

## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Friday, August 05, 2011 9:09 AM  
**To:** 'Kelly, John (JUS)'  
**Subject:** RE: Damages

The primary damages for the \$24M would be foregone revenues from being paid for "operating reserve" which is a portion of their capacity which would be on standby to come in to service very quickly if called upon.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
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Toronto, Ontario, M5H 1T1  
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Fax: 416.969.6383  
Email: [michael.lyle@powerauthority.on.ca](mailto:michael.lyle@powerauthority.on.ca)

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---

**From:** Kelly, John (JUS) [<mailto:John.Kelly@ontario.ca>]  
**Sent:** August 5, 2011 9:04 AM  
**To:** Michael Lyle  
**Subject:** RE: Damages

Mike can you just give me a list of the type of damages they are talking about? Thanks.

---

**From:** Michael Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]  
**Sent:** August 5, 2011 9:01 AM  
**To:** Kelly, John (JUS)  
**Subject:** Damages

As per our discussion, this is to confirm that the type of damages OPA would cover are sunk costs (planning, engineering, environmental studies, legal costs, payments re the site etc.) including costs re the turbines that cannot be mitigated. By the way, the other potential revenues outside of the contract that the arbitration agreement language currently leaves open to be claimed by TCE could in our estimate run to an NPV of around \$24M.

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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Friday, August 05, 2011 8:18 AM  
**To:** Michael Lyle; 'Sebastiano, Rocco'  
**Subject:** RE: TCE

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

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

---

**From:** Michael Lyle  
**Sent:** August 4, 2011 9:11 PM  
**To:** 'Sebastiano, Rocco'; Michael Killeavy  
**Subject:** TCE

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

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

---

**From:** Michael Lyle  
**Sent:** Friday, August 05, 2011 8:56 AM  
**To:** Colin Andersen  
**Subject:** RE: TCE

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

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
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**From:** Colin Andersen  
**Sent:** August 5, 2011 8:47 AM  
**To:** Michael Lyle  
**Subject:** Re: TCE

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

---

**From:** Michael Lyle  
**Sent:** Friday, August 05, 2011 08:19 AM  
**To:** Colin Andersen  
**Subject:** Fw: TCE

Nickel and dime?

---

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

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

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**From:** Michael Lyle  
**Sent:** August 4, 2011 9:11 PM  
**To:** 'Sebastiano, Rocco'; Michael Killeavy  
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## Crystal Pritchard

---

**From:** Sebastiano, Rocco [RSebastiano@osler.com]  
**Sent:** Friday, August 05, 2011 9:38 AM  
**To:** Michael Lyle  
**Subject:** Comments on the OPA/Crown Letter Agreement  
**Attachments:** letteragreementreTCE.docx

Mike, the letter looks good. I have a few minor comments for your consideration.

Regards, Rocco

---

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\*\*\*\*\*



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 the 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 OGS Oakville gas plant would not proceed. The letter stated that the 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 (as defined in the Arbitration Agreement) which may be determined by the aArbitrator under the Arbitration Agreement, except where the award of the aArbitrator 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 aArbitrator'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 as described in clause 4.3(c)(ii)(A)); and the Crown shall be liable for payment of all other amounts of the Arbitrator's award.

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. **INTD: Mike, Albeit I can't imagine that as between the OPA and the Crown that we'd ever argue whether there has been sufficient consideration, the reality is that I don't know what the actual consideration would be in this case to make this an enforceable contract.]**

Formatted: Font: Bold

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* (Ontario) or other applicable law.

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

## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Friday, August 05, 2011 9:54 AM  
**To:** 'Dermot Muir'  
**Subject:** Letter Agreement  
**Attachments:** letteragreementreTCE2.docx

See attached. By the way, what TCE describes as nickel and diming we estimate as a possible NPV of about \$24 million of additional damages.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
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120 Adelaide Street West, Suite 1600  
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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 as described in clause 4.3(c)(ii)(A)) and the Crown shall be liable for payment of all other amounts of the Arbitrator's award.

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

## Crystal Pritchard

---

**From:** Dermot Muir [Dermot.Muir@infrastructureontario.ca]  
**Sent:** Friday, August 05, 2011 3:09 PM  
**To:** Michael Lyle  
**Subject:** Arbitration Agreement  
**Attachments:** Arbitration Agreement August 5 2011.PDF

Michael:

Please find attached for your records the complete agreement with TCE signatures.

Regards

Dermot

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

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## Crystal Pritchard

---

**From:** Sebastiano, Rocco [RSebastiano@osler.com]  
**Sent:** Friday, August 05, 2011 3:22 PM  
**To:** Michael Lyle  
**Subject:** RE: TCE

Glad to be of assistance. Have a good weekend, Rocco.

---

**From:** Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]  
**Sent:** Friday, August 05, 2011 3:11 PM  
**To:** Sebastiano, Rocco  
**Subject:** TCE

We got a letter agreement from the Government re division of arbitration award in the form that we provided. Thanks for your help. Jim Hinds also wanted me to thank you for your presentation to the Board.

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

---

**From:** Michael Lyle  
**Sent:** Tuesday, August 09, 2011 2:53 PM  
**To:** 'Kelly, John (JUS)'; 'Perun, Halyna N. (MEI)'  
**Cc:** Nimi Visram  
**Subject:** FW: Arbitration Agreement  
**Attachments:** Arbitration Agreement August 5 2011.PDF

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

**From:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** August 5, 2011 3:09 PM  
**To:** Michael Lyle  
**Subject:** Arbitration Agreement

Michael:

Please find attached for your records the complete agreement with TCE signatures.

Regards

Dermot

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

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**Sent:** Tuesday, August 09, 2011 2:53 PM  
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We should ensure that this is filed appropriately.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
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## Crystal Pritchard

---

**From:** Nimi Visram  
**Sent:** Tuesday, August 09, 2011 3:06 PM  
**To:** Michael Lyle  
**Cc:** Robert Godhue; Crystal Pritchard  
**Subject:** RE: Arbitration Agreement

Attached is the link to the electronic file (includes the signed pages from Friday's Board meeting and the Arbitration Agreement) .

[L:\General Administration\Filing Lists\PDF Filing List\Electricity Resources\300164 - SWGTA Oakville Generating Station\TCE Final Documents](#)

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority  
Please consider your environmental responsibility before printing this email.

---

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**Sent:** August 9, 2011 2:53 PM  
**To:** Nimi Visram  
**Subject:** FW: Arbitration Agreement

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**Sent:** August 9, 2011 2:53 PM  
**To:** 'Kelly, John (JUS)'; Perun, Halyna N. (MEI)  
**Cc:** Nimi Visram  
**Subject:** FW: Arbitration Agreement  
**Attachments:** Arbitration Agreement August 5 2011.PDF

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**Subject:** Arbitration Agreement

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## Crystal Pritchard

---

**From:** Tim Butters  
**Sent:** Tuesday, August 09, 2011 3:28 PM  
**To:** Michael Lyle  
**Cc:** Deborah Langelaan  
**Subject:** FW: Updated Critical Issues List (Request for Revisions)

Hi Mike,

Per my note to Michael, I'm assembling information for the Critical Issues List and we're looking for an update on the TC negotiations re OGS. When you have a moment, can you please review the below entry on the negotiation process and let us know what we can provide?

ISSUE	IMPACT & STATUS
<b>TransCanada - Settlement Negotiations for Oakville Generating Station (OGS)</b>  The cancellation by the government of the Oakville Generating Station (OGS) in October 2010 triggered discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO Colin Andersen has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute.	Both organizations have avoided speculating on the potential outcome of the negotiations; however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.

---

**From:** Michael Killeavy  
**Sent:** August 9, 2011 3:15 PM  
**To:** Tim Butters  
**Cc:** Deborah Langelaan  
**Subject:** Re: Updated Critical Issues List (Request for Revisions)

Please ask Mike Lyle about what we can put in this document. It's a "live" litigation matter and we need to be careful. Deb's my delegate while I'm away.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Tim Butters  
**Sent:** Tuesday, August 09, 2011 03:02 PM

**To:** Michael Killeavy  
**Subject:** Updated Critical Issues List (Request for Revisions)

Hi Michael,


As you know, communications is responsible for the Critical Issues List that is delivered to the Board as an attachment to the monthly CEO report.

Per Colin's direction, the approach for the revised document is it will feature no more than 10 urgent issues that require discussion or analysis at the board level.

For the purpose of this update, I am looking for your revisions to the **TransCanada settlement negotiations** entry.

I'm hoping I can get your edits to the below entry by tomorrow (August 10) at 2:00 PM.

ISSUE	IMPACT & STATUS
<p><b>TransCanada - Settlement Negotiations for Oakville Generating Station (OGS)</b></p> <p>The cancellation by the government of the Oakville Generating Station (OGS) in October 2010 triggered discussions with TransCanada Energy Ltd. to mutually terminate the OGS contract, but they have yet been able to reach an agreement on financial compensation for the cancellation of the project. OPA CEO Colin Andersen has sent a letter to the CEO of TCE to suggest a third-party mediation as a possible solution to settle the commercial dispute.</p>	<p>Both organizations have avoided speculating on the potential outcome of the negotiations; however, media reports have focused on the possibility that the province might give TCE the rights to develop a plant in Cambridge as compensation for the cancellation of OGS. In the absence of an agreement, a lawsuit is possible.</p>

**Tim Butters** | Media Relations Specialist  
Ontario Power Authority  
120 Adelaide St W., Suite 1600 | Toronto, Ontario, M5H 1T1  
Phone: 416.969.6249 | Fax: 416.967.1947 | Email: [tim.butters@powerauthority.on.ca](mailto:tim.butters@powerauthority.on.ca)  
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## Crystal Pritchard

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**From:** John Zych  
**Sent:** Tuesday, September 06, 2011 1:00 PM  
**To:** Michael Lyle; JoAnne Butler; Kristin Jenkins; Shawn Cronkwright; Michael Killeavy; Susan Kennedy  
**Cc:** Nimi Visram  
**Subject:** RECENT BOARD MINUTES  
**Attachments:** DRAFT - Minutes of Board of Directors Meeting - July 29, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 5, 2011.doc

**Categories:** Orange Category

I attach minutes of the July 29, August 1, August 3, and August 5 Board meetings. These meetings dealt with only two subject  
1 TransCanada re Oakville.

There are many ways to minute these developments. I am open to your suggestions.

May I have your comments by 12:00 (noon) on Wednesday?





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

er, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

Mr. Hinds brought the Board members up to date since the last time that the Board members had discussed this matter, which was June xx, 2011. Mr. Hinds indicated that the Government of Ontario had appointed Mr. David Livingston, President of Infrastructure Ontario, to look into making a settlement of TransCanada's claims which might include TransCanada Energy acquiring an interest in a present or future Ontario electricity generation facility in full or partial settlement of its claims.

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

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

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

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

### **4. Other Business**

There was no other business.

## **5. Termination**

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

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

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James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting





## MEETING OF THE BOARD OF DIRECTORS

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

### PRESENT

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

### MEMBERS OF STAFF IN ATTENDANCE

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

#### 1. Constitution of the Meeting

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

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

#### 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

Mr. Rocce Sebastiano, of the Osler, Carr, Stuart and Hoskin LLP, the OPA's outside counsel in this matter, joined the Board meeting. Mr. Sebastiano discussed his concerns with the arbitration agreement as presently drafted, including the waiver of some of the OPA's defences.

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

Mr. Amir Shalaby pointed out that from a planning perspective, the Ontario Electricity System needed flexible generation sources over the next ten years. Thus, a plant in the Kitchener-Waterloo area would be more suitable. A refurbished Lennox plant would be suitable if it was built later as opposed to earlier in the ten-year period.

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



The Board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario rate payer and also was of the few that there too many disadvantages for the OPA arising out of the arbitration agreement as currently proposed. Management was asked to advise Mr. Livingston of these views.

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

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

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

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

\_\_\_\_\_  
James Hinds  
Chair of the meeting

\_\_\_\_\_  
John Zych  
Secretary of the meeting





## MEETING OF THE BOARD OF DIRECTORS

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

### PRESENT

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

### MEMBERS OF STAFF IN ATTENDANCE

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

#### 1. Constitution of the Meeting

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

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

necessary or desirable to make non-material amendments to the above-noted Agreements, documents, deeds and instruments, as such officer shall determine and as shall be evidenced by such officer's signature thereto.

### 3. Other Business

There was no other business.

### 4. Termination

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

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

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James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting

DRAFT



## Crystal Pritchard

---

**From:** Amir Shalaby  
**Sent:** Tuesday, September 13, 2011 4:19 PM  
**To:** Michael Lyle  
**Subject:** RE: analysis that OPA conducted

Value of TCE contract

---

**From:** Michael Lyle  
**Sent:** Tuesday, September 13, 2011 3:46 PM  
**To:** Amir Shalaby  
**Subject:** RE: analysis that OPA conducted

Analysis about what?

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

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**From:** Amir Shalaby  
**Sent:** September 13, 2011 3:39 PM  
**To:** MCNEIL Patrick -CORPBUSDEV; Serge Imbrogno; Rick Jennings  
**Cc:** JoAnne Butler; [Jacquie.carter@infrastructureontario.ca](mailto:Jacquie.carter@infrastructureontario.ca)  
**Subject:** analysis that OPA conducted

Following up on your request at yesterday's meeting. Asking Jacquie to forward to Jonathan until I get his email address. The Analysis was shared with David L earlier. For your benefit, JoAnne is prepared to take you through it at your request. Her number is 416 969 6005

Cheers  
Amir Shalaby





## Crystal Pritchard

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**From:** JoAnne Butler  
**Sent:** Wednesday, September 14, 2011 4:44 PM  
**To:** Amir Shalaby; Michael Lyle  
**Subject:** Fw: analysis that OPA conducted

Fyi.

