aspects

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Lennox GS – Current Status

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Southwest Greater Toronto Area (SW GTA) Supply

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

Southwest Greater Toronto Area (SW GTA) Supply

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

OPA Procurement Process – Ministry Directive

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

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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.

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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

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.

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Crystal Pritchard

From: John Zych
Sent: Tuesday, August 02, 2011 1:16 PM
To: Michael Lyle; Susan Kennedy
Subject: Resolution - Agreement to Submit Dispute to Arbitration.doc
Attachments: 2d - Resolution - Agreement to Submit Dispute to Arbitration.doc

As requested by Mike.

Resolution - Agreement to Submit Dispute to Arbitration

RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO POWER AUTHORITY

BE IT RESOLVED THAT:

1. the Board of Directors authorize the Ontario Power Authority (the "Corporation") to agree to enter into arbitration of a dispute with TransCanada Energy Inc. arising out of the cancellation of the Oakville Generating Station, in accordance with the parameters described in the August 3, 2011 presentation to the Board of Directors;

2. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to negotiate, finalize, execute and deliver the agreement to arbitrate the dispute (the "Agreement"), together with such changes thereto as that officer may approve, such approval to be evidenced conclusively by the execution and delivery of the Agreement;

3. any officer of the Corporation be hereby authorized and directed for and on behalf of the Corporation to execute and deliver all such ancillary agreements, documents, deeds and instruments and to do all such further acts as may be necessary or desirable to implement the Agreement, to perform its obligations thereunder and to obtain the benefits thereof; and,

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

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From: Michael Killeavy
Sent: Tuesday, August 02, 2011 1:27 PM
To: Michael Lyle; JoAnne Butler; Brett Baker; Amir Shalaby; Kevin Dick
Subject: RE: BOD 2 Aug 2011 Presentation - REVISED ....
Attachments: TCE Board Presentation 2 Aug 2011 v5.pptx

Attached is the presentation for today's review meeting at 1:30pm.

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	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 second 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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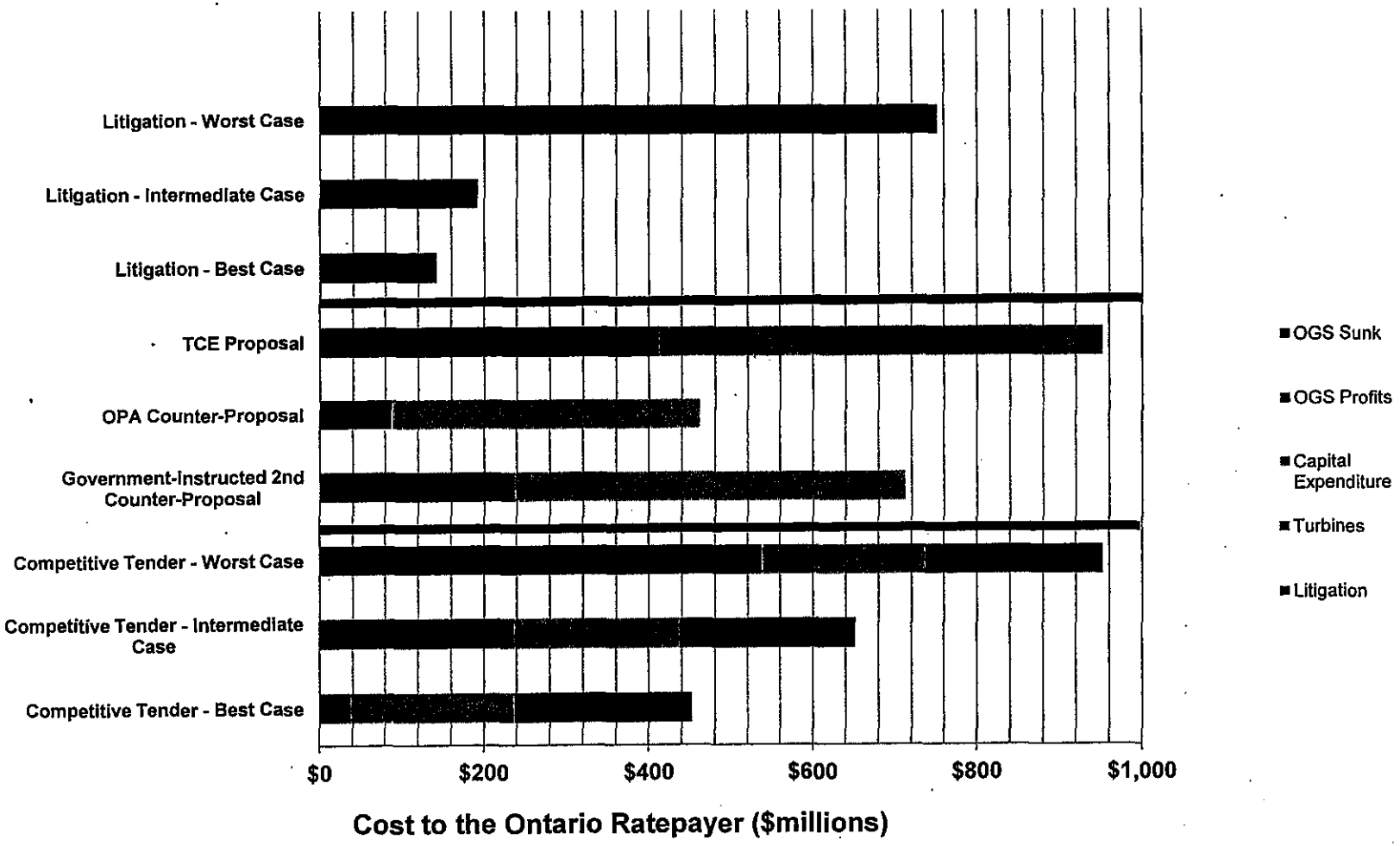
Potential Outcomes

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

Financial Value of Potential Outcomes



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Management Assessment

- Not enough information has been provided and we cannot provide any assessment on whether it is in the best interests of the OPA to enter into this arbitration agreement

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Appendix

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System Planning Considerations

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

System Planning considerations-continued

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

Current Status of Lennox Contract and Negotiations

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

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

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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)

ONTARIO POWER AUTHORITY

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.

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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

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.

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MOU

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

Replacement Project

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

Replacement Project Negotiations

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

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

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.

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

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

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

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

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

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

TCE Current Position on OGS Financial Value

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

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

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

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

Crystal Pritchard

From: Colin Andersen
Sent: Tuesday, August 02, 2011 1:39 PM
To: 'jim_hinds@irish-line.com'; Michael Lyle
Subject: Re: Confidential - TCE Arbitration

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

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

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

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

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

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

Comments/views?

Jim Hinds
(416) 524-6949

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

Yes after we talked yesterday I asked mike to followup with Finance about "the accounting" - basically with the same idea in mind.
I had heard said "the OPA didn't cancel this so why should they have to wear it". That being said since opg asset won't be determined until end of aug and maybe not even then I don't know how determinate we will get now. Worth putting back into the discourse though.

----- Original Message -----
From: James Hinds [mailto:jim_hinds@irish-line.com]

Sent: Monday, August 01, 2011 06:48 PM
To: Colin Andersen; Michael Lyle
Subject: Confidential - TCE Arbitration

Just a reminder that one of the undertakings falling out of the Board meeting today for management to consider was whether there would be any aspects of the arbitration which would have a bearing on whether the ratepayer paid the award or the taxpayer paid the award.

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

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Broer, Kate [Kate.Broer@fmc-law.com]
Sent: Tuesday, August 02, 2011 2:37 PM
To: 'Dermot.Muir@infrastructureontario.ca'; McCutcheon, David
Cc: Michael Lyle
Subject: Re: Arbitration Agreement

Dermot -

Dave, Mike and I have spoken. There are two points out of the discussion.

First, Mike is concerned about the doc discovery process in section 6.1 and, in particular, that TCE may not be as forthcoming as it should be. He is worried that they may attempt to avoid production on the basis that the province has not been sufficiently specific in making requests for information beyond that upon which TCE intends to rely. We discussed an approach more like the one found in the Rules which creates a broader obligation to produce all documents of relevance. We also discussed that this type of change could also mean broader production obligations for the province and could take more time to complete. He asked that we raise the issue with you for your further thoughts and consideration. It is our feeling that if the province wants to go back to TCE with a broader requirement, that Barrack would likely be open to a change.

The second point relates to the time limit on cross-examinations of one day in section 6.3. Mike suggested that this could be tight and we agreed it would be appropriate to change the time limit from one day to two days.

I am available on my cell 416-895-4574, if you want to discuss further.

Kate

Kate Broer
Fraser Milner Casgrain LLP
77 King Street West
Toronto, ON M5K 0A1
Direct Line: 416-863-4574
Fax: 416-863-4592
Kate.Broer@fmc-law.com

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Monday, August 01, 2011 11:05 AM
To: McCutcheon, David
Cc: Broer, Kate; 'Michael.Lyle@powerauthority.on.ca' <Michael.Lyle@powerauthority.on.ca>
Subject: Arbitration Agreement

David:

Would you be available for a short tele-con tomorrow to talk to my colleague Michael Lyle (GC at the OPA) about the arbitral process that is being proposed?

Thanks a lot.

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 2:44 PM
To: Nimi Visram; Irene Mauricette; John Zych
Subject: FW: Arbitration Agreement
Attachments: Blackline Draft Arbitration Agreement_FINAL11_IO vs Draft Arbitration Agreement_FINAL12_IO.docx; Draft Arbitration Agreement_FINAL12_IO.docx

For Board meeting. Do not use blackline. Make sure there is no highlighting in the other version.

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 2, 2011 11:33 AM
To: Michael Lyle
Cc: David Livingston
Subject: RE: Arbitration Agreement

Michael:

Please find attached the latest version with a few small edits from John K and FMC.

Regards

Dermot

From: Dermot Muir
Sent: Monday, August 01, 2011 1:03 PM
To: 'Michael.Lyle@powerauthority.on.ca'
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:

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

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(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 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.