---

**From:** MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]  
**Sent:** Tuesday, September 13, 2011 05:18 PM  
**To:** JoAnne Butler; Amir Shalaby; [serge.imbrogno@ofina.on.ca](mailto:serge.imbrogno@ofina.on.ca) <[serge.imbrogno@ofina.on.ca](mailto:serge.imbrogno@ofina.on.ca)>; [rick.jennings@ontario.ca](mailto:rick.jennings@ontario.ca) <[rick.jennings@ontario.ca](mailto:rick.jennings@ontario.ca)>  
**Cc:** [jonathan.weisstub@infrastructureontario.ca](mailto:jonathan.weisstub@infrastructureontario.ca) <[jonathan.weisstub@infrastructureontario.ca](mailto:jonathan.weisstub@infrastructureontario.ca)>  
**Subject:** RE: analysis that OPA conducted

Agree but the challenge I have been given by the various government parties is to try to reach a commercial deal which satisfies TCE to the point they don't go to arbitration.

---

**From:** JoAnne Butler [<mailto:joanne.butler@powerauthority.on.ca>]  
**Sent:** Tuesday, September 13, 2011 5:01 PM  
**To:** MCNEIL Patrick -CORPBUSDEV; Amir Shalaby; [serge.imbrogno@ofina.on.ca](mailto:serge.imbrogno@ofina.on.ca); [rick.jennings@ontario.ca](mailto:rick.jennings@ontario.ca)  
**Cc:** [jonathan.weisstub@infrastructureontario.ca](mailto:jonathan.weisstub@infrastructureontario.ca)  
**Subject:** RE: analysis that OPA conducted

The whole idea of the arbitration was to determine exactly that – the quantum. What TransCanada feels entitled to and what we are prepared to recommend differ widely.

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]  
**Sent:** Martes, 13 de Septiembre de 2011 03:50 p.m.  
**To:** Amir Shalaby; 'serge.imbrogno@ofina.on.ca'; 'rick.jennings@ontario.ca'  
**Cc:** JoAnne Butler; 'jonathan.weisstub@infrastructureontario.ca'  
**Subject:** Re: analysis that OPA conducted

I don't want to go through the analysis and shouldn't.

I just want to know what you would be prepared to recommend so I know how the ideal OPA envelope I am working.

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

---

**From:** Amir Shalaby [mailto:Amir.Shalaby@powerauthority.on.ca]  
**Sent:** Tuesday, September 13, 2011 03:38 PM  
**To:** MCNEIL Patrick -CORPBUSDEV; Serge Imbrogno <Serge.Imbrogno@ofina.on.ca>; Rick Jennings <rick.jennings@ontario.ca>  
**Cc:** JoAnne Butler <joanne.butler@powerauthority.on.ca>; Jacquie.carter@infrastructureontario.ca <Jacquie.carter@infrastructureontario.ca>  
**Subject:** analysis that OPA conducted

Following up on your request at yesterday's meeting. Asking Jacquie to forward to Jonathan until I get his email address. The Analysis was shared with David L earlier. For your benefit, JoAnne is prepared to take you through it at your request. Her number is 416 969 6005

Cheers

Amir Shalaby

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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Thursday, September 22, 2011 8:25 AM  
**To:** Michael Lyle  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

Perhaps you could suggest it ... my suggestion fell on deaf ears.

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

---

**From:** Michael Lyle  
**Sent:** September 22, 2011 8:25 AM  
**To:** Michael Killeavy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

I would be good with that.

---

**From:** Michael Killeavy  
**Sent:** Thursday, September 22, 2011 08:23 AM  
**To:** Michael Lyle  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

I had suggested that we say "... the process was proceeding blah blah blah....." or words to that effect. My take is that this is true. It's just not us doing it.

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

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**From:** Michael Lyle  
**Sent:** September 22, 2011 8:22 AM

**To:** Michael Killeavy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

I had a similar concern but do not know what else we can say given that we cannot reference the arb agreement. Perhaps if we were able to say the Govt and the OPA are continuing discussions that might be more accurate.

---

**From:** Michael Killeavy  
**Sent:** Thursday, September 22, 2011 08:18 AM  
**To:** Michael Lyle  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

I agree with you that consent isn't required. I am concerned that the part about us continuing discussions isn't really true.

I have asked Osler to review the text and provide comments by this morning.

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

---

**From:** Michael Lyle  
**Sent:** September 22, 2011 7:49 AM  
**To:** Kristin Jenkins; JoAnne Butler; Michael Killeavy  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

This looks fine. I do not recall any obligation to notify them before making a statement to the media but I do not currently have access to the agreement.

---

**From:** Kristin Jenkins  
**Sent:** Wednesday, September 21, 2011 05:08 PM  
**To:** JoAnne Butler; Michael Lyle; Michael Killeavy  
**Cc:** Colin Andersen  
**Subject:** FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

---

**From:** Kristin Jenkins  
**Sent:** September 21, 2011 4:56 PM  
**To:** Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul

(ENERGY); 'Kulendran, Jesse (ENERGY)'

**Subject:** Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)



## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Thursday, September 22, 2011 8:31 AM  
**To:** Kristin Jenkins; JoAnne Butler; Michael Killeavy  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

Thinking about this some more it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with "Discussions are ongoing.....".

---

**From:** Michael Lyle  
**Sent:** Thursday, September 22, 2011 07:49 AM  
**To:** Kristin Jenkins; JoAnne Butler; Michael Killeavy  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

This looks fine. I do not recall any obligation to notify them before making a statement to the media but I do not currently have access to the agreement.

---

**From:** Kristin Jenkins  
**Sent:** Wednesday, September 21, 2011 05:08 PM  
**To:** JoAnne Butler; Michael Lyle; Michael Killeavy  
**Cc:** Colin Andersen  
**Subject:** FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

---

**From:** Kristin Jenkins  
**Sent:** September 21, 2011 4:56 PM  
**To:** Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'  
**Subject:** Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)





## Crystal Pritchard

---

**From:** Susan Kennedy  
**Sent:** Thursday, September 22, 2011 9:29 AM  
**To:** JoAnne Butler; Michael Killeavy; Michael Lyle; Kristin Jenkins  
**Cc:** Colin Andersen  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

I agree as well.

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

---

**From:** JoAnne Butler  
**Sent:** September 22, 2011 9:02 AM  
**To:** Michael Killeavy; Michael Lyle; Kristin Jenkins  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

I agree as well. As for notification, maybe Colin could, out of courtesy, mention to Alex on his call that the press are getting nosy on this one and we providing holding messages??

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Michael Killeavy  
**Sent:** Jueves, 22 de Septiembre de 2011 08:31 a.m.  
**To:** Michael Lyle; Kristin Jenkins; JoAnne Butler  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

I agree.

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

---

**From:** Michael Lyle  
**Sent:** September 22, 2011 8:31 AM  
**To:** Kristin Jenkins; JoAnne Butler; Michael Killeavy  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

Thinking about this some more it might be better to fudge who is actually engaged in ongoing negotiations with TCE by just starting with "Discussions are ongoing.....".

---

**From:** Michael Lyle  
**Sent:** Thursday, September 22, 2011 07:49 AM  
**To:** Kristin Jenkins; JoAnne Butler; Michael Killeavy  
**Cc:** Colin Andersen; Susan Kennedy  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

This looks fine. I do not recall any obligation to notify them before making a statement to the media but I do not currently have access to the agreement.

---

**From:** Kristin Jenkins  
**Sent:** Wednesday, September 21, 2011 05:08 PM  
**To:** JoAnne Butler; Michael Lyle; Michael Killeavy  
**Cc:** Colin Andersen  
**Subject:** FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

---

**From:** Kristin Jenkins  
**Sent:** September 21, 2011 4:56 PM  
**To:** Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'  
**Subject:** Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Thursday, September 22, 2011 10:20 AM  
**To:** Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen  
**Subject:** Fw: Toronto Star Request - Cancellation of Oakville Contract

Here are Osler's comments on the proposed answer.

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](mailto:Michael.killeavy@powerauthority.on.ca)

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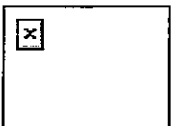
**From:** Smith, Elliot [<mailto:ESmith@osler.com>]  
**Sent:** Thursday, September 22, 2011 09:49 AM  
**To:** Michael Killeavy; Ivanoff, Paul <[PIvanoff@osler.com](mailto:PIvanoff@osler.com)>; Sebastiano, Rocco <[RSebastiano@osler.com](mailto:RSebastiano@osler.com)>  
**Cc:** Susan Kennedy  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

Michael,  
We propose responding with the following:

*The Ontario Power Authority is continuing to work with TransCanada, the company originally selected to develop the Oakville plant, regarding the cancellation of Oakville Generating Station. A final resolution has not yet been reached.*

As a courtesy we'd suggest calling TCE to let them know about this.

Elliot



Elliot Smith, P.Eng.  
Associate

416.862.6435 DIRECT  
416.862.6666 FACSIMILE  
[esmith@osler.com](mailto:esmith@osler.com)

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



---

**From:** Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]  
**Sent:** Wednesday, September 21, 2011 5:16 PM  
**To:** Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot  
**Cc:** Susan Kennedy  
**Subject:** Fw: Toronto Star Request - Cancellation of Oakville Contract

Can you guys comment on this proposed response to a media inquiry about OGS? Please see below. Thx.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Kristin Jenkins  
**Sent:** Wednesday, September 21, 2011 05:08 PM  
**To:** JoAnne Butler; Michael Lyle; Michael Killeavy  
**Cc:** Colin Andersen  
**Subject:** FW: Toronto Star Request - Cancellation of Oakville Contract

Below in the email to ministry is a proposed response to the Star. Can you please let me know if you are ok with wording – don't worry it will take all day tomorrow to get the ok from ministry, so you can get back to me in the morning. Does our agreement with TCE require us to run this by them first? At a minimum I would think we should let them know in advance even just as a courtesy.

---

**From:** Kristin Jenkins  
**Sent:** September 21, 2011 4:56 PM  
**To:** Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'  
**Subject:** Toronto Star Request - Cancellation of Oakville Contract

Katie Daubs from the Toronto Star contacted the OPA today to find out how much cancelling the OGS contract will cost. Her deadline is 5:00 pm tomorrow, Sept 22. As a reminder, the default position for a lot of media is to ascribe a \$1 billion price tag to the cancelled contract. OPA's proposed response - The Ontario Power Authority is continuing discussions with TransCanada, the company selected to develop the Oakville plant. A number of options are being explored to ensure the outcome is in the best interest of Ontario ratepayers. A specific dollar figure is not available right now.

Kristin

---

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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Thursday, September 22, 2011 10:45 AM  
**To:** Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen  
**Subject:** Re: Toronto Star Request - Cancellation of Oakville Contract

I can have Deb notify John Mikkelson of TCE - that's our agreed to protocol. Please advise.

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

---

**From:** Kristin Jenkins  
**Sent:** Thursday, September 22, 2011 10:22 AM  
**To:** Michael Killeavy; Michael Lyle; JoAnne Butler; Colin Andersen  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

Ok. I will eliminate the last sentence originally proposed and change to Discussion are continuing with Trans Canada... and send to the ministry. Who is going to give TCE a heads up? Whoever does should let them know we are awaiting word from the ministry on wording of the response and that it may change somewhat.

---

**From:** Michael Killeavy  
**Sent:** September 22, 2011 10:20 AM  
**To:** Kristin Jenkins; Michael Lyle; JoAnne Butler; Colin Andersen  
**Subject:** Fw: Toronto Star Request - Cancellation of Oakville Contract

Here are Osler's comments on the proposed answer.

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

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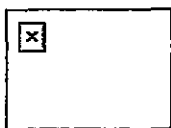
**From:** Smith, Elliot [mailto:ESmith@osler.com]  
**Sent:** Thursday, September 22, 2011 09:49 AM  
**To:** Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>  
**Cc:** Susan Kennedy  
**Subject:** RE: Toronto Star Request - Cancellation of Oakville Contract

Michael,  
We propose responding with the following:

*The Ontario Power Authority is continuing to work with TransCanada, the company originally selected to develop the Oakville plant, regarding the cancellation of Oakville Generating Station. A final resolution has not yet been reached.*

As a courtesy we'd suggest calling TCE to let them know about this.

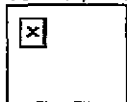
Elliot



Elliot Smith, P.Eng.  
Associate

416.862.6435 DIRECT  
416.862.6666 FACSIMILE  
esmith@osler.com

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



---

**From:** Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
**Sent:** Wednesday, September 21, 2011 5:16 PM  
**To:** Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot  
**Cc:** Susan Kennedy  
**Subject:** Fw: Toronto Star Request - Cancellation of Oakville Contract

Can you guys comment on this proposed response to a media inquiry about OGS? Please see below. Thx.

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



---

**From:** Kristin Jenkins  
**Sent:** Wednesday, September 21, 2011 05:08 PM  
**To:** JoAnne Butler; Michael Lyle; Michael Killeavy  
**Cc:** Colin Andersen  
**Subject:** FW: Toronto Star Request - Cancellation of Oakville Contract

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**From:** Kristin Jenkins  
**Sent:** September 21, 2011 4:56 PM  
**To:** Sharkawi, Rula (ENERGY); Lindsay, David (ENERGY); Colin Andersen; Patricia Phillips; Tim Butters; Gerard, Paul (ENERGY); 'Kulendran, Jesse (ENERGY)'  
**Subject:** Toronto Star Request - Cancellation of Oakville Contract

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Kristin

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| Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)

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## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Thursday, September 29, 2011 5:05 PM  
**To:** Deborah Langelaan; JoAnne Butler; Michael Killeavy  
**Subject:** RE: OGS L/C  
**Attachments:** Arbitration Agreement August 5 2011 (3).pdf

Of course.

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

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---

**From:** Deborah Langelaan  
**Sent:** September 29, 2011 4:34 PM  
**To:** JoAnne Butler; Michael Killeavy; Michael Lyle  
**Subject:** RE: OGS L/C

Is it possible to acquire a copy of the final, executed Arbitration Agreement?

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

---

**From:** JoAnne Butler  
**Sent:** September 28, 2011 4:56 PM  
**To:** Michael Killeavy; Michael Lyle; Deborah Langelaan  
**Subject:** Re: OGS L/C

Ok...please proceed as discussed..

JCB

---

**From:** Michael Killeavy  
**Sent:** Wednesday, September 28, 2011 04:46 PM  
**To:** Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Re: OGS L/C

Thank you.