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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**

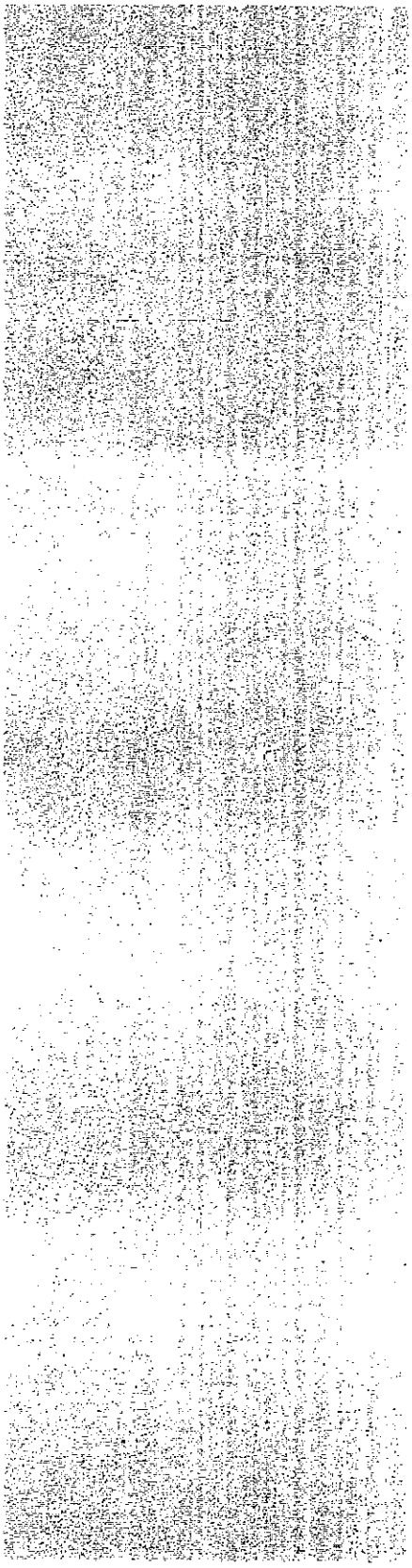
Title

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.

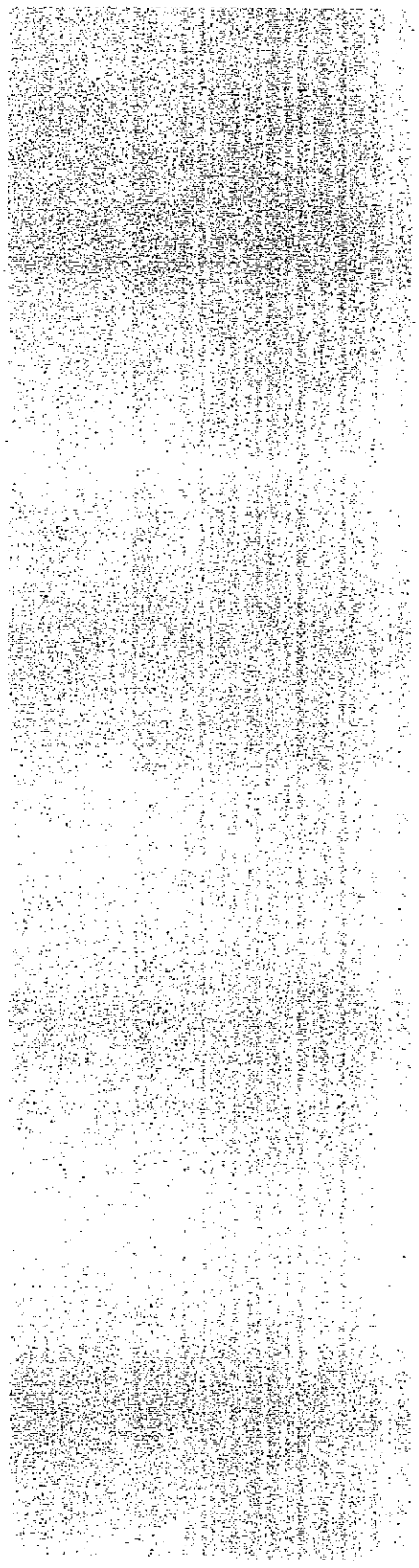
TCE ACKNOWLEDGES AND AGREES that it fully understands the terms of this Full and Final Release and has delivered same voluntarily, after receiving independent legal advice, for the purpose of making full and final compromise and settlement of the claims and demands which are the subject of this Full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

Section 4.3 Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

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

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

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

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

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion 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
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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
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
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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 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") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. 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, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

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

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

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

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

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 2:46 PM
To: Irene Mauricette; Nimi Visram
Cc: John Zych
Subject: FW:
Attachments: Original TS.pdf; Preferred TS.pdf

For Board meeting. Make sure that email to Board is clear that Original is being provided for context but has been superceded by preferred.

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
Preferred
Term Sheet

Proposal

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

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

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

Terms

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

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

Arbitration

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

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

Approvals

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

Schedule A

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

Development A

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

Development B

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

Crystal Pritchard

From: Michael Killeavy
Sent: Tuesday, August 02, 2011 3:29 PM
To: Michael Lyle; JoAnne Butler; Amir Shalaby; Brett Baker
Cc: John Zych
Subject: TCE Matter - BOD Presentation 2 Aug 2011 ....
Attachments: TCE Board Presentation 2 Aug 2011 v6.pptx

Importance: High

Attached is the updated presentation, which reflects today's meeting comments.

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

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

ONTARIO POWER AUTHORITY

Proposed Deal – Key Elements

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

Arbitration Agreement – Key Elements

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

ONTARIO POWER AUTHORITY

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?

- Who should pay arbitration award? – ratepayers or taxpayers?

- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

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

ONTARIO POWER AUTHORITY

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 second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

ONTARIO POWER AUTHORITY

Potential Outcomes

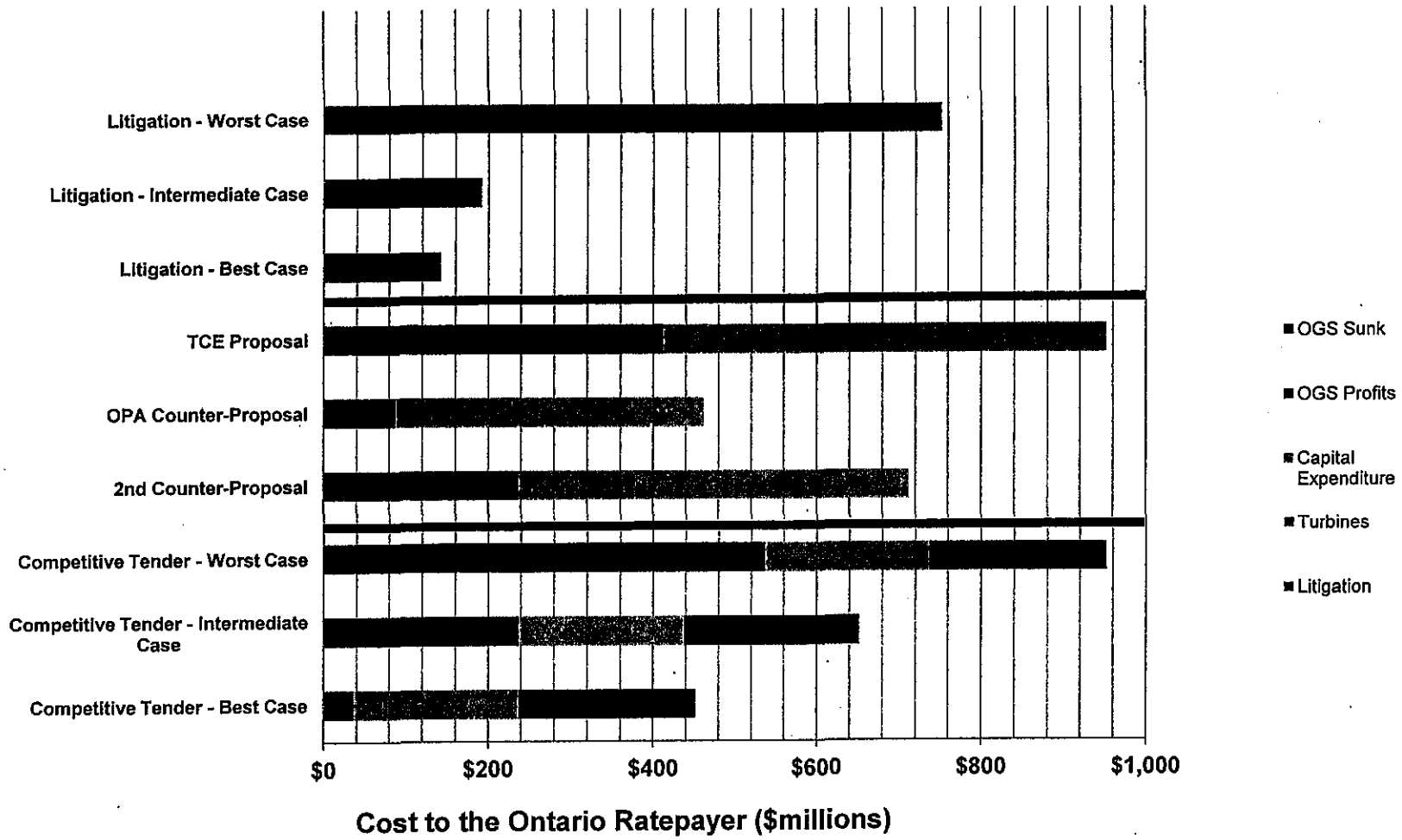
- The following graphic sets out several cases for litigation/arbitration and settlement

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

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

ONTARIO POWER AUTHORITY

Financial Value of Potential Outcomes



ONTARIO POWER AUTHORITY

Appendix – System Planning and Status of Lennox GS

ONTARIO POWER AUTHORITY

OPG/TCE Potential Deal - System Planning Considerations

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

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

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

Current Status of Lennox Contract and Negotiations

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

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

Procurement Process - Contract

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

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

Government Cancellation

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

Termination Negotiations

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

- These discussions began in October 2010 and continued until April 2011.