Deb, JoAnne I think we have to return the security. We have conceded the termination point in the arbitration agreement we entered into. I had forgotten about the recital Mike mentions. I apologize for the confusion on this.

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

---

**From:** Michael Lyle  
**Sent:** Wednesday, September 28, 2011 04:43 PM  
**To:** Michael Killeavy; JoAnne Butler; Deborah Langelaan  
**Subject:** RE: OGS L/C

Yes

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

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**From:** Michael Killeavy  
**Sent:** September 28, 2011 4:40 PM  
**To:** Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Re: OGS L/C

Then I don't think we have a right to hold security on a contract that's been terminated. Would you agree?

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:** Wednesday, September 28, 2011 04:36 PM  
**To:** Michael Killeavy; JoAnne Butler; Deborah Langelaan  
**Subject:** RE: OGS L/C

Yes.

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

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---

**From:** Michael Killeavy  
**Sent:** September 28, 2011 4:32 PM  
**To:** Michael Lyle; JoAnne Butler; Deborah Langelaan  
**Subject:** Re: OGS L/C

I had forgotten about that. Does the agreement state that the parties represent that the recitals are true and correct?

Michael Killeavy, LL.B., MBA, P.Eng.  
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Ontario Power Authority  
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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:** Wednesday, September 28, 2011 04:25 PM  
**To:** JoAnne Butler; Michael Killeavy; Deborah Langelaan

**Subject:** RE: OGS L/C

Keep in mind that in the recitals to the arbitration agreement it states that OPA terminated the CES Contract by letter dated October 7, 2010.

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

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---

**From:** JoAnne Butler  
**Sent:** September 28, 2011 3:56 PM  
**To:** Michael Killeavy; Deborah Langelaan  
**Cc:** Michael Lyle  
**Subject:** Re: OGS L/C

No comments. I agree with your position.

JCB

---

**From:** Michael Killeavy  
**Sent:** Wednesday, September 28, 2011 09:02 AM  
**To:** Deborah Langelaan  
**Cc:** Michael Lyle; JoAnne Butler  
**Subject:** Re: OGS L/C

Deb,

We need to tread carefully here. I agree with Osler's comments, which are reflective of our position all along.

We have not repudiated the contract. We have entered into settlement discussions with TCE to terminate the contract. The contract subsists. The security is still required.

Mike and JoAnne, do you have any comments on this?

Michael

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:** Deborah Langelaan  
**Sent:** Wednesday, September 28, 2011 08:51 AM  
**To:** Michael Killeavy  
**Subject:** FW: OGS L/C

Michael;

John Mikkelsen left me a v/m yesterday wanting to discuss TCE's L/C and a couple of options they have come up with. Before I return his call I wanted to give you the heads up and see if the OPA's position remains the same as it was in March.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

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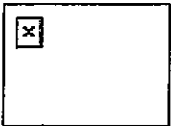
**From:** Smith, Elliot [<mailto:ESmith@osler.com>]  
**Sent:** March 24, 2011 11:40 AM  
**To:** Deborah Langelaan; Michael Killeavy; Susan Kennedy  
**Cc:** JoAnne Butler; Sebastiano, Rocco  
**Subject:** RE: OGS L/C

Deb,

We certainly understand the OPA's desire to mitigate the costs associated with the termination of the OGS contract, but we do have some concerns with returning the LC. In particular, returning the LC would be a fact that could be admissible in potential litigation and may support TCE's allegation that the contract has been repudiated. Conversely, the fact that they have not requested the return of the LC could support the OPA's position that we are negotiating a mutual termination.

At this time, we would suggest waiting until after we meet with TCE and gauge their reaction to our proposal, when we'll have a better idea of where things stand. If the process is moving forward productively then there may be an opportunity to mitigate the LC costs as well as some of the interest costs.

Elliot



Elliot Smith  
Associate

416.862.6435 DIRECT  
416.862.6666 FACSIMILE  
[esmith@osler.com](mailto:esmith@osler.com)

Osler, Hoskin & Harcourt LLP



---

**From:** Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]  
**Sent:** Wednesday, March 23, 2011 10:21 AM  
**To:** Smith, Elliot; Michael Killeavy; Susan Kennedy  
**Cc:** JoAnne Butler; Sebastiano, Rocco  
**Subject:** OGS L/C

\*\*\*Privileged & Confidential\*\*\*

TCE has provided the OPA with an L/C in the amount of \$30 million for their Completion and Performance Security under the OGS Contract. TCE's cost to maintain the L/C is approximately \$25,000/month and they have rolled this monthly cost into their OGS Sunk Costs. Given the circumstances, is TCE still obligated to provide the OPA with this security?

Deb

Deborah Langelaan | Manager, Natural Gas Projects| OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
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\*\*\*\*\*



## Crystal Pritchard

---

**From:** John Zych  
**Sent:** Tuesday, October 11, 2011 2:05 PM  
**To:** 'pjmon'  
**Cc:** Michael Lyle  
**Subject:** MINUTES OF JULY 29 AND AUGUST 1, 3, 5 AND 17, 2011  
**Attachments:** Minutes of Board of Directors Meeting - July 29, 2011 - As Approved.doc; DRAFT B - Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT B - Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT - Minutes of Board of Directors Meeting - August 5, 2011.doc; Minutes of Board of Directors Meeting - August 17, 2011 - As Approved.doc

**Categories:** Orange Category

Patrick,

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

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

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

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

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

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

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

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

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

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## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

the status of negotiations with TransCanada Energy Inc. (TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

#### **4. Other Business**

There was no other business.

#### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

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

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

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



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

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

The Board members indicated that its primary concern was to avoid having the Ontario Power Authority pay compensation that was not justifiable in the interests of the Ontario rate payer and also was of the view that there were too many disadvantages for the OPA arising out of the arbitration agreement as currently proposed. Management was asked to advise Mr. Livingston of this view.

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

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

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

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

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James Hinds  
Chair of the meeting

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John Zych  
Secretary of the meeting





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

The Chair declared that, although less notice had been provided of this meeting than the by-laws of the OPA required (24 hours' notice had actually been given instead of the 48 hours' notice that was required), if no Board member objected to the lack of sufficient notice, the meeting would be properly called. No Board member who was present objected. Mr. Zych advised that Ms. McLeod had indicated to him that she would waive notice of the meeting.

Mr. Hinds noted that a quorum of members was present. Thus, the meeting was duly constituted for the transaction of business. Mr. Zych advised that Ms. McLeod had indicated that she could not attend the meeting but would waive notice of the meeting.

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

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

## **2. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting



## **Crystal Pritchard**

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

**Categories:** Orange Category

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

Kristin

**Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)**





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


## Crystal Pritchard

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

Colin,

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

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

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

Upon your review, happy to discuss.

Brett.



## Crystal Pritchard

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**From:** Joe Toneguzzo  
**Sent:** Tuesday, October 25, 2011 6:07 PM  
**To:** JoAnne Butler; Michael Lyle; Kristin Jenkins  
**Cc:** Amir Shalaby; George Pessione  
**Subject:** FW: Greenfield

Amir requested that I forward the following comments related to the OGS-GS Comparison:

Current studies indicate the dates for transmission upgrades required in the file named OGS-GS Comparison are not as urgent than indicated.

See changes to dates in Red to be incorporated in the System Impacts Column copied below:

System Impacts
<ul style="list-style-type: none"><li>• OGS addressed SWGTA supply &amp; reliability issues</li><li>• Without OGS transmission upgrades required by 2019</li></ul>
<ul style="list-style-type: none"><li>• Greenfield South addressed SWGTA supply &amp; reliability issues</li><li>• Without GS transmission upgrades required in 2018 or 2017</li></ul>

This timing provides standard planning lead times for completing studies, obtaining approvals and implementing the required facilities.

Please let me know if any questions.

Thanks - Joe

---

**From:** Amir Shalaby  
**Sent:** Tuesday, October 25, 2011 5:15 PM  
**To:** Joe Toneguzzo; George Pessione  
**Subject:** Fw: Greenfield

Take a scan and tell me if have concerns

---

**From:** Kristin Jenkins  
**Sent:** Tuesday, October 25, 2011 05:12 PM  
**To:** Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** Greenfield

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

Kristin

**Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)**

## Crystal Pritchard

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**From:** Michael Lyle  
**Sent:** Tuesday, October 25, 2011 8:29 PM  
**To:** Kristin Jenkins; Colin Andersen; JoAnne Butler; Michael Killeavy; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** Re: Greenfield

A few comments first on key messages document. First under Eastern says No negotiated agreement perhaps could add bullet saying "Eastern continues construction while negotiations ongoing" at the beginning. In bullet 4 could add at end "as all necessary regulatory approvals are in place". In Chart on TCE under project, I believe that some approvals had been received although Michael K will have a better recollection on this.

---

**From:** Kristin Jenkins  
**Sent:** Tuesday, October 25, 2011 05:12 PM  
**To:** Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** Greenfield

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

Kristin

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## Crystal Pritchard

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**From:** Michael Killeavy  
**Sent:** Tuesday, October 25, 2011 8:32 PM  
**To:** Michael Lyle; Kristin Jenkins; Colin Andersen; JoAnne Butler; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** RE: Greenfield

I will check tomorrow. I don't have the information with me this evening.

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](mailto:Michael.killeavy@powerauthority.on.ca)

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

**From:** Michael Lyle  
**Sent:** Tue 25-Oct-11 8:28 PM  
**To:** Kristin Jenkins; Colin Andersen; JoAnne Butler; Michael Killeavy; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** Re: Greenfield

A few comments first on key messages document. First under Eastern says No negotiated agreement perhaps could add bullet saying "Eastern continues construction while negotiations ongoing" at the beginning. In bullet 4 could add at end "as all necessary regulatory approvals are in place". In Chart on TCE under project, I believe that some approvals had been received although Michael K will have a better recollection on this.

**From:** Kristin Jenkins  
**Sent:** Tuesday, October 25, 2011 05:12 PM  
**To:** Colin Andersen; JoAnne Butler; Michael Lyle; Michael Killeavy; Amir Shalaby  
**Cc:** Brett Baker; Irene Mauricette  
**Subject:** Greenfield

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

Kristin

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416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)

## Crystal Pritchard

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**From:** Amir Shalaby  
**Sent:** Sunday, November 06, 2011 9:04 AM  
**To:** Brett Baker; Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler  
**Subject:** TCE will get arbitration underway

According to a conversation with OPG recently .  
Not unexpected

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

**From:** MCNEIL Patrick -CORPBUSDEV [<mailto:patrick.mcneil@opg.com>]  
**Sent:** Sunday, November 06, 2011 07:23 AM  
**To:** 'rick.jennings@ontario.ca' <[rick.jennings@ontario.ca](mailto:rick.jennings@ontario.ca)>;  
'jonathan.weisstub@infrastructureontario.ca' <[jonathan.weisstub@infrastructureontario.ca](mailto:jonathan.weisstub@infrastructureontario.ca)>;  
'serge.imbrogno@ofina.on.ca' <[serge.imbrogno@ofina.on.ca](mailto:serge.imbrogno@ofina.on.ca)>; Amir Shalaby  
**Subject:** Project Apple

OPG CONFIDENTIAL AND COMMERCIALY SENSITIVE

Sorry for delay in the update but swamped like the rest of you.

Last Wednesday, OPG and TCE met to discuss the draft Long-Term Partnership Agreement OPG provided TCE in September.

TCE advised they had decided to initiate the arbitration with Ontario and TCE and were going to meet with Infrastructure Ontario on Thursday to advise them of their decision.

TCE believes it is in its best interest to use arbitration to set the damage value for the Oakville cancellation.

TCE wishes to continue to explore the options identified by TCE apart from the arbitration agreement and perhaps in satisfaction of the damage value.

I will be arranging a conference call for the four of us as soon as possible this week.

Jonathan has suggested it would be worthwhile for OPG to start discussions with the OPA on the options to determine what value can be assigned to them.

I am in Ottawa Monday and Tuesday but will try to cut out of some meetings.

Have a great remainder of the weekend.

D. Patrick McNeil

Senior Vice-President, Corporate Business Development and Chief Risk Officer Ontario Power Generation

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THIS MESSAGE IS ONLY INTENDED FOR THE USE OF THE INTENDED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, PROPRIETARY AND/OR CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying, conversion to hard copy or other use of this communication is strictly prohibited. If you are not the intended recipient and have received this message in error, please notify me by return e-mail and delete this message from your system. Ontario Power Generation Inc.



## Crystal Pritchard

---

**From:** Kristin Jenkins  
**Sent:** Monday, October 24, 2011 4:47 PM  
**To:** Colin Andersen; JoAnne Butler; Michael Killeavy; Michael Lyle  
**Cc:** Tim Butters; Mary Bernard; Patricia Phillips  
**Subject:** Change in Media Relations Protocol  
  
**Importance:** High

Minister's Office does not want calls referred there. They want OPA to draft responses for review and approval which OPA will then send to media. Below are recommended responses to the calls. Tim please confirm capacity and CODs for OGS and Greenfield South for response to third question.

- John Spears, Toronto Star (mechanics of cancelling the contract - how it's done, has it been done)

-Not appropriate to float options publicly when we have not yet engaged the proponent which is also something we don't want to highlight. Recommend:

The provincial government is committed to relocating the plant. WE want to do this fairly and discuss options directly with the proponent not through the media. More information will be made available as the process moves forward.

- Tristin Hopper, National and Toronto desk of the National Post, request for OPA to confirm status of development

### Recommended Response:

The provincial government is committed to relocating the plant. The plant has been under construction since May 2011. More information will be available as the relocation process moves forward.

- Ian Harvey, Freelance Writer, Q: what was the output and cost for Oakville estimated at. What was the date of cancellation. What is the output and cost for Mississauga and what is the anticipated date of completion.

The Oakville Generating Station was to have had a capacity of 900 MW with an in service date of X. The cost to construct the plant was estimated at 1 billion. The plant was cancelled before it obtained approvals. New transmission will replace the Oakville plant to ensure local supply and reliability.

Greenfield South's capacity is 280 MW with an in service date of X. The cost to construct is estimated at 300 to 400 million. Without this capacity in the southwest GTA, transmission expansion will have to take place two to three years earlier than anticipated.