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

ONTARIO POWER AUTHORITY

TCE Initial Concerns

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

Confidentiality Agreement

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

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

- This agreement has a term of five years.

MOU

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

Replacement Project

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

Replacement Project Negotiations

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

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

OPA Analysis

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

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

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

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

TCE Current Position on OGS Financial Value

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

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

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

Crystal Pritchard

From: John Zych
Sent: Tuesday, August 02, 2011 3:53 PM
To: Colin Andersen; 'jmichaelcostello@gmail.com'; 'Richard Fitzgerald'; 'James Hinds'; 'Adele Hurley'; 'Ron Jamieson'; 'Bruce Lourie'; 'Lyn McLeod'; 'pjmon'
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pptx; 2 - Original TS.pdf; 3 - Preferred TS.pdf; 4 - Draft Arbitration Agreement_FINAL12_IO.docx

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

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

We attach the following materials:

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

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

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

The call-in details are as follows:

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

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

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Arbitration Agreement with TCE

Presentation to Board of Directors Prepared in Contemplation of Litigation: Solicitor/Client Privilege

August 2, 2010

Background:

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

ONTARIO POWER AUTHORITY

Background:

- OPA briefed Government on these issues and attempted to develop a common approach with Government on negotiating an arbitration agreement with TCE

- Issue was elevated in Government and Infrastructure Ontario ("IO") was asked to take a lead role in negotiations

- IO was able to get TCE to agree to hold off on commencing litigation while discussions were pursued

Proposed Deal – Key Elements

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

Arbitration Agreement – Key Elements

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

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Arbitration Agreement – OPA Key Concerns

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

Arbitration Agreement – OPA Key Concerns

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

ONTARIO POWER AUTHORITY

Comparison of Settlement Proposals

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

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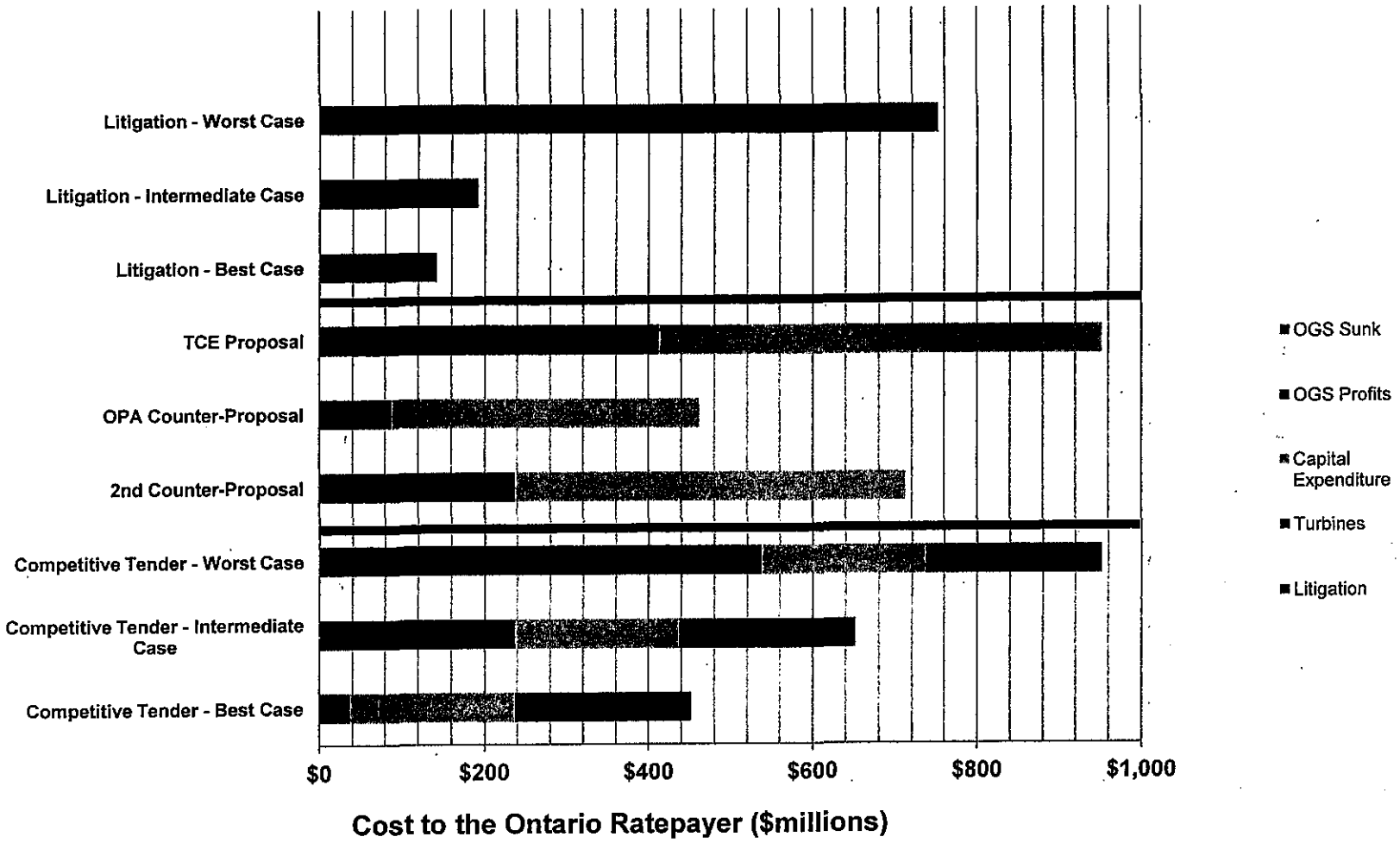
Potential Outcomes

- 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 scenario if the case were to go to litigation

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

Financial Value of Potential Outcomes



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Appendix – System Planning and Status of Lennox GS

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OPG/TCE Potential Deal - System Planning Considerations

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

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

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

Current Status of Lennox Contract and Negotiations

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

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

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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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

Procurement Process - Contract

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

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

ONTARIO POWER AUTHORITY

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)

ONTARIO POWER AUTHORITY

Opposition to Gas-Fired Generation

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

Government Cancellation

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

Termination Negotiations

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

- These discussions began in October 2010 and continued until April 2011.

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

ONTARIO POWER AUTHORITY

TCE Initial Concerns

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

Confidentiality Agreement

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

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

- This agreement has a term of five years.

MOU

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

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ONTARIO POWER AUTHORITY

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Original
Term Sheet

Proposal

To Create a Long Term Partnership Development Agreement

Between the Province of Ontario and TransCanada Energy

July 2011

Private and Confidential Draft: For Discussion Only

Privileged and Without Prejudice

Context

Parties:

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

Terms

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

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

Binding MOU

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

Arbitration

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

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

Approvals

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

Schedule A

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

Objective:	TransCanada Energy Ltd. ("TCE") and Ontario Power Generation Inc. ("OPG"), (together, the "Partners") will work together exclusively using best efforts on thermal generation developments as further described in this Schedule A.
Development A	
Joint Venture:	The Partners will form a joint venture, partnership or other tax-favourable structure which will have the exclusive right to work together using best efforts on a gas-fired generation facility (the "Project") at one of OPG's existing thermal sites, or other such sites as the Partners agree, secured with a long-term CES Contract with the Ontario Power Authority or other credit-worthy power purchaser. The Partners will use the turbines and ancillary contracts (the "Turbines") already acquired for the OGS .
Ownership:	The Partners will own the Project on a 50/50 equity basis.
Term:	The Partnership will have 2 years to identify a mutually agreeable project and secure a long-term CES Contract with the OPA or other credit-worthy power purchaser.
Funding:	The Project shall be funded as follows: TCE will transfer Oakville gas turbines and associated contracts to the OPG/TCE joint venture upon execution of a CES Contract for the Project. For the first $[450] million of Project capital cost (including Turbines), TCE shall contribute all funding in the form of the Turbines (with a notional value of $[225] million) and up to $[225] million in cash necessary to complete the Project. Project capital costs over $[450] million shall be funded 50/50 by OPG and TCE. In return for TCE's commitment to fund the Project as set out above, TCE shall acquire all of OPG's equity interest in Portlands Energy Centre Inc. and partnership interest

	in Portlands Energy Centre LP. TCE shall also pay OPG $[100] million - $[50] million on closing and $[50] million on first anniversary of closing.
Closing:	To occur as soon as all third party and government approvals are received.
Termination:	In the event that the Partners are unable to develop the Project and secure the CES Contract using the Turbines by the end of the 2 year period or if the Parties obtain a CES Contract but are unable to construct the Project, then TCE will transfer its interest in the Turbines to OPG for no additional consideration and the joint venture shall terminate.
Return:	The Project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
Definitive Document:	Agreement to be based on typical agreements for a transaction of this nature and to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement and to close the transaction, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011

Development B

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

	performed on the conversion of the Coal Power Facilities to natural gas fuel.
Coal Power Facilities:	The following three coal generation facilities and sites are owned by OPG: Lambton (950 MW) Nanticoke (4,096 MW) Thunder Bay (303 MW)
Ownership:	50/50
Term:	[10] years, subject to extension by mutual agreement of the Partners, plus the term of any CES Contracts (the "Term").
Funding:	The Partners will fund all aspects of the projects in proportion to their ownership interest. OPG will contribute site and facilities; Partners to agree on valuation and true-up by TCE.
Return:	Each project will give a return to TCE that is equal to or better than returns earned on similar, privately-owned generating projects.
ROFR:	In the event that the OPG intends to sell, lease or otherwise transfer any direct or indirect interest in any of the Coal Power Facilities, it shall grant TCE the right of first refusal on any third party offer.
Definitive Document:	Agreement incorporating these terms and to be based on typical agreements for a transaction of this nature, to be negotiated in good faith and executed on or before September 1, 2011.
Approvals:	TCE and OPG to obtain all required internal approvals to enter into the definitive agreement, including Board of Directors and, for OPG, any required approvals of the Province, on or before September 1, 2011.