## Crystal Pritchard

---

**From:** John Zych  
**Sent:** Tuesday, November 08, 2011 12:04 PM  
**To:** 'pjmon'  
**Cc:** Michael Lyle  
**Subject:** MINUTES OF AUGUST 1, 3, AND 5, 2011  
**Attachments:** DRAFT Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 5, 2011.doc

**Categories:** Orange Category

Patrick,

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

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

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

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

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

Please advise.

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

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---

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

Patrick,

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

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

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

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

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

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

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

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

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
416-969-6055  
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416-967-1947 OPA Fax  
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## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

er, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

#### **4. Other Business**

There was no other business.

#### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting







## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting



## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Wednesday, November 09, 2011 1:16 PM  
**To:** Amir Shalaby  
**Subject:** Re: Discussion with IO on TCE

Ok. Off phone now.

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

**From:** Amir Shalaby  
**Sent:** Wednesday, November 09, 2011 01:07 PM  
**To:** Michael Lyle  
**Subject:** Re: Discussion with IO on TCE

Just called , will try in a few minutes

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

**From:** Michael Lyle  
**Sent:** Wednesday, November 09, 2011 12:40 PM  
**To:** Amir Shalaby  
**Subject:** RE: Discussion with IO on TCE

I am in the office until 1:30. Are you able to call me?

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

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

**From:** Amir Shalaby  
**Sent:** November 9, 2011 12:14 PM  
**To:** Michael Lyle; Michael Killeavy  
**Cc:** JoAnne Butler  
**Subject:** Re: Discussion with IO on TCE

I understand. Again: should I meet ? As a member of working group . I need an explicit direction please

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

From: Michael Lyle  
Sent: Wednesday, November 09, 2011 11:44 AM  
To: Amir Shalaby; Michael Killeavy  
Cc: JoAnne Butler  
Subject: RE: Discussion with IO on TCE

I think we need to make it very clear that the arbitration is going to be between TCE, OPA and the Crown. Not sure that there is any role for IO to play. They need to be aware of outcome and any settlement negotiations as this will impact on potential deal related to assets to pay for settlement/award. Perhaps it is time that we had a three way discussion between Crown, OPA and IO involving counsel to talk about respective roles going forward.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6035  
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-----Original Message-----

From: Amir Shalaby  
Sent: November 9, 2011 11:39 AM  
To: Michael Lyle; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

He is "head of new partnerships", assigned to this file. I do not know the exact role for IO going forward( above pay grade) Let me know if it is ok to meet

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

From: Michael Lyle  
Sent: Wednesday, November 09, 2011 10:55 AM  
To: Amir Shalaby; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

What is Jonathon's position? I remain confused about what role IO think they are playing in the arbitration.

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

From: Amir Shalaby  
Sent: Wednesday, November 09, 2011 10:53 AM  
To: Michael Lyle; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

Should I work with Jonathan for now?

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

From: Michael Lyle  
Sent: Wednesday, November 09, 2011 10:52 AM  
To: Amir Shalaby; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

Once we are in arbitration, all communications about disclosure of information will go through legal counsel.

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

From: Amir Shalaby  
Sent: Wednesday, November 09, 2011 10:36 AM  
To: Michael Killeavy  
Cc: JoAnne Butler; Michael Lyle  
Subject: Discussion with IO on TCE

Jonathan is hopeful that a session with TCE can be arranged post launch of arbitration. The objective would be to speed up discovery process. He asked me to provide a list of information ( he is thinking mostly financial assumptions) that we would like to get from TCE.

I indicated that Michael K has made good guesses at most,

So here is as chance to lift the curtain , look under the hood, open the kimono .

What are. The assumptions , parameters you would like to know?

I am meeting with Jonathan tomorrow at 9 . To discuss process as well as our views on merits of options.

Does any of you wish to join ?

A start at the list would be helpful

( I can guess at residual value, IRR, discount rates, costs, market /gas price assumptions)

Tx





## Crystal Pritchard

---

**From:** Amir Shalaby  
**Sent:** Wednesday, November 09, 2011 1:17 PM  
**To:** Michael Lyle  
**Subject:** Call me when you get a moment on 416 274 5887

Your line is busy

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

**From:** Amir Shalaby  
**Sent:** Wednesday, November 09, 2011 01:07 PM  
**To:** Michael Lyle  
**Subject:** Re: Discussion with IO on TCE

Just called , will try in a few minutes

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

**From:** Michael Lyle  
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**Sent:** November 9, 2011 12:14 PM  
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**Cc:** JoAnne Butler  
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Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6035  
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-----Original Message-----

From: Amir Shalaby  
Sent: November 9, 2011 11:39 AM  
To: Michael Lyle; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

He is "head of new partnerships", assigned to this file. I do not know the exact role for IO going forward( above pay grade) Let me know if it is ok to meet

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

From: Michael Lyle  
Sent: Wednesday, November 09, 2011 10:55 AM  
To: Amir Shalaby; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

What is Jonathon's position? I remain confused about what role IO think they are playing in the arbitration.

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Sent: Wednesday, November 09, 2011 10:53 AM  
To: Michael Lyle; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

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

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To: Amir Shalaby; Michael Killeavy  
Cc: JoAnne Butler  
Subject: Re: Discussion with IO on TCE

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From: Amir Shalaby  
Sent: Wednesday, November 09, 2011 10:36 AM  
To: Michael Killeavy  
Cc: JoAnne Butler; Michael Lyle  
Subject: Discussion with IO on TCE

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I indicated that Michael K has made good guesses at most,

So here is as chance to lift the curtain , look under the hood, open the kimono .

What are. The assumptions , parameters you would like to know?

I am meeting with Jonathan tomorrow at 9 . To discuss process as well as our views on merits of options.

Does any of you wish to join ?

A start at the list would be helpful

( I can guess at residual value, IRR, discount rates, costs, market /gas price assumptions)  
Tx



## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, November 16, 2011 1:06 PM  
**To:** 'Sebastiano, Rocco'  
**Cc:** 'Ivanoff, Paul'; 'Smith, Elliot'; Michael Lyle  
**Subject:** OGS Damages Calculation - Information Required ...  
**Attachments:** Need to Know 16 Nov 2011.docx

**Importance:** High

Rocco,

Here's the list of information that I think we'd need to know to understand how TCE arrived at its claimed damages calculation.

Michael

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



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

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model<sup>i</sup>, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

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<sup>i</sup> Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"





## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Wednesday, November 16, 2011 3:41 PM  
**To:** 'john.kelly@ontario.ca'  
**Cc:** 'Dermot.Muir@infrastructureontario.ca'  
**Subject:** Re: Meeting

Michael K has now been invited. Thanks.

---

**From:** Michael Lyle  
**Sent:** Wednesday, November 16, 2011 03:25 PM  
**To:** 'john.kelly@ontario.ca' <[john.kelly@ontario.ca](mailto:john.kelly@ontario.ca)>  
**Cc:** 'Dermot Muir' <[Dermot.Muir@infrastructureontario.ca](mailto:Dermot.Muir@infrastructureontario.ca)>  
**Subject:** Meeting

I have checked and it does not appear that any OPA staff have been invited to a meeting to discuss document disclosure in the TCE matter. Michael Killeavy, our Director of Contract Management, would be the most logic person to attend such a meeting. I believe Amir Shalaby, our VP of Planning, will be on a call on Friday with OPG, IO and the Ministry of Energy to discuss the TCE matter but I do not believe that call is about this issue and in any event, Amir would not be the right person to represent OPA on a discussion about documentary disclosure.

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

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## **Crystal Pritchard**

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

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

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

Kristin

Kristin Jenkins | Vice President, Corporate Communications | Ontario Power Authority | 120 Adelaide Street West, Suite 1600 | Toronto, ON M5H 1T1 | tel. 416.969.6007 | fax. 416.967.1947 | [www.powerauthority.on.ca](http://www.powerauthority.on.ca)



## Crystal Pritchard

---

**From:** John Zych  
**Sent:** Wednesday, November 23, 2011 8:49 PM  
**To:** jim.hinds@irish-line.com  
**Cc:** Nimi Visram; Michael Lyle  
**Subject:** FW: MINUTES OF AUGUST 1, 3, AND 5, 2011  
**Attachments:** DRAFT Minutes of Board of Directors Meeting - August 1, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 3, 2011.doc; DRAFT Minutes of Board of Directors Meeting - August 5, 2011.doc

**Categories:** Orange Category

Jim,

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

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

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

John Zych

---

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

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

---

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

Patrick,

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

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

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

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

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

Please advise.

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
416-969-6055  
416-967-7474 Main telephone  
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---

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

Patrick,

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

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

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

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

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

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

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
416-969-6055  
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John.Zych@powerauthority.on.ca

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## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

or, the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

#### **4. Other Business**

There was no other business.

#### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting







## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

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

## **2. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting



## Crystal Pritchard

---

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

**Categories:** Orange Category

Colin,

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

Kathleen,

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

---

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

Jim,

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

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

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John Zych

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Please advise.

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
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**Cc:** Michael Lyle  
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The Board members requested that the minutes of the meetings of August 1, 3 and 5, 2011 be reviewed and brought back to the Board for its review and approval.

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

John Zych  
Corporate Secretary  
Ontario Power Authority  
Suite 1600  
120 Adelaide Street West  
Toronto, ON M5H 1T1  
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## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

the status of negotiations with TransCanada Energy Inc. ("TransCanada Energy") as to its claims arising out of the decision of the Government of Ontario not to proceed with the development of TransCanada Energy's Oakville Generating Station project.

### **3. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

#### **4. Other Business**

There was no other business.

#### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting





## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

## 2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. In Camera Session**

The directors met in the absence of management.

### **5. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting







## **MEETING OF THE BOARD OF DIRECTORS**

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

### **PRESENT**

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

### **MEMBERS OF STAFF IN ATTENDANCE**

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

### **1. Constitution of the Meeting**

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

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

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

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

## **2. TransCanada Energy Inc. Negotiations**

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

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

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

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

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

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

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

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

### **3. Other Business**

There was no other business.

### **4. Termination**

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

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

---

James Hinds  
Chair of the meeting

---

John Zych  
Secretary of the meeting



## Crystal Pritchard

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

just finished a Conference call with Government/lo folks:

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

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

Cheers

amir



## Crystal Pritchard

---

**From:** JoAnne Butler  
**Sent:** Friday, November 25, 2011 5:09 PM  
**To:** Amir Shalaby; Michael Lyle; Michael Killeavy; Colin Andersen  
**Subject:** RE: Progress discussion on TCE arbitartaion

We will discuss our list, however, understanding the model, as we discussed with IO, Finance and Energy yesterday, would be extremely helpful so that at least we understand how they got their nominal cash flows. If we get to general agreement on that, then the discussion will be around discount factor and terminal value. There was some discussion of trying to get agreement on the discount factor and getting to the contract "number" without arbitration and then having an expedited arbitration only around the terminal value. That is where we left it yesterday.

JCB

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

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416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Amir Shalaby  
**Sent:** Viernes, 25 de Noviembre de 2011 04:20 p.m.  
**To:** Michael Lyle; Michael Killeavy; Colin Andersen; JoAnne Butler  
**Subject:** Progress discussion on TCE arbitartaion

just finished a Conference call with Government/IO folks:

- They are asking JoAnne or Michael K to send the shorter list of parameters that matter
- They met with legal counsel for TCE and agreed to amend the terms of arbitration ( to expedite settlement). They will pass the amendments by Michael L when they are ready. The amendments have to do with: compressing the process, document exchange, steps following document exchange
- They developed a list of Arbitrators to select from ( I asked that Michael L be party to the selection)
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Cheers  
amir





## Crystal Pritchard

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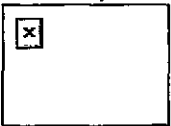
**From:** Sebastiano, Rocco [RSebastiano@osler.com]  
**Sent:** Tuesday, November 29, 2011 4:46 PM  
**To:** Michael Killeavy; Michael Lyle  
**Cc:** Ivanoff, Paul; Smith, Elliot; Carson, Lorne  
**Subject:** Update on Greenfield South

By way of update, I had a few calls today with Carl:

1. Greenfield was supposedly caught by surprise by the labourers who showed up at the gate yesterday hoping that there would be work for them. Carl advised that Greg did not ask the workers to show up on Monday.
2. EIG has retained Stikemans as Cdn litigation counsel and apparently, is in discussions about next steps.
3. Carl has prepared the Schedules and exhibits to the EIG Note Purchase Agreement and will be sending them over to me. I will circulate them as soon as I receive them.
4. Carl is putting together copies of the key equipment supply agreements that we requested. He did advise, however, that as these agreements contain some commercially confidential information, Greenfield is considering whether to redact any portions of these agreements. Recall that TCE also redacted portion of the turbine supply agreement on OGS when they sent it to us.

We have been doing some thinking about the options of dealing with the Secured Lenders prepayment claim. What time did you want to set up a call tomorrow morning to discuss these options?

Thanks, Rocco



Rocco Sebastiano  
Partner

416.862.5859 DIRECT  
416.862.6666 FACSIMILE  
[rsebastiano@osler.com](mailto:rsebastiano@osler.com)

Osler, Hoskin & Harcourt LLP  
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## Crystal Pritchard

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**From:** Michael Killeavy  
**Sent:** Tuesday, November 29, 2011 5:06 PM  
**To:** 'Sebastiano, Rocco'; Michael Lyle; JoAnne Butler  
**Cc:** 'Ivanoff, Paul'; 'Smith, Elliot'; 'Carson, Lorne'  
**Subject:** RE: Update on Greenfield South  
  
**Importance:** High

We can do the call between 11:30 and noon, if that's convenient? If so, could you please circulate teleconference information to the attendees?