OPG
Preferred
Term Sheet

Proposal

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July 2011

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

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

Arbitration

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

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

Approvals

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

Schedule A

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

Development A

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

Development B

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

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

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

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

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 **Waiver of Defences**

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

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

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

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

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

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion 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
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Email: mbarrack@tgf.ca

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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

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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 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") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. 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, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

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

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

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

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

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Tuesday, August 02, 2011 4:30 PM
To: 'Broer, Kate'; McCutcheon, David
Cc: Michael Lyle
Subject: RE: Arbitration Agreement

I'm happy to go back to MikeB about this but I'm wondering if the first point is one that the Crown would support if they could also be required to produce more. I'm trying to get in touch with John and can ask him if you think that it is worth holding things up over. The second point seems straightforward.

Dermot

From: Broer, Kate [mailto:Kate.Broer@fmc-law.com]
Sent: Tuesday, August 02, 2011 2:37 PM
To: Dermot Muir; McCutcheon, David
Cc: 'Michael.Lyle@powerauthority.on.ca'
Subject: Re: Arbitration Agreement

Dermot -

Dave, Mike and I have spoken. There are two points out of the discussion.

First, Mike is concerned about the doc discovery process in section 6.1 and, in particular, that TCE may not be as forthcoming as it should be. He is worried that they may attempt to avoid production on the basis that the province has not been sufficiently specific in making requests for information beyond that upon which TCE intends to rely. We discussed an approach more like the one found in the Rules which creates a broader obligation to produce all documents of relevance. We also discussed that this type of change could also mean broader production obligations for the province and could take more time to complete. He asked that we raise the issue with you for your further thoughts and consideration. It is our feeling that if the province wants to go back to TCE with a broader requirement, that Barrack would likely be open to a change.

The second point relates to the time limit on cross-examinations of one day in section 6.3. Mike suggested that this could be tight and we agreed it would be appropriate to change the time limit from one day to two days.

I am available on my cell 416-895-4574, if you want to discuss further.

Kate

Kate Broer
Fraser Milner Casgrain LLP
77 King Street West
Toronto, ON M5K 0A1
Direct Line: 416-863-4574
Fax: 416-863-4592
Kate.Broer@fmc-law.com

THE ORIGINAL MESSAGE. THANK YOU

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Monday, August 01, 2011 11:05 AM
To: McCutcheon, David
Cc: Broer, Kate; 'Michael.Lyle@powerauthority.on.ca' <Michael.Lyle@powerauthority.on.ca>
Subject: Arbitration Agreement

David:

Would you be available for a short tele-con tomorrow to talk to my colleague Michael Lyle (GC at the OPA) about the arbitral process that is being proposed?

Thanks a lot.

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 6:09 PM
To: 'Dermot.Muir@infrastructureontario.ca'
Subject: Re: Arbitration Agreement

Sure

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Tuesday, August 02, 2011 06:08 PM
To: Michael Lyle
Subject: RE: Arbitration Agreement

Michael:

I'm just on the road at the moment. Why don't I call you? Would 6:40 be ok?

Dermot

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Tuesday, August 02, 2011 6:07 PM
To: Dermot Muir
Subject: RE: Arbitration Agreement

Got your message. Can you take a call at 6:30? What number should I call you on?

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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Sent: August 2, 2011 4:30 PM
To: 'Broer, Kate'; McCutcheon, David
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Subject: RE: Arbitration Agreement

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Toronto, Ontario
M5G 2C8
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Crystal Pritchard

From: James Hinds [jim_hinds@irish-line.com]
Sent: Tuesday, August 02, 2011 6:49 PM
To: Colin Andersen; Michael Lyle
Subject: NTP and Samsung - Do Not Share

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

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

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Adele Hurley [adele@adelehurley.com]
Sent: Tuesday, August 02, 2011 7:12 PM
To: John Zych
Cc: Colin Andersen; jmichaelcostello@gmail.com; Richard Fitzgerald; James Hinds; Ron Jamieson; Bruce Lourie; Lyn McLeod; pjmon; Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: Re: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

Noted. Thank you.
Adele

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

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

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

We attach the following materials:

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

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

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

The call-in details are as follows:

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

John Zych

Corporate Secretary

Ontario Power Authority

Suite 1600

120 Adelaide Street West

Toronto, ON M5H 1T1

416-969-6055

416-967-7474 Main telephone

416-967-1947 OPA Fax

416-416-324-5488 Personal Fax

John.Zych@powerauthority.on.ca

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.

Crystal Pritchard

From: Michael Lyle
Sent: Tuesday, August 02, 2011 10:45 PM
To: 'rsebastiano@osler.com'
Subject: Fw: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pptx; 2 - Original TS.pdf; 3 - Preferred TS.pdf; 4 - Draft Arbitration Agreement_FINAL12_IO.docx

Sorry. Slipped my mind in what was a very busy day.

From: John Zych
Sent: Tuesday, August 02, 2011 03:52 PM
To: Colin Andersen; 'jmichaelcostello@gmail.com' <jmichaelcostello@gmail.com>; 'Richard Fitzgerald' <rfitzgerald7@sympatico.ca>; 'James Hinds' <jim_hinds@irish-line.com>; 'Adele Hurley' <adele@adelehurley.com>; 'Ron Jamieson' <ferrari@execulink.com>; 'Bruce Lourie' <blourie@ivey.org>; 'Lyn McLeod' <lynandneil@sympatico.ca>; 'pjmon' <pjmon@yorku.ca>
Cc: Amir Shalaby; Michael Lyle; JoAnne Butler; Kim Marshall; Andrew Pride; Kristin Jenkins; Brett Baker; Nimi Visram
Subject: BOARD TELECONFERENCE MEETING - WEDNESDAY, AUGUST 3, 2011 - 4:30 P.M., TORONTO TIME

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Suite 1600
120 Adelaide Street West
Toronto, ON M5H 1T1
416-969-6055
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416-967-1947 OPA Fax
416-416-324-5488 Personal Fax

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

Arbitration Agreement – Key Elements

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

Arbitration Agreement – OPA Key Concerns

- What is value proposition for ratepayers? – how strong are arguments that OPA could have made in litigation but are precluded from making in arbitration?

- Who should pay arbitration award? – ratepayers or taxpayers?

- The turbines – are there opportunities to obtain ratepayer value by providing for assignment of turbines to successful bidder?

Arbitration Agreement – OPA Key Concerns

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

Comparison of Settlement Proposals

	$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 second counter-proposal the permitting risk is entirely transferred to TCE; however, the promise of finding compensation of OGS lost profits would continues until another option is found.

ONTARIO POWER AUTHORITY

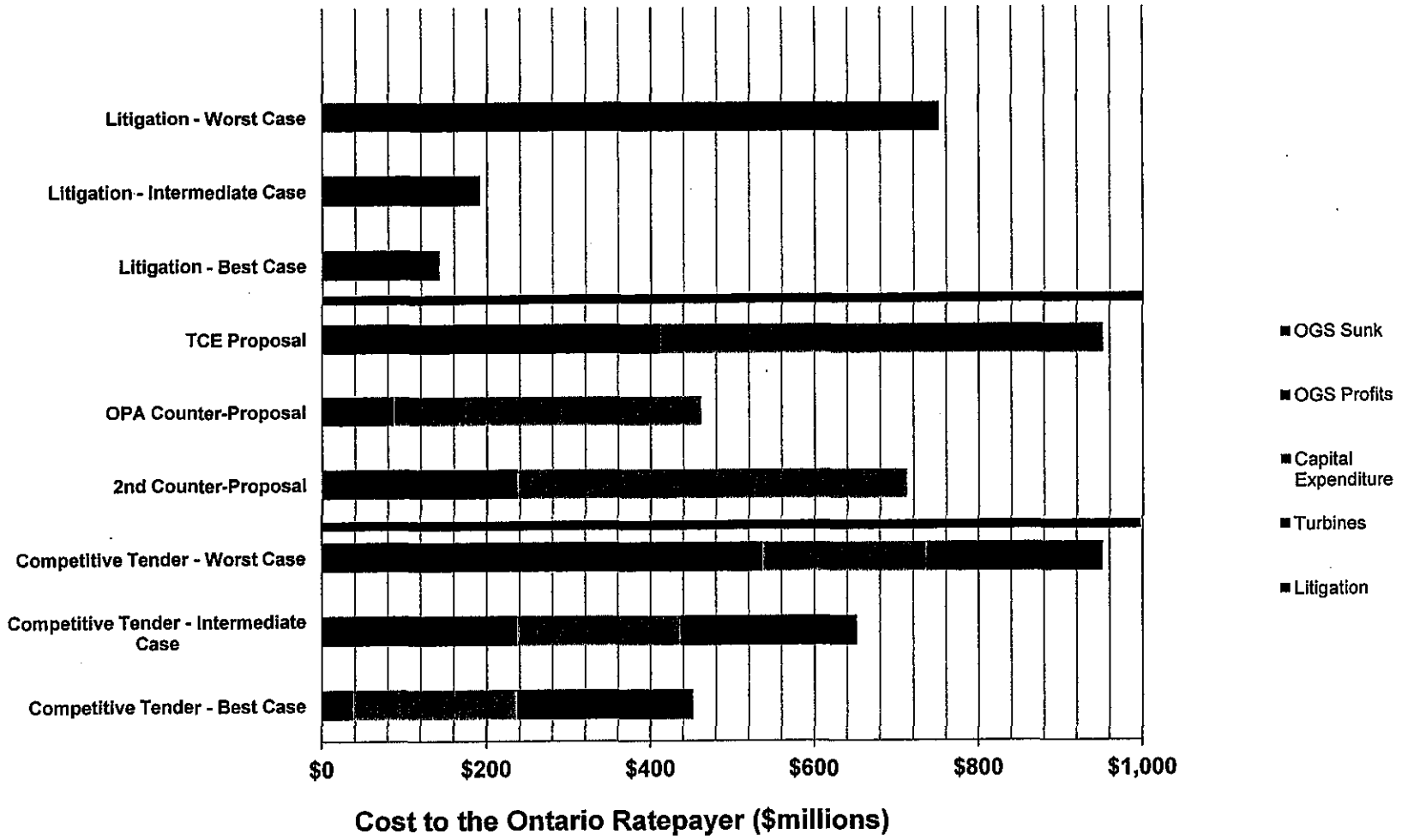
Potential Outcomes

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

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

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

Financial Value of Potential Outcomes



ONTARIO POWER AUTHORITY

Appendix – System Planning and Status of Lennox GS

ONTARIO POWER AUTHORITY

OPG/TCE Potential Deal - System Planning Considerations

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

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

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

Current Status of Lennox Contract and Negotiations

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

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

ONTARIO POWER AUTHORITY

Southwest Greater Toronto Area (SW GTA) Supply

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

Southwest Greater Toronto Area (SW GTA) Supply

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

OPA Procurement Process – Ministry Directive

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

Procurement Process - Contract

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

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

Opposition to Gas-Fired Generation

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

ONTARIO POWER AUTHORITY

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

ONTARIO POWER AUTHORITY

Government Cancellation

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

Termination Negotiations

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

- These discussions began in October 2010 and continued until April 2011.

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

ONTARIO POWER AUTHORITY

TCE Initial Concerns

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

Confidentiality Agreement

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

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

- This agreement has a term of five years.

MOU

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

Replacement Project

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

Replacement Project Negotiations

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

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

OPA Analysis

- OPA undertook a detailed analysis of the Replacement Project.

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

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

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

Fundamental Disagreement – Value of OGS

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

Residual Value of the OGS

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

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

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

ONTARIO POWER AUTHORITY

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.

Crystal Pritchard

From: James Hinds [jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 7:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

Mathematically true, but not the full story and not an accurate reading of where we find ourselves right now.

If it were to go to litigation and if the ratepayer is assumed to bear the full burden of the outcome, the ratepayer gets no electrons. If a Replacement Project is done, the ratepayer gets electrons. We should be biased towards some form of Replacement Project.

When we were in negotiations with TCE about a KW peaker, we tried to establish parameters whereby we could accommodate TCE's costs on the cancelled 945MW Oakville combined cycle plant within the envelope of a 500MW peaker. Slides 8 and 10, previously seen by the Board. We established an "out edge" of this envelope in respect of a peaker; this was not acceptable to TCE.

When IO took over negotiations, they changed the envelope to Lennox, an antiquated 2,100MW baseload dual fuel plant and Nantikoke, a 4,400MW coal-to-gas conversion opportunity. On the face of it, it makes more sense that TCE's demands can be accommodated by folding in the business proposition of a 945MW combined cycle plant into either of these alternative sites.

The question isn't just "cost to the ratepayer" - it is "value to the ratepayer".

Let's focus on Lennox. Since 2006, Lennox has been running on a yearly contract which presently costs the ratepayer $110MM per year. And for what? What is its capacity utilization? The only time I've seen it running recently was once during the heat spell this past July. It is my understanding that OPG has written the plant off to zero and has filed notice to close it; the only reason it is still running is the must-run contract. Absent the TCE discussion, we were wanting to extend the contract on Lennox for three to ten years. What is the NPV of that contract extension - $300MM to $900MM by a quick calculation. What value does running Lennox this way create for the ratepayer?

If the proposed Lennox rebuild eliminates some or all of those costs currently borne by the ratepayer, isn't that a source of ratepayer value?

My point is that the real question here is this: what is the value for ratepayer of Lennox as presently run and Lennox reconfigured with the Oakville turbines? Costs to the ratepayer under the latter will probably be higher, but the question is the value to the ratepayer. We need to have a more practical and financially articulate position before we engage in this discussion this afternoon.

Jim Hinds
(416) 524-6949

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

ARBITRATION AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1
APPLICATION OF THE ACT

Section 1.1 Recitals

The recitals herein are true and correct.

Section 1.2 Act

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

ARTICLE 2

Section 2.1 **Consideration**

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

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

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

ARTICLE 3

ARBITRATOR

Section 3.1

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

ARTICLE 4
JURISDICTION OF ARBITRATOR

Section 4.1 **Final Decision and Award**

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

Section 4.2 **The Disputes**

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

Section 4.3 Waiver of Defences

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

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

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

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

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

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

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

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

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

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

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

Section 4.4 Arbitrator Jurisdiction

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

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

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

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

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

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

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

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

Section 4.5 Costs

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

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

Section 4.6 Timetable

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

ARTICLE 5
SUBMISSION OF WRITTEN STATEMENTS

Section 5.1 Statement of Claim

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

Section 5.2 Defence

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

Section 5.3 Reply

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

ARTICLE 6
CONDUCT OF THE ARBITRATION

Section 6.1 Documentary Discovery

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

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

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

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

Section 6.2 Evidence by Witness Affidavits

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

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

Section 6.3 Cross Examinations on Affidavits

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

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

Section 6.4 Expert Reports

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

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

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

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

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

Section 6.5 Arbitration Hearing

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

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

Section 6.6 Witness Statements

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

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

Section 6.7 Examinations and Oral Submissions

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

Section 6.8 Applicable Law

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

Section 6.9

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

Section 6.10

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

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

ARTICLE 7
AWARD

Section 7.1 Decision(s) Timeline

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

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

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

Section 7.2

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

Section 7.3

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

(a) Upon the request of the Respondent Her Majesty the Queen in Right of Ontario to satisfy the Final Award or interim final award against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "**Assets of Interest**") to the Respondent for consideration. Such list to consist of assets owned by the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion 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") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 22 (c) of the *Proceedings Against the Crown Act* (the "Claim");

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

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

and demands for damages, monies, losses, indemnities, costs, interests in loss, or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Releasor arising out of, in relation to or in connection with the CES Contract, the October 7 Letter, the Claim or the Arbitration and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a fiduciary duty or by virtue of any statute or otherwise or by reason of any damage, loss or injury arising out of the matters set forth above and, without limiting the generality of the foregoing, from any and all matters that were raised or could have been raised in respect to or arising out of the CES Contract, the October 7 Letter or the Claim. 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, the October 7 Letter and the Claim, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof, and (b) any and all of the claims or causes of action that could have been made at the Arbitration by the Releasor against the Releasees, in respect of and arising from the CES Contract, the October 7 Letter or the Claim, and that this Full and Final Release is to be construed liberally as against the Releasor to fulfill the said intention.

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

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

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

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

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

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

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

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

DATED this _____day of _____, 2011.

TRANSCANADA ENERGY LTD.

By: _____

Title

Crystal Pritchard

From: James Hinds [jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 7:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

Mathematically true, but not the full story and not an accurate reading of where we find ourselves right now.

If it were to go to litigation and if the ratepayer is assumed to bear the full burden of the outcome, the ratepayer gets no electrons. If a Replacement Project is done, the ratepayer gets electrons. We should be biased towards some form of Replacement Project.

When we were in negotiations with TCE about a KW peaker, we tried to establish parameters whereby we could accommodate TCE's costs on the cancelled 945MW Oakville combined cycle plant within the envelope of a 500MW peaker. Slides 8 and 10, previously seen by the Board. We established an "out edge" of this envelope in respect of a peaker; this was not acceptable to TCE.

When IO took over negotiations, they changed the envelope to Lennox, an antiquated 2,100MW baseload dual fuel plant and Nantikoke, a 4,400MW coal-to-gas conversion opportunity. On the face of it, it makes more sense that TCE's demands can be accommodated by folding in the business proposition of a 945MW combined cycle plant into either of these alternative sites.

The question isn't just "cost to the ratepayer" - it is "value to the ratepayer".

Let's focus on Lennox. Since 2006, Lennox has been running on a yearly contract which presently costs the ratepayer $110MM per year. And for what? What is its capacity utilization? The only time I've seen it running recently was once during the heat spell this past July. It is my understanding that OPG has written the plant off to zero and has filed notice to close it; the only reason it is still running is the must-run contract. Absent the TCE discussion, we were wanting to extend the contract on Lennox for three to ten years. What is the NPV of that contract extension - $300MM to $900MM by a quick calculation. What value does running Lennox this way create for the ratepayer?

If the proposed Lennox rebuild eliminates some or all of those costs currently borne by the ratepayer, isn't that a source of ratepayer value?

My point is that the real question here is this: what is the value for ratepayer of Lennox as presently run and Lennox reconfigured with the Oakville turbines? Costs to the ratepayer under the latter will probably be higher, but the question is the value to the ratepayer. We need to have a more practical and financially articulate position before we engage in this discussion this afternoon.

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: JoAnne Butler
Sent: Wednesday, August 03, 2011 8:04 AM
To: Michael Killeavy; Michael Lyle; Amir Shalaby
Subject: Re: Confidential - TCE and Lennox

Can we discuss response at ETM?

----- Original Message -----
From: Michael Killeavy
Sent: Wednesday, August 03, 2011 07:44 AM
To: Michael Lyle
Cc: JoAnne Butler
Subject: Re: Confidential - TCE and Lennox

Based on TCE's position in the negotiations, the all-in cost of the K-W peaker in terms of CAPEX, sunk costs, financial value of OGS is more expensive than our worst outcome under litigation - in the litigation scenario we'd forego CAPEX outlays.

I'll have to think about Jim's question/comment some more. There is value in having a peaking plant, I suppose. Amir will need to weigh in, though. Is the value perhaps the avoided cost of imported power?

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

----- Original Message -----
From: Michael Lyle
Sent: Wednesday, August 03, 2011 07:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

----- Original Message -----
From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 07:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

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My point is that the real question here is this: what is the value for ratepayer of Lennox as presently run and Lennox reconfigured with the Oakville turbines? Costs to the ratepayer under the latter will probably be higher, but the question is the value to the ratepayer. We need to have a more practical and financially articulate position before we engage in this discussion this afternoon.