Thanks,

Michael

Michael Killeavy, LL.B., MBA, P.Eng.  
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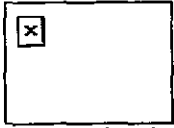
**From:** Sebastiano, Rocco [<mailto:RSebastiano@osler.com>]  
**Sent:** November 29, 2011 4:46 PM  
**To:** Michael Killeavy; Michael Lyle  
**Cc:** Ivanoff, Paul; Smith, Elliot; Carson, Lorne  
**Subject:** Update on Greenfield South

By way of update, I had a few calls today with Carl:

1. Greenfield was supposedly caught by surprise by the labourers who showed up at the gate yesterday hoping that there would be work for them. Carl advised that Greg did not ask the workers to show up on Monday.
2. EIG has retained Stikemans as Cdn litigation counsel and apparently, is in discussions about next steps.
3. Carl has prepared the Schedules and exhibits to the EIG Note Purchase Agreement and will be sending them over to me. I will circulate them as soon as I receive them.
4. Carl is putting together copies of the key equipment supply agreements that we requested. He did advise, however, that as these agreements contain some commercially confidential information, Greenfield is considering whether to redact any portions of these agreements. Recall that TCE also redacted portion of the turbine supply agreement on OGS when they sent it to us.

We have been doing some thinking about the options of dealing with the Secured Lenders prepayment claim. What time did you want to set up a call tomorrow morning to discuss these options?

Thanks, Rocco



Rocco Sebastiano  
Partner

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\*\*\*\*\*

## Crystal Pritchard

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**From:** Michael Lyle  
**Sent:** Wednesday, November 30, 2011 1:23 PM  
**To:** JoAnne Butler; Michael Killeavy  
**Cc:** 'Ivanoff, Paul'  
**Subject:** FW: Sched B\_ Blacklined version of Arbitration Agreement  
**Attachments:** Sched B\_ Blacklined version of Arbitration Agreement.doc

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
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**From:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** November 30, 2011 10:29 AM  
**To:** Michael Lyle  
**Subject:** Sched B\_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

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

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**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**TRANSCANADA ENERGY LTD.**

**Claimant**

**- and -**

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

**Respondents**

**ARBITRATION AGREEMENT**

**WHEREAS** the Ontario Power Authority (the "OPA") and the Claimant TransCanada Energy Ltd. ("TCE" or the "Claimant") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "CES Contract") for the construction 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 consent to sever for the Oakville Generating Station site 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 Arbitrator**

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) 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

- (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;
    - (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 the Claimant in the period after the expiration of the twenty year term of the CES 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 September 30, 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 5  
INITIATION OF THE ARBITRATION PROCESS

~~Section 5.1~~

~~The Parties agree that the formal arbitration process described in Article 6 shall commence with the Parties meeting to agree on a limited document exchange as described in Section 6.1 below.~~

~~Section 5.2~~

~~The meeting referred to in Section 6.1 shall take place no later than December 9, 2011.~~

~~Section 5.3~~

~~The time periods referred to in Article 6 shall be suspended from December 23, 2011 until January 8, 2012 inclusive.~~

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 cannot come to an agreement on these dates or the extent or nature of production 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; and~~
- ~~(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 6.1

The Province of Ontario, OPA, and TCE will meet and agree on a limited document exchange in which each party provides the other its most relevant internal assessment of the damages suffered by TCE in respect of the items set out in subsections 4.3(c)(ii)(A) ("20 Year Net Profit NPV") and (C) ("Terminal Value NPV") to the extent that these documents have not already been exchanged.

## Section 6.2

The documents agreed to be exchanged will be forwarded within one (1) week of the meeting referred to in Section 6.1 (no later than December 16, 2011, as a result of the start date set out in Section 5.2).

## Section 6.3

Within two (2) weeks of receipt of the documents referred to in Section 6.2 (no later than January 16, 2012, as a result of the suspension of time periods referred to in Section 5.3):

- (1) the Parties will provide to each other the amount it is prepared to settle for in respect of 20 Year Net Profit NPV and Terminal Value NPV and the basis for its position including a brief description of its financial calculations and legal arguments; and
- (2) TCE will provide a brief description of the amount it is claiming in respect of subsection 4.3(c)(ii)(B) ("Performance and Termination Costs") and a breakdown of those amounts by category.

## Section 6.4

Within two (2) weeks of the receipt of the documents referred to in Section 6.3 (no later than January 30, 2012), the Parties shall meet for the purpose of attempting to settle all elements of damages.

## Section 6.5

If the Parties are unable to settle any element of damages in the meeting referred to in Section 6.4 they shall, within two (2) weeks (no later than February 13, 2012), meet together with their experts to narrow the issues in dispute for presentation to the Arbitrator. At this meeting the Parties shall agree on a formula to be applied by the Arbitrator in an amended final offer arbitration to be conducted in the event they are unable to settle some or all of the issues referred to above.

## Section 6.6

Within four (4) weeks of the meeting referred to in Section 6.5 (no later than March 12, 2012), each of the Parties shall exchange initial expert reports setting out the

amount of damages they are prepared to settle for in respect of each of the issues. These reports will be provided to the Arbitrator.

#### **Section 6.7**

Within two (2) weeks of the delivery of the reports referred to in Section 6.6 (no later than March 26, 2012), the Parties and their experts shall meet to attempt to settle all issues or narrow those that have not been settled.

#### **Section 6.8**

Within three (3) weeks of the meeting referred to in Section 6.7 (no later than April 16, 2012), the Parties shall exchange final expert reports and a statement setting out the amount of damages they are prepared to settle for in respect of each of the then outstanding issues. These reports shall be provided to the Arbitrator.

#### **Section 6.9**

Within one (1) week of the receipt of the reports referred to in Section 6.8 (no later than April 23, 2011), the Parties shall meet with the Arbitrator and settle the form of evidence which shall be put to the Arbitrator in an arbitration which shall last no longer than one (1) week including opening and closing submission. The Parties shall also confirm with the Arbitrator the form of amended final offer selection which the Parties have chosen to employ.

#### **Section 6.10**

As soon as possible after the meeting with the Arbitrator, the arbitration shall be conducted in accordance with the agreed upon procedure.

#### **Section 6.11**

In the event that the Parties cannot come to an agreement on any procedural issue during the course of the arbitration, including but not limited to in Sections 6.1, 6.5, 6.7 and 6.9, they will refer the issue to the Arbitrator, who after hearing brief submission shall decide the issue.

#### **Section 6.12                      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 6.13                      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 6.14                      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 6.15                      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 6.16**

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 6.17**

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 8 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 substantially 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~~ sixty (60) days 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 to TCE of the transaction, being equal to the Final Award [or interim final award] (the "Equivalent Value").

- (a) Upon the request of the Respondent, the Province of Ontario, to satisfy the Final Award [or interim final award] as against either of the Respondents by the transfer of an asset of Equivalent Value, TCE shall within ten (10) business days submit a list of assets of interest (the "Assets of Interest") to the Respondent for consideration. Such list to consist of assets owned by

the Province of Ontario, the OPA or an agency of the Province of Ontario and at a minimum to include assets in which TCE has an equity interest or that has been subject to prior discussion amongst the Parties. Assets which will provide partial Equivalent Value may be considered.

- (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.

- (f) If more than ninety (90) days have passed after the date of the issuance of 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 Confidentiality**

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, 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 to their 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, employees, agents, servants, administrators, successors, members, subsidiaries, affiliates, insurers, and assigns of the terms and conditions of this Article. Notwithstanding the foregoing, the OPA and the Province of Ontario are entitled to share confidential information for the purpose of defending the Claim.

## **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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**Counsel for the Respondent,  
The Ontario Power Authority**

**Oslers, Hoskin & Harcourt LLP**  
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**Paul A. Ivanoff**  
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**Counsel for the Respondent,  
Her Majesty The Queen in Right of  
Ontario**

**Ministry of the Attorney General  
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**Eunice Machado**  
Tel: (416) 601-7562  
Fax : (416) 868-0673  
Email: eunice.machado@ontario.ca

## **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**                      5<sup>th</sup> day of August, 2011.

**TRANSCANADA ENERGY LTD.**

By: William C. Taylor

Title Senior Vice-President, Eastern Power

By Terry Bennett

Title Vice-President, Eastern Growth

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

By David Lindsay

Title Deputy Minister of Energy

**ONTARIO POWER AUTHORITY**

By: \_\_\_\_\_

Title

## **SCHEDULE "A"**

### **CONFIDENTIALITY AGREEMENT**

**THIS CONFIDENTIALITY AGREEMENT** sets forth the terms pursuant to which ► will provide or receive certain confidential information during the course of participating at the Arbitration Hearing between the Claimant, TransCanada Energy Ltd., and the Respondents, Her Majesty the Queen in Right of Ontario and the Ontario Power Authority.

The information that will be disclosed is considered to be proprietary and confidential information ("Confidential Information"). For the purpose of this Agreement the party disclosing Confidential Information is referred to as the "Disclosing Party", the party receiving such Confidential Information is referred to as the "Receiving Party".

The Receiving Party agrees that he/she has been made aware of the confidentiality terms in Article 8 of the Arbitration Agreement dated August ,2011 and agrees to maintain in strict confidence all Confidential Information disclosed by the Disclosing Party. The Receiving Party shall not disclose and shall prevent disclosure of Confidential Information to any third party without the express written permission of the Disclosing Party and shall not use Confidential Information for any commercial use, except for the purpose consistent with giving evidence at the Arbitration Hearing. In the event the Receiving Party is required by judicial or administrative process to disclose Confidential Information, the Receiving Party will promptly notify the Disclosing Party and permit adequate time to oppose such process.

The obligation of confidentiality and restricted use imposed herein shall not apply to Confidential Information that:

1. is known to the public or the Receiving Party prior to disclosure;
2. becomes known to the public through no breach of this Agreement by the Receiving Party;
3. is disclosed to the Receiving Party by a third party having a legal right to make such disclosure; or
4. is developed independently of the Confidential Information by the Receiving Party.

The Receiving Party agrees that the Confidential Information disclosed by the Disclosing Party will be used solely for the purposes consistent with the Arbitration Agreement and participation at the Arbitration Hearing or providing evidence during the course of the Arbitration Hearing. The Receiving Party will restrict transmission of such Confidential Information to those advisors and representatives who need to know the Confidential Information, for the purposes of the Agreement it is being agreed by the Receiving Party that such advisors and representatives are or will be placed under similar written obligations of confidentiality and restricted use as are contained in this Agreement and in the Arbitration Agreement.

It is understood that unauthorized disclosure or use by the Receiving Party hereto of Confidential Information may cause irreparable harm to the Disclosing Party and result in significant commercial damages, which may not adequately compensate for the breach. In addition to any remedies that may be available at law, in equity or otherwise, the Receiving Party agrees that the Disclosing Party shall be entitled to obtain injunctive relief enjoining the Receiving Party from engaging in any of the activities or practices which may constitute a breach or threatened breach of this Agreement, without the necessity of proving actual damages.

Upon written request by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all materials furnished by the Disclosing Party pursuant to this Agreement. The Receiving Party will not retain samples, copies, extracts, electronic data storage, or other reproduction in whole or in part of such materials. All documents, memoranda, notes and other writing based on such Confidential Information shall be destroyed.

Notwithstanding anything to the contrary in this Agreement, the Receiving Party acknowledges that this Agreement, the Confidential Information, and any other document or agreement provided or entered into in connection with the Arbitration Agreement or Arbitration Hearing, 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.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

AGREED TO as of the ► day of ►

---

Witness

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(Name)



## **SCHEDULE "B"**

### **FULL AND FINAL RELEASE**

**WHEREAS TRANSCANADA ENERGY LTD. ("TCE") and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AND THE ONTARIO POWER AUTHORITY (the "Respondents")** have agreed to settle all matters outstanding between them in respect of and arising from the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 ("CES Contract") the letter dated October 7, 2010 by which the Ontario Power Authority (the "OPA") terminated the CES Contract and acknowledged that TCE was entitled to its reasonable damages (the "October 7 Letter") and TCE's claim that is the subject of a Notice given by it dated April 27, 2011 pursuant to section 7 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 out of and in relation to the CES Contract, the October 7 Letter and the Claim [as set out in the [Insert title of document setting out settlement terms/arbitration award] (the 'Arbitration') and/or in consideration of the payment of the Final Award made in the arbitration proceedings between TCE and the Respondents pursuant to an Arbitration Agreement dated ►, and the payment by the Respondents to TCE of the sum of \$5.00 (five dollars) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, TCE, its directors, officers, employees, agents, servants, administrators, successors, shareholders, members, subsidiaries, affiliates, insurers, assigns and related parties from time to time (collectively, the "**Releasor**");

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

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

**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 they 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

By \_\_\_\_\_  
Title

## **Crystal Pritchard**

---

**From:** Michael Killeavy  
**Sent:** Wednesday, November 30, 2011 1:44 PM  
**To:** JoAnne Butler; Michael Lyle  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Ditto.

A limited scope of discovery impairs our ability to scrutinize the assumptions used in the their modelling used to quantify the alleged damages. I cannot agree with these changes.

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

---

**From:** JoAnne Butler  
**Sent:** November 30, 2011 1:33 PM  
**To:** Michael Lyle; Michael Killeavy  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Mike, this is frightful....as we have discussed in the past, I have a huge issue around overall governance. We hold the contract and the Gov. is making deals around us. Surely, our Board must be starting to get uncomfortable with this. Is it not time to assign the contract to the Gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickle anyway.

JCB

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

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Toronto, Ontario M5H 1T1

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Michael Lyle  
**Sent:** Miércoles, 30 de Noviembre de 2011 01:23 p.m.  
**To:** JoAnne Butler; Michael Killeavy  
**Cc:** 'Ivanoff, Paul'  
**Subject:** FW: Sched B\_ Blacklined version of Arbitration Agreement

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Michael Lyle  
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Legal, Aboriginal & Regulatory Affairs  
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120 Adelaide Street West, Suite 1600  
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Fax: 416.969.6383  
Email: [michael.lyle@powerauthority.on.ca](mailto:michael.lyle@powerauthority.on.ca)

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---

**From:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** November 30, 2011 10:29 AM  
**To:** Michael Lyle  
**Subject:** Sched B\_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario

1 Dundas Street West, 20th Floor  
Toronto, Ontario M5G 2L5  
416-325-2316  
416-204-6130 (fax)  
[Dermot.Muir@infrastructureontario.ca](mailto:Dermot.Muir@infrastructureontario.ca)

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## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Wednesday, November 30, 2011 2:46 PM  
**To:** Michael Killeavy; JoAnne Butler  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Ok. I think we have a consensus. Will provide feedback from IO.