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Irene Mauricette
Sent: Wednesday, August 03, 2011 9:49 AM
To: Colin Andersen
Cc: Michael Lyle; John Zych; Nimi Visram
Subject: FW: Slide Deck - PowerPoint
Attachments: 1 - TCE Board Presentation 2 Aug 2011 v6.pdf

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

Thnx
Nimi

Nimi Visram on behalf of
Irene Mauricette
Executive Assistant to
The Chief Executive Officer

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

Direct: 416 969 6010
FAX: 416 969 6380
Email: irene.mauricette@powerauthority.on.ca
Web: www.powerauthority.on.ca

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

Nimi Visram| Ontario Power Authority |Executive Assistant & Board Coordinator, to General Counsel & Vice President, Legal, Aboriginal and Regulatory Affairs
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1
☎Phone: 416.969.6027 | 🖷 Fax: 416.969.6383| ✉ Email: nimi.visram@powerauthority.on.ca

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 10:59 AM
To: Amir Shalaby; JoAnne Butler
Subject: RE: Response to Jim's questions : Confidential - TCE and Lennox

I have invited you to a pre-meeting at 4 with Jim, JoAnne, Michael K and myself to discuss his question.

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

-----Original Message-----
From: Amir Shalaby
Sent: August 3, 2011 10:46 AM
To: JoAnne Butler; Michael Lyle
Subject: Response to Jim's questions : Confidential - TCE and Lennox

Did you discuss this? I can provide the response at the meeting or now by email, what is your guidance?

----- Original Message -----
From: JoAnne Butler
Sent: Wednesday, August 03, 2011 08:03 AM
To: Michael Killeavy; Michael Lyle; Amir Shalaby
Subject: Re: Confidential - TCE and Lennox

Can we discuss response at ETM?

----- Original Message -----
From: Michael Killeavy
Sent: Wednesday, August 03, 2011 07:44 AM
To: Michael Lyle
Cc: JoAnne Butler
Subject: Re: Confidential - TCE and Lennox

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

----- Original Message -----
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Sent: Wednesday, August 03, 2011 07:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

----- Original Message -----
From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 07:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 11:00 AM
To: 'James Hinds'; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

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

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

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

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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Amir Shalaby
Sent: Wednesday, August 03, 2011 11:02 AM
To: Michael Lyle; JoAnne Butler
Subject: Re: Response to Jim's questions : Confidential - TCE and Lennox

Thanks

----- Original Message -----
From: Michael Lyle
Sent: Wednesday, August 03, 2011 10:59 AM
To: Amir Shalaby; JoAnne Butler
Subject: RE: Response to Jim's questions : Confidential - TCE and Lennox

I have invited you to a pre-meeting at 4 with Jim, JoAnne, Michael K and myself to discuss his question.

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

-----Original Message-----
From: Amir Shalaby
Sent: August 3, 2011 10:46 AM
To: JoAnne Butler; Michael Lyle
Subject: Response to Jim's questions : Confidential - TCE and Lennox

Did you discuss this? I can provide the response at the meeting or now by email, what is your guidance?

----- Original Message -----
From: JoAnne Butler
Sent: Wednesday, August 03, 2011 08:03 AM
To: Michael Killeavy; Michael Lyle; Amir Shalaby
Subject: Re: Confidential - TCE and Lennox

Can we discuss response at ETM?

----- Original Message -----
From: Michael Killeavy

Sent: Wednesday, August 03, 2011 07:44 AM
To: Michael Lyle
Cc: JoAnne Butler
Subject: Re: Confidential - TCE and Lennox

Based on TCE's position in the negotiations, the all-in cost of the K-W peaker in terms of CAPEX, sunk costs, financial value of OGS is more expensive than our worst outcome under litigation - in the litigation scenario we'd forego CAPEX outlays.

I'll have to think about Jim's question/comment some more. There is value in having a peaking plant, I suppose. Amir will need to weigh in, though. Is the value perhaps the avoided cost of imported power?

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

----- Original Message -----
From: Michael Lyle
Sent: Wednesday, August 03, 2011 07:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

----- Original Message -----
From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 07:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

Mathematically true, but not the full story and not an accurate reading of where we find ourselves right now.

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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 11:20 AM
To: 'James Hinds'; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: RE: Confidential - TCE and Lennox

Ok.

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

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

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

Jim Hinds
(416) 524-6949

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

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

Michael Lyle

General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Direct: 416-969-6035
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.

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

Folks,

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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Dermot Muir [Dermot.Muir@infrastructureontario.ca]
Sent: Wednesday, August 03, 2011 1:33 PM
To: Michael Lyle
Cc: Nadine Brammer
Subject: Arbitration Agreement
Attachments: Arbitration Agreement.pdf

Michael:

Please find attached the execution copy of the agreement. Pending approval by your Board could I please ask you to arrange for execution and return to me. I will forward to TCE.

Thanks a lot for all your help on this matter. It would be nice to meet you in person. I will ask my assistant to be in touch with yours and try to arrange a lunch for us.

Regards

Dermot

Dermot P. Muir
General Counsel and Corporate Secretary
Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2C8
416-325-2316
416-204-6130 (fax)
Dermot.Muir@infrastructureontario.ca

Crystal Pritchard

From: Michael Killeavy
Sent: Wednesday, August 03, 2011 1:54 PM
To: Michael Lyle; JoAnne Butler
Subject: FW: Confidential - TCE and Lennox

Kevin's provided some background on Lennox GS for us.

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

From: Kevin Dick
Sent: August 3, 2011 9:36 AM
To: Michael Killeavy
Subject: RE: Confidential - TCE and Lennox

A few notes/clarifications on Lennox and the arbitration agreement:

1. The Lennox contract is roughly 50 to 60 MM dollars per year. 60 MM dollars represents the fixed costs, variable costs and 5% cost of capital for Lennox less the market revenues Lennox makes. I think the 110 MM dollar number referenced in the email below is a gross number but I would not consider it appropriate as an assessment of the cost of Lennox. OPG has likely written off the asset but the OPA is not paying any depreciation costs for the facility. The NPV of the contract extension based on a 60 MM annual costs is roughly 500 MM.
2. While there are questions regarding Lennox's usefulness a practical question arises regarding the conversion of Nanticoke and Lambton. Lennox is a dual fuel facility providing 2100 MW of capacity at the relatively low cost of 60 MM/year (2,500 $/MW-month). Why would we be contemplating a conversion of Nanticoke costing over 500 MM dollars (350 MM dollars for a pipeline and 50 MM dollars per unit converted) with an operating cost of 27 MM dollars per year per unit when Lennox already has the infrastructure in place and has comparable, if not lower, operating costs (the heat rates are comparable). If Nanticoke, or Lambton for that matter, are required as capacity resources but Lennox is deemed to not be in the ratepayers interest I think that raises serious questions on our planning decisions. Reconfiguring the Lennox facility will likely not be a positive net value for ratepayers, however I recognise this is about minimising negative value rather than maximising positive value.
3. Personally, I think building a combined cycle at Nanticoke makes the most sense but the plans to convert Nanticoke should be abandoned. I think that getting a deal done for KWCG would have been a better option but it now appears as though that opportunity has passed. I do agree with Jim's assessment of the situation. Better to get some value for ratepayers than have a settlement paid to TCE with no generation being installed but I am unsure if cancelling the current Lennox contract is the right route. I think a look at Nanticoke as the appropriate site is likely the better route.

Kevin Dick, P. Eng.
Director, Clean Energy Procurement
Electricity Resources

Ontario Power Authority
120 Adelaide St W, Suite 1600
Toronto, ON M5H 1T1
T: 416.969.6292
F: 416.967.1947

-----Original Message-----
From: Michael Killeavy
Sent: August 3, 2011 8:24 AM
To: Kevin Dick
Subject: FW: Confidential - TCE and Lennox

Please see below. It deals with Lennox.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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-----Original Message-----
From: Michael Lyle
Sent: August 3, 2011 7:39 AM
To: Michael Killeavy
Subject: Fw: Confidential - TCE and Lennox

Do you want to address this?

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From: James Hinds [mailto:jim_hinds@irish-line.com]
Sent: Wednesday, August 03, 2011 07:38 AM
To: Michael Lyle; Amir Shalaby; JoAnne Butler
Cc: Colin Andersen
Subject: Confidential - TCE and Lennox

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Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Wednesday, August 03, 2011 9:27 PM
To: Michael Lyle
Cc: Smith, Elliot; Ivanoff, Paul
Subject: Draft Gas Turbine Clause for Arbitration Agreement

Mike, here is a first cut at a clause to deal with the gas turbines. I am working on the proposed revisions for the other two concepts.

Regards, Rocco

Section 4.7 Gas Turbines

The Parties acknowledge that TCE has entered into an equipment supply contract (as amended, the "Equipment Supply Contract") with MPS Canada, Inc. ("MPS") dated July 7, 2009, for the purchase of two M501GAC gas turbines, which were subsequently modified to include "fast start" capability (the "Gas Turbines").

(a) TCE shall mitigate any damages it may suffer in connection with the Gas Turbines resulting from the cancellation of the OGS, by assigning, selling or otherwise disposing of the Gas Turbines or assigning or amending the Equipment Supply Contract ("Proposed Gas Turbine Mitigation Measures").
(b) After all material details relating to a Proposed Gas Turbine Mitigation Measure have been finalized, TCE shall provide the OPA with a detailed explanation of such Proposed Gas Turbine Mitigation Measure. For a period of **[90 days]** after the OPA has received such explanation, the OPA (or a third party to be designated by the OPA) shall have the right to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such right of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.
(c) If the OPA does not exercise the right set out in Section 4.7(b), TCE may proceed with the Proposed Gas Turbine Mitigation Measure in accordance with its obligation set out in Section 4.7(a).

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 9:45 PM
To: 'Sebastiano, Rocco'
Cc: 'Smith, Elliot'; 'Ivanoff, Paul'
Subject: RE: Draft Gas Turbine Clause for Arbitration Agreement
Attachments: 4.7gasturbines.docx

A couple of comments in the attached. How would this work if these steps in s.4.7 were carried out after the arbitrator had issued the award?

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
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Direct: 416-969-6035
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~~(c)~~

Comment [mi1]: Can this include TCE using them in another TCE project?

Comment [mi2]: Any timeline for how quickly this would be done?

Formatted: Normal, No bullets or numbering

Crystal Pritchard

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Wednesday, August 03, 2011 10:27 PM
To: Michael Lyle
Cc: Smith, Elliot; Ivanoff, Paul
Subject: Limitation of Damages and Split of Final Award Clause

Mike, here are the other proposed clauses:

Section 4.3(d)

(d) The Parties agree that the waiver of defences relating to Section 14.1 of the CES Contract set out in this Arbitration Agreement is intended to apply to the determination of TCE's reasonable damages associated with the anticipated financial value of the CES Contract (such as loss of profits), but is not intended to apply to other special, indirect, incidental, punitive, exemplary or consequential damages (such as loss of revenues not contemplated by the CES Contract).

Section 7.5 Split of Final Award between Respondents

Notwithstanding any finding of liability as between the Respondents which may be determined by the Arbitrator in the Final Award [or interim final award], except where the Final Award [or interim final award] is satisfied the transfer of an asset of Equivalent Value, the Respondents agree that the liability for payment of the Final Award [or interim final award] shall be split equally between the Respondents.

Rocco Sebastiano
Partner

416.862.5859 DIRECT
416.862.6666 FACSIMILE
rsebastiano@osler.com

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

Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 10:34 PM
To: 'Sebastiano, Rocco'
Cc: 'Smith, Elliot'; 'Ivanoff, Paul'
Subject: RE: Limitation of Damages and Split of Final Award Clause

Looks good but for a missing "by" after the word satisfied in s.7.5. Can you put all of the changes in a single document and I will ship them around to the client and we will have a discussion in the morning? Thanks.

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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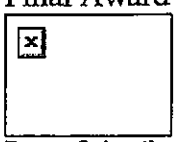

Rocco Sebastiano

Partner

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Crystal Pritchard

From: Michael Lyle
Sent: Wednesday, August 03, 2011 10:54 PM
To: Colin Andersen; JoAnne Butler; Michael Killeavy; Brett Baker
Subject: TCE
Attachments: arbagreementnewclauses.doc

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

Michael Lyle
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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

Proposed New Clauses for the Draft Arbitration Agreement

Section 4.3(d)

(d) The Parties agree that the waiver of defences relating to Section 14.1 of the CES Contract set out in this Arbitration Agreement is intended to apply to the determination of TCE's reasonable damages associated with the anticipated financial value of the CES Contract (such as loss of profits), but is not intended to apply to other special, indirect, incidental, punitive, exemplary or consequential damages (such as loss of revenues not contemplated by the CES Contract).

Section 4.7 Gas Turbines

The Parties acknowledge that TCE has entered into an equipment supply contract (as amended, the "Equipment Supply Contract") with MPS Canada, Inc. ("MPS") dated July 7, 2009, for the purchase of two M501GAC gas turbines, which were subsequently modified to include "fast start" capability (the "Gas Turbines").

(a) TCE shall mitigate any damages it may suffer in connection with the Gas Turbines resulting from the cancellation of the OGS, by assigning, selling or otherwise disposing of the Gas Turbines or assigning or amending the Equipment Supply Contract ("Proposed Gas Turbine Mitigation Measures").

(b) After all material details relating to a Proposed Gas Turbine Mitigation Measure have been finalized, and prior to the commencement of the Arbitration Hearing, TCE shall provide the OPA with a detailed explanation of such Proposed Gas Turbine Mitigation Measure. For a period of **[90 days]** after the OPA has received such explanation, the OPA (or a third party to be designated by the OPA) shall have the right to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such right of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.

(c) If the OPA does not exercise the right set out in Section 4.7(b), TCE may proceed with the Proposed Gas Turbine Mitigation Measure in accordance with its obligation set out in Section 4.7(a).

Section 7.5 Split of Final Award between Respondents

Notwithstanding any finding of liability as between the Respondents which may be determined by the Arbitrator in the Final Award [or interim final award], except where the Final Award [or interim final award] is satisfied by the transfer of an asset of Equivalent Value, the Respondents agree that the liability for payment of the Final Award [or interim final award] shall be split equally between the Respondents.

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, August 04, 2011 8:17 AM
To: Michael Lyle; Colin Andersen; JoAnne Butler; Brett Baker
Subject: RE: TCE
Attachments: arbagreementnewclauses-MK Comments.docx

Importance: High

I have a few minor suggestions in the attached mark-up.

Michael Killeavy, LL.B., MBA, P.Eng.
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416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

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

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

Michael Lyle
General Counsel and Vice President
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Email: michael.lyle@powerauthority.on.ca

Proposed New Clauses for the Draft Arbitration Agreement

Section 4.3(d)

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(b) After all material details relating to a Proposed Gas Turbine Mitigation Measures have been finalized, and prior to the commencement of the Arbitration Hearing, TCE shall provide the OPA with a detailed explanation of such Proposed Gas Turbine Mitigation Measures. For a period of **[90 days]** after the OPA has received such explanation, the OPA (or a third party to be designated by the OPA) shall have the right to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such right of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.

(c) If the OPA does not exercise the right set out in Section 4.7(b), TCE may proceed with the Proposed Gas Turbine Mitigation Measures in accordance with its obligation set out in Section 4.7(a).

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Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 11:12 AM
To: 'Sebastiano, Rocco'
Subject: RE: Draft Arbitration Agreement_FINAL15_IO

I agree the recital does not work to address our concern which is why I did not mention it in the email.

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: August 4, 2011 11:00 AM
To: Michael Lyle
Subject: RE: Draft Arbitration Agreement_FINAL15_IO

Certainly "to be comprised of" is better, but I am still concerned that the next clause in (A) says "the net profit to be earned by TCE over the 20 year life of the CES Contract" which could be interpreted to be broader than "the net profit to be earned under the CES Contract". I would prefer that (A) be amended to read "the net profit to be earned by TCE under the CES Contract over the 20 year term of the CES Contract".

Regarding the new recital, it does not address a 50/50 split of the award. Rather, it leaves it to "the respective shares of the amount". Would this then be left to the arbitrator to decide?

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, August 04, 2011 10:18 AM
To: Sebastiano, Rocco
Subject: FW: Draft Arbitration Agreement_FINAL15_IO

I think the language in 4.3©(ii) – comprised rather than includes gives us what we want. Do you agree?

Michael Lyle
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Ontario Power Authority
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Email: michael.lyle@powerauthority.on.ca

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From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: August 4, 2011 10:14 AM
To: Michael Lyle
Subject: Draft Arbitration Agreement_FINAL15_IO

Michael:

Just wondering if the addition of the new recital and additional language in 4.3(c)(ii) could answer two of your concerns? If so then perhaps we could just add some language about the turbines.

Could you please get back to me as soon as possible.

Thanks

Dermot

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

SOLICITOR/CLIENT PRIVILEGE

Proposed New Clauses for the Draft Arbitration Agreement

Section 4.3(d)

(d) The Parties agree that the waiver of defences relating to Section 14.1 of the CES Contract set out in this Arbitration Agreement is intended to apply to the determination of TCE's reasonable damages associated with the anticipated financial value of the CES Contract (such as loss of profits under the CES Contract), but is not intended to apply to other special, indirect, incidental, punitive, exemplary or consequential damages (such as loss of revenues not contemplated by the CES Contract).

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(b) After all material details relating to a Proposed Gas Turbine Mitigation Measures have been finalized, and prior to the commencement of the Arbitration Hearing, TCE shall provide the OPA with a detailed explanation of such Proposed Gas Turbine Mitigation Measures. For a period of **[90 days]** after the OPA has received such explanation, the OPA (or a third party to be designated by the OPA) shall have the right to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such right of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.

(c) If the OPA does not exercise the right set out in Section 4.7(b), TCE may proceed with the Proposed Gas Turbine Mitigation Measures in accordance with its obligation set out in Section 4.7(a).

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Notwithstanding any finding of liability as between the Respondents which may be determined by the Arbitrator in the Final Award [or interim final award], except where the Final Award [or interim final award] is satisfied by the transfer of an asset of Equivalent Value, the Respondents agree that the liability for payment of the Final Award [or interim final award] shall be split equally between the Respondents.

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 1:22 PM
To: Colin Andersen
Subject: New clauses
Attachments: proposed new clauses comprehensive.docx

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

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

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

Section 7.5 Split of Final Award between Respondents

Notwithstanding any finding of liability as between the Respondents which may be determined by the Arbitrator in the Final Award [or interim final award], except where the Final Award [or interim final award] is satisfied by the transfer of an asset of Equivalent Value, the Respondents agree that the liability for payment of any component of the Final Award [or interim final award] which is with respect to loss of profits or indirect or consequential damages shall be paid by the Crown.

Section 4.7 Gas Turbines

The Parties acknowledge that TCE has entered into an equipment supply contract (as amended, the "Equipment Supply Contract") with MPS Canada, Inc. ("MPS") dated July 7, 2009, for the purchase of two M501GAC gas turbines, which were subsequently modified to include "fast start" capability (the "Gas Turbines").

TCE shall give OPA at least 60 days notice before it assigns, sells or otherwise disposes of the Gas Turbines. Prior to the earlier of the assignment, sale or other disposition of the Gas Turbines and the commencement of the Arbitration Hearing, OPA shall have the option to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such option of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS.

Section 4.3(c)(ii) Reasonable Damages

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

(i).....

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

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

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 5:04 PM
To: Irene Mauricette
Cc: Brett Baker
Subject: FW: Confidential - TCE and Lennox

I think this might be the one but it already went to Amir.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
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Email: michael.lyle@powerauthority.on.ca

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

Folks,

As I am plowing through the slide deck, I was struck by the two statements on Slide 9, namely that Replacement Projects might cost the ratepayer more than our worst case scenario in the event that it were to go to litigation.

Mathematically true, but not the full story and not an accurate reading of where we find ourselves right now.

If it were to go to litigation and if the ratepayer is assumed to bear the full burden of the outcome, the ratepayer gets no electrons. If a Replacement Project is done, the ratepayer gets electrons. We should be biased towards some form of Replacement Project.

When we were in negotiations with TCE about a KW peaker, we tried to establish parameters whereby we could accommodate TCE's costs on the cancelled 945MW Oakville combined cycle plant within the envelope of a 500MW peaker. Slides 8 and 10, previously seen by the Board. We established an "out edge" of this envelope in respect of a peaker; this was not acceptable to TCE.