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

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**From:** Michael Killeavy  
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**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Ditto.

A limited scope of discovery impairs our ability to scrutinize the assumptions used in the their modelling used to quantify the alleged damages. I cannot agree with these changes.

Michael Killeavy, LL.B., MBA, P.Eng.  
Director, Contract Management  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario  
M5H 1T1  
416-969-6288  
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**From:** JoAnne Butler  
**Sent:** November 30, 2011 1:33 PM  
**To:** Michael Lyle; Michael Killeavy  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Mike, this is frightful....as we have discussed in the past, I have a huge issue around overall governance. We hold the contract and the Gov. is making deals around us. Surely, our Board must be starting to get uncomfortable with this. Is it not time to assign the contract to the Gov. and let them get on with doing what they want since, as they keep telling us, it is mostly their nickle anyway.

JCB

JoAnne C. Butler  
Vice President, Electricity Resources  
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416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Michael Lyle  
**Sent:** Miércoles, 30 de Noviembre de 2011 01:23 p.m.  
**To:** JoAnne Butler; Michael Killeavy  
**Cc:** 'Ivanoff, Paul'  
**Subject:** FW: Sched B\_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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Legal, Aboriginal & Regulatory Affairs  
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**From:** Dermot Muir [mailto:Dermot.Muir@infrastructureontario.ca]  
**Sent:** November 30, 2011 10:29 AM  
**To:** Michael Lyle  
**Subject:** Sched B\_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

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General Counsel and Corporate Secretary  
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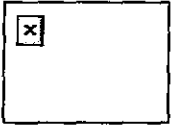


## Crystal Pritchard

---

**From:** Ivanoff, Paul [PIvanoff@osler.com]  
**Sent:** Wednesday, November 30, 2011 2:58 PM  
**To:** Michael Lyle  
**Cc:** JoAnne Butler; Michael Killeavy; Sebastiano, Rocco  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Mike,  
I completely agree with your concerns. I understood that there was agreement on procedure/conduct for the arbitration and I don't understand why they are resiling.  
Let me know if you want to discuss.



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
pivanoff@osler.com

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



---

**From:** Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]  
**Sent:** Wednesday, November 30, 2011 1:23 PM  
**To:** JoAnne Butler; Michael Killeavy  
**Cc:** Ivanoff, Paul  
**Subject:** FW: Sched B\_ Blacklined version of Arbitration Agreement

Attached are the proposed amendments to the arbitration agreement that are proposed by TCE and have been referred to us from counsel for IO. As I indicated previously, I was concerned that TCE was trying to limit the scope of discovery in order to allow them to not disclose relevant documentation. This has been confirmed by the drafting. The key here is that they are the ones with most of the documents relevant to assessing damages and so it is to their advantage to keep discovery very limited. We had previously been concerned with section 6.1 as it stated that the parties were to meet and confer on documentary discovery but states that such discovery would not be as broad as in the Rules of Civil Procedure. It did say though that parties would have to disclose the documents that fall into the categories identified by opposing counsel. The new section 6.1 contemplates the parties meeting and agreeing on a limited document exchange in which each party provides "its most relevant internal assessment" of the damages re 20 year profit and terminal value. This allows TCE to only put forward the assessment that favours their position and shield any internal documents that might indicate that their numbers are inflated. IO will likely take the view that OPA should not care about this given that the DM of Energy has stated the Government's intention to cover these costs. However, note that there is no right of document discovery with respect to the sunk costs which the OPA is responsible to pay. Section 6.3(2) only gives us a right to a "brief description" of the amount TCE is claiming and a breakdown of these amounts by category. This is obviously unacceptable. We will no doubt have other concerns as we go through this in more detail. Dermot Muir, IO General Counsel, is trying to get a response out of me on this. I assume that IO will want to move it quickly. It will need to be approved by our Board. I intend to call him after 4 today. If anyone has additional comments before then, please let me know.

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**From:** Dermot Muir [mailto:[Dermot.Muir@infrastructureontario.ca](mailto:Dermot.Muir@infrastructureontario.ca)]  
**Sent:** November 30, 2011 10:29 AM  
**To:** Michael Lyle  
**Subject:** Sched B\_ Blacklined version of Arbitration Agreement

Michael:

Please find attached the latest proposed changes to the arbitration agreement as provided by Mike B.

Happy to discuss.

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
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## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Friday, December 02, 2011 4:41 PM  
**To:** 'Dermot Muir'  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

My concern is actually increased by the need to obtain agreement since I assume that TCE will only provide the documents that they agree to provide. I am not really sure what happens if we cannot reach agreement on this but I do not see how it leads to more documentary disclosure. The proposal to address my second comment, while better than the original draft, still has the problem that it leaves it to TCE to bring forward evidence that supports their case but does not allow OPA and the Crown to get access to documents that may not support their case. An obligation to provide all relevant documentation with respect to Performance and Termination Costs with the ability to have examinations for discovery is what is really needed.

Michael Lyle  
General Counsel and Vice President  
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**From:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** December 2, 2011 3:04 PM  
**To:** Michael Lyle  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

Michael:

With regard to your first comment, is your concern mitigated since there has to be agreement on the document exchange? How about the below addition to address your second comment:

- (1) TCE will provide a brief description of and documentary evidence to support the amount it is claiming in respect of subsection 4.3(c)(ii)(B) ("Performance and Termination Costs") and a breakdown of those amounts by category.

Regards

Dermot

---

**From:** Michael Lyle [<mailto:Michael.Lyle@powerauthority.on.ca>]  
**Sent:** Thursday, December 01, 2011 8:02 PM  
**To:** Dermot Muir

**Cc:** Susan Kennedy; Michael Killeavy  
**Subject:** RE: Sched B\_ Blacklined version of Arbitration Agreement

See attached comments as per our telephone conversation. I have copied Susan Kennedy our Associate General Counsel on this matter as I will be on vacation for most of next week. Michael Killeavy is our Director of Contract Management.

Michael Lyle  
General Counsel and Vice President  
Legal, Aboriginal & Regulatory Affairs  
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**Sent:** November 30, 2011 10:29 AM  
**To:** Michael Lyle  
**Subject:** Sched B\_ Blacklined version of Arbitration Agreement

Michael:

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Happy to discuss.

Regards

Dermot

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---



## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Monday, December 05, 2011 10:54 AM  
**To:** Ivanoff, Paul  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler  
**Subject:** TCE Matter - Information Needed ...  
**Attachments:** Need to Know 16 Nov 2011.docx  
  
**Importance:** High

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.  
Director, Contract Management  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario  
M5H 1T1  
416-969-6288  
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**PRIVILEGED & CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION**

Information we need to know from TransCanada Energy ("TCE") regarding its claimed damages associated with the anticipated financial value of the Oakville Generating Station ("OGS"):

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model<sup>i</sup>, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

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<sup>i</sup> Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"





## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Monday, December 05, 2011 11:01 AM  
**To:** Michael Lyle; 'pivanoff@osler.com'  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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

---

**From:** Michael Lyle  
**Sent:** December 5, 2011 11:00 AM  
**To:** Michael Killeavy; 'pivanoff@osler.com'  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** Re: TCE Matter - Information Needed ...

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**From:** Michael Killeavy  
**Sent:** Monday, December 05, 2011 10:54 AM  
**To:** Ivanoff, Paul <PIvanoff@osler.com>  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler  
**Subject:** TCE Matter - Information Needed ...

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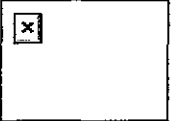
## Crystal Pritchard

---

**From:** Ivanoff, Paul [PIvanoff@osler.com]  
**Sent:** Monday, December 05, 2011 5:47 PM  
**To:** Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...

Thanks Michael. We'll consider and speak to John Kelly.

Regards,  
Paul



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
[pivanoff@osler.com](mailto:pivanoff@osler.com)

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



---

**From:** Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]  
**Sent:** Monday, December 05, 2011 10:54 AM  
**To:** Ivanoff, Paul  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler  
**Subject:** TCE Matter - Information Needed ...  
**Importance:** High

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## Crystal Pritchard

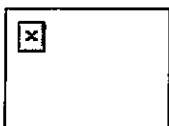
---

**From:** Ivanoff, Paul [PIvanoff@osler.com]  
**Sent:** Wednesday, December 07, 2011 6:01 PM  
**To:** Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...  
**Attachments:** v3 Scope of Documentary Discovery OPA re TCE 22287002\_3.doc

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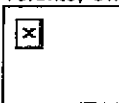
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Paul



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



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**Sent:** Monday, December 05, 2011 11:01 AM  
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\*\*\*\*\*





IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

**Scope of Documentary Production**

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

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

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

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

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith;
11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.
14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;
15. All project development schedules and construction schedules for the OGS;
16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
17. The Long Term Service Agreement;
18. Operating and Maintenance ("O&M") Agreements for the OGS; and
19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].

## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 07, 2011 6:03 PM  
**To:** 'PIvanoff@osler.com'  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; 'RSebastiano@osler.com'  
**Subject:** Re: TCE Matter - Information Needed ...

Will do. Thank you.

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

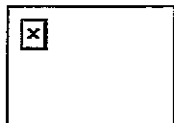
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**From:** Ivanoff, Paul [<mailto:PIvanoff@osler.com>]  
**Sent:** Wednesday, December 07, 2011 06:00 PM  
**To:** Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco <[RSebastiano@osler.com](mailto:RSebastiano@osler.com)>  
**Subject:** RE: TCE Matter - Information Needed ...

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**From:** Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]  
**Sent:** Monday, December 05, 2011 11:01 AM  
**To:** Michael Lyle; Ivanoff, Paul  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** RE: TCE Matter - Information Needed ...

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## Crystal Pritchard

---

**From:** JoAnne Butler  
**Sent:** Thursday, December 08, 2011 9:15 AM  
**To:** 'Ivanoff, Paul'; Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...

Paul,

It has been made clear to us (again) that TCE will NOT share their model. From an earlier email from IO, quote:

*"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."*

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Thoughts??

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

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**From:** Ivanoff, Paul [mailto:PIvanoff@osler.com]  
**Sent:** Miércoles, 07 de Diciembre de 2011 06:01 p.m.  
**To:** Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...

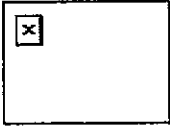
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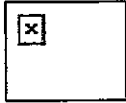
Paul



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**From:** Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
**Sent:** Monday, December 05, 2011 11:01 AM  
**To:** Michael Lyle; Ivanoff, Paul  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** RE: TCE Matter - Information Needed ...

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**From:** Michael Lyle  
**Sent:** December 5, 2011 11:00 AM  
**To:** Michael Killeavy; 'pivanoff@osler.com'  
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**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler



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**Sent:** Thursday, December 08, 2011 9:34 AM  
**To:** JoAnne Butler; 'Ivanoff, Paul'  
**Cc:** Michael Lyle; Susan Kennedy; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...  
**Attachments:** OPA\_v3 Scope of Documentary Discovery OPA re TCE 22287002\_3.doc

We have reviewed the document and made a few suggested changes. The changes are in blackline in the attached version of the document.

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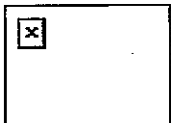
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**From:** Michael Lyle  
**Sent:** December 5, 2011 11:00 AM  
**To:** Michael Killeavy; 'pivanoff@osler.com'  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

---

**From:** Michael Killeavy  
**Sent:** Monday, December 05, 2011 10:54 AM  
**To:** Ivanoff, Paul <PIvanoff@osler.com>  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler  
**Subject:** TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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

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\*\*\*\*\*

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

**Scope of Documentary Production**

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

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

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

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

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



## Crystal Pritchard

---

**From:** Ivanoff, Paul [PIvanoff@osler.com]  
**Sent:** Thursday, December 08, 2011 11:57 AM  
**To:** JoAnne Butler; Sebastiano, Rocco; Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy  
**Subject:** RE: TCE Matter - Information Needed ...

I'll send the document (as revised by Michael) over to John Kelly.  
Paul



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
pivanoff@osler.com

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



---

**From:** JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]  
**Sent:** Thursday, December 08, 2011 9:50 AM  
**To:** Sebastiano, Rocco; Ivanoff, Paul; Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy  
**Subject:** RE: TCE Matter - Information Needed ...

I am quite happy for Paul/Mike to fight the good fight with John Kelly on this and therefore, we should leave it in for the purposes of arbitration. There seems to be a background group looking at a more "flexible" list in efforts to get some movement forward without going to arbitration. If we keep insisting on the model among this group, it's just Ground Hog Day again.....

JCB

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

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

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

---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
**Sent:** Jueves, 08 de Diciembre de 2011 09:40 a.m.  
**To:** JoAnne Butler; Ivanoff, Paul; Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy  
**Subject:** RE: TCE Matter - Information Needed ...

Although TCE has resisted in providing their financial model during our settlement negotiations, as part of the private arbitration proceedings, TCE should be required (as would any other plaintiff in any legal proceedings) to prove their damages. The only way they can do so is by presenting a detailed financial model, complete with underlying assumptions and forecasts which the arbitrator and the defendant's expert can review and ask questions about. Without disclosure of this most seminal piece of information and supporting documentation, there is no way that TCE could prove its purported losses in a court of law. They cannot refuse to provide simply on the basis that it is commercially confidential and expect us to simply "trust them" that their model would survive scrutiny by a third party expert like Gene Meehan. In my view, if TCE is allowed not to disclose their financial model and background assumptions and forecasts, then it would make a mockery of the entire arbitration process because their model could be full of errors, incorrect assumptions and overly favourable forecasts of electricity prices and gas prices which we would be unable to challenge.... I know that I am preaching to the converted, but it is frustrating that the Province would even entertain TCE's refusal to disclose this information as part of the arbitration proceedings.

Thanks, Rocco

---

**From:** JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]  
**Sent:** Thursday, December 08, 2011 9:15 AM  
**To:** Ivanoff, Paul; Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...

Paul,

It has been made clear to us (again) that TCE will NOT share their model. From an earlier email from IO, quote:

*"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."*

So, I am not sure if asking them for the model again will add any value or move anything forward. Perhaps we can word our request (thinking future audit) something like the following:

*"After repeated requests to be able to view the TCE model, they refuse to do so because of purported commercial sensitivity and the multiple, large and complex formulas and models that feed into it. Therefore, OPA has no choice but to recreate a shadow model. In order to that, we need the following information: .....". This is more or less what MK has indicated in his one pager of asks but maybe we need to expand it.*

Thoughts??