When IO took over negotiations, they changed the envelope to Lennox, an antiquated 2,100MW baseload dual fuel plant and Nantikoke, a 4,400MW coal-to-gas conversion opportunity. On the face of it, it makes more sense that TCE's demands can be accommodated by folding in the business proposition of a 945MW combined cycle plant into either of these alternative sites.

The question isn't just "cost to the ratepayer" - it is "value to the ratepayer".

Let's focus on Lennox. Since 2006, Lennox has been running on a yearly contract which presently costs the ratepayer $110MM per year. And for what? What is its capacity utilization? The only time I've seen it running recently was once during the heat spell this past July. It is my understanding that OPG has written the plant off to zero and has filed notice to close it; the only reason it is still running is the must-run contract. Absent the TCE discussion, we were wanting to extend the contract on Lennox for three to ten years. What is the NPV of that contract extension - $300MM to $900MM by a quick calculation. What value does running Lennox this way create for the ratepayer?

If the proposed Lennox rebuild eliminates some or all of those costs currently borne by the ratepayer, isn't that a source of ratepayer value?

My point is that the real question here is this: what is the value for ratepayer of Lennox as presently run and Lennox reconfigured with the Oakville turbines? Costs to the ratepayer under the latter will probably be higher, but the question is the value to the ratepayer. We need to have a more practical and financially articulate position before we engage in this discussion this afternoon.

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 5:24 PM
To: 'Dermot.Muir@infrastructureontario.ca'
Subject: Re: turbines

In a meeting. Let's talk at 6.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Thursday, August 04, 2011 05:22 PM
To: Michael Lyle
Subject: turbines

Michael:

MAG would like to add to the turbines language as follows. Please let me know if you're fine with this.

Gas Turbines

The Parties acknowledge that TCE has entered into an equipment supply contract (as amended, the "Equipment Supply Contract") with MPS Canada, Inc. ("MPS") dated July 7, 2009, for the purchase of two M501GAC gas turbines, which were subsequently modified to include "fast start" capability (the "Gas Turbines").

Prior to the earlier of the assignment, sale or other disposition of the Gas Turbines and the commencement of the Arbitration Hearing, OPA shall have the option to take an assignment of the Equipment Supply Contract in exchange for paying to TCE an amount equal to all amounts paid by TCE to MPS pursuant to the Equipment Supply Contract and assuming any remaining obligations TCE has under the Equipment Supply Contract. Such option of assignment shall only be conditional on MPS's consent in accordance with the terms of the Equipment Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS. TCE shall give OPA 60 days notice before it assigns, sells or otherwise disposes of the Gas Turbines. In any such sale, assignment or disposition all commercially reasonable means shall be employed in an effort to obtain the market value of the turbines.

Thanks

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 6:31 PM
To: 'Dermot.Muir@infrastructureontario.ca'
Subject: Re: turbines

I will give you a call.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Thursday, August 04, 2011 06:17 PM
To: Michael Lyle
Subject: Re: turbines

Michael:

I gave into starvation and have gone home for dinner. Could I ask you to please send me a draft side agreement this evening?

I'm happy to talk about it if you would like. 416-473-5667

Thanks a lot.

Dermot

From: Michael Lyle <Michael.Lyle@powerauthority.on.ca>
To: Dermot Muir
Sent: Thu Aug 04 17:23:45 2011
Subject: Re: turbines

In a meeting. Let's talk at 6.

From: Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]
Sent: Thursday, August 04, 2011 05:22 PM
To: Michael Lyle
Subject: turbines

Michael:

MAG would like to add to the turbines language as follows. Please let me know if you're fine with this.

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Supply Contract, and TCE shall, at the OPA's expense, provide all reasonable assistance to the OPA (or the third party so designated by the OPA, if applicable) in securing such consent from MPS. TCE shall give OPA 60 days notice before it assigns, sells or otherwise disposes of the Gas Turbines. In any such sale, assignment or disposition all commercially reasonable means shall be employed in an effort to obtain the market value of the turbines.

Thanks

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

SOLICITOR/CLIENT PRIVILEGE

Crystal Pritchard

From: Michael Killeavy
Sent: Thursday, August 04, 2011 9:19 PM
To: Michael Lyle; 'RSebastiano@osler.com'
Subject: Re: TCE

I'm not sure about what ancillary services would be worth. I'll do some number crunching tomorrow. Thank you for the update.

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

From: Michael Lyle
Sent: Thursday, August 04, 2011 09:11 PM
To: 'Sebastiano, Rocco' <RSebastiano@osler.com>; Michael Killeavy
Subject: TCE

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

Michael Lyle
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Crystal Pritchard

From: Michael Lyle
Sent: Thursday, August 04, 2011 9:20 PM
To: 'Sebastiano, Rocco'
Subject: Letter Agreement
Attachments: letteragreementreTCE.docx

Government wants a side letter re the split between OPA and the Crown rather than in arbitration agreement. See attached. Could I have your comments? I will call you in the morning.

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

This letter will confirm the basis upon which Her Majesty the Queen in Right of Ontario (the "Crown") and the Ontario Power Authority (the "OPA") have agreed to divide between themselves responsibility for the payment of any award made under an arbitration agreement (the "Arbitration Agreement) entered into between TransCanada Energy Ltd. ("TCE"), the Crown and the OPA with respect to matters related to a contract between TCE and OPA dated as of October 9, 2009 (the "CES Contract") for the development and operation of a 900 megawatt gas fired generating station in Oakville, Ontario (the "OGS").

By letter dated October 7, 2010, the OPA noted the Minister of Energy's announcement of the same day that the Oakville gas plant would not proceed. The letter stated that OPA would not proceed with the contract and acknowledged that TCE is entitled to reasonable damages from the OPA, including the anticipated financial value of the CES Contract. The letter further stated that the OPA would like to begin negotiations with TCE to reach mutual agreement to terminate the CES Contract.

Negotiations have led to agreement that the issues in dispute between TCE, the Crown and the OPA related to the decision not to proceed with the OGS should be resolved by way of binding arbitration in accordance with the terms of the Arbitration Agreement. Section 4.3(c)(ii) of the Arbitration Agreement sets out the three components of which the reasonable damages of TCE are understood to be comprised. The Crown and the OPA agree that it is appropriate to reach agreement on which components of damages should be allocated to the Crown and which should be allocated to the OPA.

The Crown and the OPA agree that, notwithstanding any finding of liability as between the Respondents which may be determined by the arbitrator, except where the award of the arbitrator is satisfied by the transfer of an asset of Equivalent Value in accordance with section 7.3 of the Arbitration Agreement, the

OPA shall only be liable for payment of the component of the arbitrator's award that is described in clause 4.3(c)(ii)(B) of the Arbitration Agreement (costs incurred by TCE in connection with either the performance or termination of the CES Contract other than costs which have been recovered under the component of damages which is net profit to be earned by TCE during the 20 year term of the CES Contract). The Crown and the OPA acknowledge that this agreement is made for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

The Crown and the OPA agree that this letter agreement and its contents are to be held in confidence and shall not be disclosed unless disclosure is required under the *Freedom of Information and Protection of Privacy Act* or other applicable law.

Please execute and return to us the duplicate copy of this letter enclosed to confirm the foregoing.

Crystal Pritchard

From: James Hinds [jim_hinds@irish-line.com]
Sent: Thursday, August 04, 2011 11:34 PM
To: lynandneil@sympatico.ca; Colin Andersen; jmichaelcostello@gmail.com; ferrari@execulink.com; pjmon@yorku.ca; adele@adelehurley.com; blourie@ivey.org; rfitzgerald7@sympatico.ca
Cc: Michael Lyle; John Zych
Subject: OPA Board Meeting - Fri Aug 5 1:00 pm

Folks,

With continuing apologies for the lack of notice, we need to have a telephone Board meeting tomorrow at 1 pm (Toronto time) to come to a decision on the arbitration agreement and other matters related to the TCE Oakville dispute.

During the day today, Colin has made significant progress on the terms of the arbitration agreement and the ratepayer/taxpayer allocation issue.

Unfortunately, we have no present flexibility on the time line as we are responding to a TCE-imposed deadline.

More details will follow tomorrow.

Jim Hinds
(416) 524-6949

Crystal Pritchard

From: Michael Killeavy
Sent: Friday, August 05, 2011 4:32 AM
To: 'RSebastiano@osler.com'; Michael Lyle
Subject: Re: TCE

Thank. I agree with you. I'll work on OR this morning.

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Friday, August 05, 2011 01:50 AM
To: Michael Lyle; Michael Killeavy
Subject: Re: TCE

Perhaps Kevin Dick could do a rough cut of the value of OR. As for other possible claims for lost revenue outside of the CES Contract, considering GEC is claiming $10 million/yr for MR356 for a comparably-sized facility, I could imagine a situation where TCE's claim includes a significant amount on account of GCGs, in the millions of dollars per year. Also, PEC advised that as a result of MR356, they had lost in excess of $1 million in revenue since the introduction of the rule 18 months ago and that plant's economics are more generous to the Supplier than OGS.

Bottom-line here is that there are other sources of revenues from the IESO markets which are not contemplated in the CES Contract and which would have generated in excess of $1 million per year in actual net revenue to OGS. This does not amount to nickels and dimes, rather tens of millions of dollars. TCE is not coming clean on this issue in my estimation.

Regarding the turbine issue, as I indicated to the OPA board, this is a potential liability in the order of $100 million which according to the agreed split on damages between the OPA and the Province (as per the draft side letter) would fall into the damages category for which the OPA would be on the hook. Maybe that's why the Province is not as concerned about the damages flowing from the turbines as we are.

I would hope that the Province would take a careful approach on these issues. At this stage, TCE is not going to pull the trigger and jeopardize the only leverage they have because once they issue their claim in court, their leverage is gone. This is why it is unfortunate that the OPA is not at the negotiating table with TCE... Sorry, I know that I am preaching to the converted...

Rocco

From: Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]
Sent: Thursday, August 04, 2011 09:11 PM
To: Sebastiano, Rocco; Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>
Subject: TCE

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

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