JCB

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

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

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

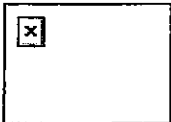
---

**From:** Ivanoff, Paul [mailto:PIvanoff@osler.com]  
**Sent:** Miércoles, 07 de Diciembre de 2011 06:01 p.m.  
**To:** Michael Killeavy  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco  
**Subject:** RE: TCE Matter - Information Needed ...

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list. We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request.

Please let me know your thoughts on this front.

Regards,  
Paul



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
pivanoff@osler.com

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



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**From:** Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
**Sent:** Monday, December 05, 2011 11:01 AM  
**To:** Michael Lyle; Ivanoff, Paul  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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

**From:** Michael Lyle  
**Sent:** December 5, 2011 11:00 AM  
**To:** Michael Killeavy; 'pivanoff@osler.com'  
**Cc:** Susan Kennedy; JoAnne Butler  
**Subject:** Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

---

**From:** Michael Killeavy  
**Sent:** Monday, December 05, 2011 10:54 AM  
**To:** Ivanoff, Paul <PIvanoff@osler.com>  
**Cc:** Michael Lyle; Susan Kennedy; JoAnne Butler  
**Subject:** TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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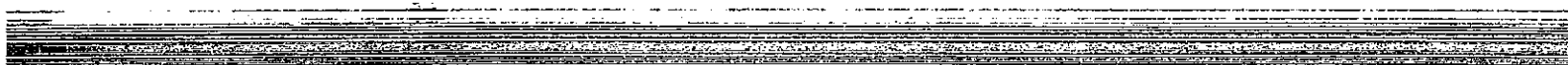
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## Crystal Pritchard

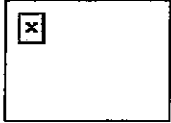
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**From:** Ivanoff, Paul [PIvanoff@osler.com]  
**Sent:** Thursday, December 08, 2011 12:08 PM  
**To:** john.kelly@ontario.com  
**Cc:** Michael Killeavy; Michael Lyle; Susan Kennedy; Sebastiano, Rocco  
**Subject:** Privileged and Confidential - OPA/TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4.doc

John,

Please see the attached draft Scope of Documentary Production for the arbitration with TCE. We understand that you would like the list to include only essential items and we believe that the attached draft is a reasonable and appropriate request which takes into account, at a minimum, what would need to be considered by the OPA in order to evaluate the claims of TCE including those claims for loss of profits and sunk costs.

Regards,  
Paul



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
[pivanoff@osler.com](mailto:pivanoff@osler.com)

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- and -

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

Respondents

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

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- Relevant Time Frame: October 2, 2008 - Present

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3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;
4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;
5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

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

## Crystal Pritchard

---

**From:** Nimi Visram  
**Sent:** Friday, December 09, 2011 1:34 PM  
**To:** Michael Lyle  
**Subject:** RE: Vapour Pre-Meeting Conference Call

Mike, this will conflict with our team meeting – will you step out for the call?

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority  
Please consider your environmental responsibility before printing this email.

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

**From:** Michael Killeavy **On Behalf Of** Peggy Delaney  
**Sent:** December 9, 2011 1:30 PM  
**To:** Nimi Visram  
**Subject:** FW: Vapour Pre-Meeting Conference Call  
**When:** December 12, 2011 9:00 AM-9:45 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Conference Call: 416 212-8011 Passcode: 9583454#

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

**From:** Peggy Delaney [<mailto:Peggy.Delaney@infrastructureontario.ca>]  
**Sent:** December 8, 2011 3:09 PM  
**To:** 'Peggy Delaney'; Andrew Lin; Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Serge Imbrogno; Deborah Langelaan  
**Cc:** Rick Jennings (MEI)  
**Subject:** Vapour Pre-Meeting Conference Call  
**When:** December 12, 2011 9:00 AM-9:45 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Conference Call: 416 212-8011 Passcode: 9583454#

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14<sup>th</sup> at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot – let me know if external counsel should be invited to the meetings.

Andrew

---

Andrew Lin  
VP, Treasury & Risk Management, and Head of Special Initiatives  
Infrastructure Ontario  
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8  
Tel: (416) 325-3299

## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

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

Andrew

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

**From:** Peggy Delaney

**Sent:** Thursday, December 08, 2011 4:49 PM

**To:** Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno

**Cc:** 'Deborah Langelaan'; 'Michael Lyle'

**Subject:** Call #2 Pre-Discussions for Meeting with TCE

**When:** Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).

**Where:** Dial in 416 212-8011 Passcode: 9583454# Moderator 4290#

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

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



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- ~~4.3. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;~~
- ~~5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~

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

Draft & Privileged



Drain & Privileged



## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Tuesday, December 13, 2011 9:00 AM  
**To:** JoAnne Butler  
**Subject:** Fw: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

Have another matter. I will leave this to you and Michael.

---

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

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**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** Call #2 Pre-Discussions for Meeting with TCE  
**When:** Tuesday, December 13, 2011 9:00 AM-10:00 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Dial in 416 212-8011 Passcode: 9583454# Moderator 4290#

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

**Scope of Documentary Production**

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- | 6.4. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
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- | 21.15. The assumptions made with respect to the forecasted price of carbon.







## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:03 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

revised

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**From:** Andrew Lin  
**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

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**Sent:** Thursday, December 08, 2011 4:49 PM  
**To:** Peggy Delaney; Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Tuesday, December 13, 2011 9:09 AM  
**To:** Michael Lyle  
**Subject:** Fw: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

I have reiterated to IO that this cannot be a list of documents to limit the scope of documentary discovery for any arbitration. It needs to be a simple list of documents for the settlement discussions only.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]  
**Sent:** Tuesday, December 13, 2011 09:02 AM  
**To:** Jonathan Weisstub <[Jonathan.Weisstub@infrastructureontario.ca](mailto:Jonathan.Weisstub@infrastructureontario.ca)>; Dermot Muir <[Dermot.Muir@infrastructureontario.ca](mailto:Dermot.Muir@infrastructureontario.ca)>; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI) <[Rick.Jennings@ontario.ca](mailto:Rick.Jennings@ontario.ca)>; Serge Imbrogno <[Serge.Imbrogno@ofina.on.ca](mailto:Serge.Imbrogno@ofina.on.ca)>  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

revised

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**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
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## Crystal Pritchard

---

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**Sent:** Tuesday, December 13, 2011 9:29 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v5 Scope of Documentary Discovery OPA re TCE.doc

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**Sent:** Tuesday, December 13, 2011 9:03 AM  
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**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

revised << File: v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc >>

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**Sent:** Tuesday, December 13, 2011 8:54 AM  
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10.



## Crystal Pritchard

---

**From:** Jonathan Weisstub [Jonathan.Weisstub@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:33 AM  
**To:** Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dermot –

Do you mind suggesting some appropriate language for the preamble?

Jonathan

---

**From:** Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]  
**Sent:** Tuesday, December 13, 2011 9:31 AM  
**To:** Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI)  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

Hi,

I'd change the preamble to say something about without prejudice and this doesn't limit our ask.

Serge

---

**From:** Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:29 AM  
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**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

revised << File: v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc >>

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**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
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**Sent:** Tuesday, December 13, 2011 9:48 AM  
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**Cc:** Michael Lyle  
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I have inserted a new clause in the preamble. Let me now what you think.

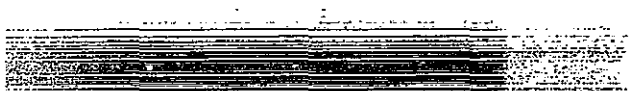
Regards

Dermot

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

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

Respondents

**Scope of Documentary Production List of Proposed Settlement Information**

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

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

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

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

- ~~1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");~~
- ~~2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;~~
- ~~3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;~~
- ~~4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;~~

5. ~~All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~
6. ~~TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;~~
- 7.1. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. ~~The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");~~
9. ~~The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;~~
- 10.2. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
- 11.3. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
- 12.4. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
- 13.5. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.
14. ~~The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;~~
15. ~~All project development schedules and construction schedules for the OGS;~~
- 16.6. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine including invoices and proof of payments;
7. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;
8. The "replacement contract" that TCE ~~allegedly~~ anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;



17. —

18. ~~Separated revenue and expense line items in the financial projections Operating and Maintenance ("O&M") Agreements for the OGS;~~

19. ~~Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 present];~~

20. ~~Strategy for offering the production of energy into IESO Administered Market versus revenue and expenses for contracted energy; and~~

21. —The assumptions made with respect to the forecasted price of carbon.

10. —



## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Tuesday, December 13, 2011 10:01 AM  
**To:** Dermot Muir; Serge Imbrogno; Andrew Lin; JoAnne Butler; Rick Jennings (MEI)  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

This generally looks fine to me. I think there is a typographical error in the last sentence of the preamble – it ought to say "... amongst the Parties."

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:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** December 13, 2011 9:48 AM  
**To:** Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)  
**Cc:** Michael Lyle  
**Subject:** v5 Scope of Documentary Discovery OPA re TCE

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

Regards

Dermot

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

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---

## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 2:35 PM  
**To:** Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weissstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

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

Andrew

---

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

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Regards

Dermot

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General Counsel and Corporate Secretary  
Infrastructure Ontario  
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## Crystal Pritchard

---

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

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

---

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

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Andrew

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

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

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
Toronto, Ontario M5G 2L5  
416-325-2316  
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## **List of Proposed Settlement Information**

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

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



## Crystal Pritchard

---

**From:** JoAnne Butler  
**Sent:** Tuesday, December 13, 2011 3:16 PM  
**To:** 'Andrew Lin'; Dermot Muir; Serge Imbrogno; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

This matches with the notes that I took...thanks...

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]  
**Sent:** Martes, 13 de Diciembre de 2011 03:00 p.m.  
**To:** Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

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

---

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

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

Andrew

---

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

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

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
Toronto, Ontario M5G 2L5  
416-325-2316  
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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 14, 2011 5:52 PM  
**To:** Ronak Mozayyan; Deborah Langelaan  
**Cc:** JoAnne Butler; Catherine Forster; Michael Lyle  
**Subject:** OGS Financial Model ....

Deb and Ronak,

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

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

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

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

Michael

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](mailto:Michael.killeavy@powerauthority.on.ca)



## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 14, 2011 5:56 PM  
**To:** 'Plvanoff@osler.com'  
**Cc:** 'RSebastiano@osler.com'; Michael Lyle; JoAnne Butler  
**Subject:** Fw: OGS Financial Model ....

Paul,

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

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

Thank you,  
Michael

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

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

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

Deb and Ronak,

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

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Ontario Power Authority  
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Michael.killeavy@powerauthority.on.ca

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## Crystal Pritchard

---

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

Michael,

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

Regards,  
Paul

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

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

Paul,

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

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Thank you,  
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416-969-6071 (fax)  
416-520-9788 (cell)  
[Michael.killeavy@powerauthority.on.ca](mailto:Michael.killeavy@powerauthority.on.ca)

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

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

Deb and Ronak,

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\*\*\*\*\*

## Crystal Pritchard

---

**From:** JoAnne Butler  
**Sent:** Tuesday, December 27, 2011 9:33 PM  
**To:** Michael Lyle  
**Cc:** Kim Marshall  
**Subject:** Fw: TCE

As per previous email...now it looks like Dermot is the only lawyer...this may be about the "settlement" stream not the "arbitration" stream. It could just be a follow up to a call we had last Thursday. Maybe you do not need to join??

JCB

---

**From:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** Tuesday, December 27, 2011 08:12 PM  
**To:** JoAnne Butler; Rick Jennings (MEI) <[Rick.Jennings@ontario.ca](mailto:Rick.Jennings@ontario.ca)>; Jonathan Weisstub <[Jonathan.Weisstub@infrastructureontario.ca](mailto:Jonathan.Weisstub@infrastructureontario.ca)>; Serge Imbrogno <[Serge.Imbrogno@ofina.on.ca](mailto:Serge.Imbrogno@ofina.on.ca)>; Andrew Lin <[Andrew.Lin@infrastructureontario.ca](mailto:Andrew.Lin@infrastructureontario.ca)>  
**Subject:** TCE

**When:** Wednesday, December 28, 2011 10:00 AM-10:30 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Teleconference - Dial In: (416) 212-8012, Toll Free: 866-633-0848, Conference ID: 1069794

**Note:** The GMT offset above does not reflect daylight saving time adjustments.

\*~\*~\*~\*~\*~\*~\*~\*~\*~\*



## Crystal Pritchard

---

**From:** Nimi Visram  
**Sent:** Friday, December 09, 2011 1:34 PM  
**To:** Michael Lyle  
**Subject:** RE: Vapour Pre-Meeting Conference Call

Mike, this will conflict with our team meeting -- will you step out for the call?

Nimi Visram | Executive Assistant and Board Coordinator | Legal, Aboriginal and Regulatory Affairs | Ontario Power Authority  
Please consider your environmental responsibility before printing this email.

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

**From:** Michael Killeavy **On Behalf Of** Peggy Delaney  
**Sent:** December 9, 2011 1:30 PM  
**To:** Nimi Visram  
**Subject:** FW: Vapour Pre-Meeting Conference Call  
**When:** December 12, 2011 9:00 AM-9:45 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Conference Call: 416 212-8011 Passcode: 9583454#

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

**From:** Peggy Delaney [<mailto:Peggy.Delaney@infrastructureontario.ca>]  
**Sent:** December 8, 2011 3:09 PM  
**To:** 'Peggy Delaney'; Andrew Lin; Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Serge Imbrogno; Deborah Langelaan  
**Cc:** Rick Jennings (MEI)  
**Subject:** Vapour Pre-Meeting Conference Call  
**When:** December 12, 2011 9:00 AM-9:45 AM (GMT-05:00) Eastern Time (US & Canada).  
**Where:** Conference Call: 416 212-8011 Passcode: 9583454#

I've arranged with Terry Bennett of TCE to meet on Wed., Dec. 14<sup>th</sup> at 3:30pm to go through the assumptions that we're requesting from TCE. In order to prepare for that, we should have a pre-meeting on our side this week to discuss the requested assumptions. Attached is the OFA's initial list of information required of TCE on which we should add. Terry requests that we send it over to him ahead of time.

My assistant Peggy will arrange for a meeting or call this week for the pre-meeting, and will also send out an invite with for the TCE meeting.

Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other.

Dermot -- let me know if external counsel should be invited to the meetings.

Andrew

---

Andrew Lin  
VP, Treasury & Risk Management, and Head of Special Initiatives  
Infrastructure Ontario  
777 Bay St., 9th Fl., Toronto, Ontario M5G 2C8  
Tel: (416) 325-3299

## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

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

Andrew

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

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

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- ~~2.1. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;~~
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- ~~5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~

Draft & Privileged

- | 6.4. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
- | 7.5. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
- | 8.6. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
- | 9.7. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
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- | 11.9. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
- | 12.10. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
- | 13.11. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.
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- | 21.15. The assumptions made with respect to the forecasted price of carbon.

Draft & Privileged



## Crystal Pritchard

---

**From:** Michael Lyle  
**Sent:** Tuesday, December 13, 2011 9:00 AM  
**To:** JoAnne Butler  
**Subject:** Fw: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

Have another matter. I will leave this to you and Michael.

---

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

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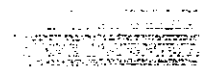
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Draft & Privileged



Draft & Privileged





## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:03 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

revised

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**From:** Andrew Lin  
**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
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## Crystal Pritchard

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**From:** Michael Killeavy  
**Sent:** Tuesday, December 13, 2011 9:09 AM  
**To:** Michael Lyle  
**Subject:** Fw: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc

I have reiterated to IO that this cannot be a list of documents to limit the scope of documentary discovery for any arbitration. It needs to be a simple list of documents for the settlement discussions only.

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](mailto:Michael.killeavy@powerauthority.on.ca)

---

**From:** Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]  
**Sent:** Tuesday, December 13, 2011 09:02 AM  
**To:** Jonathan Weisstub <[Jonathan.Weisstub@infrastructureontario.ca](mailto:Jonathan.Weisstub@infrastructureontario.ca)>; Dermot Muir <[Dermot.Muir@infrastructureontario.ca](mailto:Dermot.Muir@infrastructureontario.ca)>; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI) <[Rick.Jennings@ontario.ca](mailto:Rick.Jennings@ontario.ca)>; Serge Imbrogno <[Serge.Imbrogno@ofina.on.ca](mailto:Serge.Imbrogno@ofina.on.ca)>  
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Draft & Privileged



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**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:29 AM  
**To:** Jonathan Weisstub; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE  
**Attachments:** v5 Scope of Documentary Discovery OPA re TCE.doc

As per our call this morning. Please review this one last time and send me any further comments before I send over to TCE.

---

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**Sent:** Tuesday, December 13, 2011 9:03 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
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- 8. ~~The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");~~
- 9. ~~The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;~~
- 10.2. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
- 11.3. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
- 12.4. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
- 13.5. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.
- 14. ~~The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;~~
- 15. ~~All project development schedules and construction schedules for the OGS;~~
- 16.6. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine including invoices and proof of payments;
- 7. The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;
- 8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
- 9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
- 17. —

18. ~~Separated revenue and expense line items in the financial projections Operating and Maintenance ("O&M") Agreements for the OGS;~~
19. ~~Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 present];~~
20. ~~Strategy for offering the production of energy into IESO Administered Market versus revenue and expenses for contracted energy; and~~
21. The assumptions made with respect to the forecasted price of carbon.

10.



## Crystal Pritchard

---

**From:** Jonathan Weisstub [Jonathan.Weisstub@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:33 AM  
**To:** Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)  
**Cc:** Deborah Langelaan; Michael Lyle  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dermot –

Do you mind suggesting some appropriate language for the preamble?

Jonathan

---

**From:** Serge Imbrogno [mailto:Serge.Imbrogno@ofina.on.ca]  
**Sent:** Tuesday, December 13, 2011 9:31 AM  
**To:** Andrew Lin; Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI)  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

Hi,

I'd change the preamble to say something about without prejudice and this doesn't limit our ask.

Serge

---

**From:** Andrew Lin [mailto:Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:29 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

As per our call this morning. Please review this one last time and send me any further comments before I send over to TCE.

---

**From:** Andrew Lin  
**Sent:** Tuesday, December 13, 2011 9:03 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

revised << File: v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc >>

---

**From:** Andrew Lin  
**Sent:** Tuesday, December 13, 2011 8:54 AM  
**To:** Jonathan Weisstub; Dermot Muir; 'Joanne.Butler@powerauthority.on.ca'; 'Michael.killeavy@powerauthority.on.ca'; Rick Jennings (MEI); Serge Imbrogno  
**Cc:** 'Deborah Langelaan'; 'Michael Lyle'  
**Subject:** RE: Call #2 Pre-Discussions for Meeting with TCE

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

Andrew << File: v4 Scope of Documentary Discovery OPA re TCE 22287002\_4 - al blacklines.doc >>

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

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

This second meeting will go ahead ! On Monday it was determined that further discussion was necessary.  
Note: This time is being held in case further discussions are necessary after Monday and will be determined on Monday's call

---

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## Crystal Pritchard

---

**From:** Dermot Muir [Dermot.Muir@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 9:48 AM  
**To:** Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)  
**Cc:** Michael Lyle  
**Subject:** v5 Scope of Documentary Discovery OPA re TCE  
**Attachments:** v5 Scope of Documentary Discovery OPA re TCE.doc

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

Regards

Dermot

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

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

-and-

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

Respondents

**Scope of Documentary Production List of Proposed Settlement Information**

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

Formatted: Space After: 0 pt

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

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

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

- ~~1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");~~
- ~~2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;~~
- ~~3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;~~
- ~~4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;~~

Draft & Privileged

5. ~~All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;~~
6. ~~TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;~~
- 7.1. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. ~~The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");~~
9. ~~The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;~~
- 10.2. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
- 11.3. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
- 12.4. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
- 13.5. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility, including any Operating and Maintenance ("O&M") Agreements.
14. ~~The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;~~
15. ~~All project development schedules and construction schedules for the OGS;~~
- 16.6. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine including invoices and proof of payments;
7. ~~The Long Term Service Agreement with MPS Canada Ltd. In addition, all planned maintenance, refurbishment and decommissioning activities and their associated costs;~~
8. ~~The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");~~
9. ~~The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;~~

17. —
18. — ~~Separated revenue and expense line items in the financial projections Operating and Maintenance ("O&M") Agreements for the OGS;~~
19. — ~~Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 — present];~~
20. — ~~Strategy for offering the production of energy into IESO Administered Market versus revenue and expenses for contracted energy; and~~
21. — The assumptions made with respect to the forecasted price of carbon.

10. —

Draft & Privileged



## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Tuesday, December 13, 2011 10:01 AM  
**To:** Dermot Muir; Serge Imbrogno; Andrew Lin; JoAnne Butler; Rick Jennings (MEI)  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

This generally looks fine to me. I think there is a typographical error in the last sentence of the preamble – it ought to say "... amongst the Parties."

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:** Dermot Muir [<mailto:Dermot.Muir@infrastructureontario.ca>]  
**Sent:** December 13, 2011 9:48 AM  
**To:** Serge Imbrogno; Andrew Lin; Dermot Muir; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI)  
**Cc:** Michael Lyle  
**Subject:** v5 Scope of Documentary Discovery OPA re TCE

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

Regards

Dermot

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

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## Crystal Pritchard

---

**From:** Andrew Lin [Andrew.Lin@infrastructureontario.ca]  
**Sent:** Tuesday, December 13, 2011 2:35 PM  
**To:** Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weissstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

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

Andrew

---

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

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

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
Toronto, Ontario M5G 2L5  
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416-204-6130 (fax)  
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## Crystal Pritchard

---

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

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

---

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

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

Andrew

---

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

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

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
Toronto, Ontario M5G 2L5  
416-325-2316  
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## **List of Proposed Settlement Information**

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

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



## Crystal Pritchard

---

**From:** JoAnne Butler  
**Sent:** Tuesday, December 13, 2011 3:16 PM  
**To:** 'Andrew Lin'; Dermot Muir; Serge Imbrogno; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

This matches with the notes that I took...thanks...

JCB

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

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

**From:** Andrew Lin [<mailto:Andrew.Lin@infrastructureontario.ca>]  
**Sent:** Martes, 13 de Diciembre de 2011 03:00 p.m.  
**To:** Dermot Muir; Serge Imbrogno; JoAnne Butler; Michael Killeavy; Rick Jennings (MEI); Jonathan Weisstub  
**Cc:** Michael Lyle  
**Subject:** RE: v5 Scope of Documentary Discovery OPA re TCE

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

---

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

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

Andrew

---

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

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

Regards

Dermot

Dermot P. Muir  
General Counsel and Corporate Secretary  
Infrastructure Ontario  
1 Dundas Street West, 20th Floor  
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## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 14, 2011 5:52 PM  
**To:** Ronak Mozayyan; Deborah Langelaan  
**Cc:** JoAnne Butler; Catherine Forster; Michael Lyle  
**Subject:** OGS Financial Model ....

Deb and Ronak,

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

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

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

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

Michael

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](mailto:Michael.killeavy@powerauthority.on.ca)





## Crystal Pritchard

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 14, 2011 5:56 PM  
**To:** 'Pivanoff@osler.com'  
**Cc:** 'RSebastiano@osler.com'; Michael Lyle; JoAnne Butler  
**Subject:** Fw: OGS Financial Model ....

Paul,

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

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

Thank you,  
Michael

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

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

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

Deb and Ronak,

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

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

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

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

Michael

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

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-----

## Crystal Pritchard

---

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

Michael,

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

Regards,  
Paul

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

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

Paul,

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

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

Thank you,  
Michael

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

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

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

Deb and Ronak,

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

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

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

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

Michael

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](mailto:Michael.killeavy@powerauthority.on.ca)

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\*\*\*\*\*



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F 416-967-1947  
[www.powerauthority.on.ca](http://www.powerauthority.on.ca)

November 11, 2010

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

Dear Mr. Pourbaix:

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

We acknowledge receipt of your letter to the OPA dated November 8, 2010. We are of the view that since our letter to you dated October 7, 2010, we have engaged in productive negotiations to reach mutual agreement to terminate the Contract. We do not accept the assertion in your November 8, 2010 letter that the OPA has repudiated the Contract.

We appreciate your willingness to move forward on the basis of your October 8, 2010 letter, that is, to continue to meet and discuss our request that the Contract be mutually terminated, and we would like to express our continued willingness to do the same.

Sincerely,

**ONTARIO POWER AUTHORITY**

Per: 

Name: Colin Andersen

Title: Chief Executive Officer

Re: ICE . OPA Communications \_ .

Page 2 of 3

CC: Deborah Langelan; JoAnne Butler  
Sent: Fri Nov 19 16:46:49 2010  
Subject: RE: ICB - OPA Communications . .

Michael, I believe there have been some misunderstandings here. I need to give instructions to Mitsubishi today with respect to extending the Letter Agreement. Could you and Deb please call me at 416-869-2133 to discuss?

Thanks, Terry

11/25/2010

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This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you

11/25/2010

Terry Bennett

---

**From:** Terry Bennett  
**Sent:** Friday, November 19, 2010 3:32 PM  
**To:** Deborah Langelaan; Michael Killeavy  
**Cc:** JoAnne Butler; Terri Steeves  
**Subject:** RE: TCE - OPA Communications ...  
**Importance:** High

Thank you Deb, we very much appreciate your response

We will request that MPS allow us to share the MPS Contract with you (under the provisions of our own Confidentiality Agreement which I am told our respective lawyers are working on).

We believe we can also obtain a firm price from MPS for the conversion to the fast start. However, the extension offer from MPS only remains in place for the month of December (with a 10 day notice provision) and so the cancellation fee will only remain at 55% until that time. The cancellation fee for January increases to 75%, and then to 90% for February. We do not believe MPS will agree to hold the 55% cancellation fee through January. So, while we may be able to get a firm price that remains valid through to January 31, 2011, the penalty for cancelling the contract after December 21 (accounting for the 10 day notice period) will rise significantly.

We believe that we can work together to firm up equipment selection by December 21 and remain committed to the goal of finding a viable replacement project that provides the highest value to Ontario ratepayers.

I have copied Terri Steeves on this email as she is the main contact with MPS and can correct or clarify any of the points I have made here.

Regards,

Terry

---

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

**From:** Terry Bennett <terry\_bennett@transcanada.com>  
**To:** Michael Killeavy

11/25/2010



**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Thursday, November 18, 2010 4:25 PM  
**To:** 'Deborah Langeaan'; 'JoAnne C. Butler (joanne.butler@powerauthority.on.ca)'; 'Michael Killeavy (michael.killeavy@powerauthority.on.ca)'; 'Amir Shalaby (amir.shalaby@powerauthority.on.ca)'; 'Ben Chin'  
**Cc:** Chris Breen; Karl Johansson; Terri Steeves; Terry Bennett; John Mikkelsen  
**Subject:** Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")  
**Importance:** High

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

Under the current terms of the MPS Contract, after November 19, 2010 the termination payment under the MPS Contract increases to 60% of such contract price provided that notice of termination is given on or before December 21, 2010. As we have discussed, MPS has proposed amending the MPS Contract to reduce the termination payment due for termination after November 19 and on or before December 21 to 55%. Termination of the MPS Contract after December 21st will trigger a substantial termination payment (75% of the contract price) which may be avoided if the OPA and TCE reach an agreement on an alternative project.

In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly, unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

11/25/2010

Page 2 of 2

you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

11/25/2010

**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Thursday, November 18, 2010 3:50 PM  
**To:** 'Deborah Langelaan'; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); 'Ben Chin'; Michael Killeavy (michael.killeavy@powerauthority.on.ca); 'Amir Shalaby (amir.shalaby@powerauthority.on.ca)'  
**Cc:** Karl Johansson; John Mikkelsen; Terri Steeves; Chris Breen; Terry Bennett  
**Subject:** RE: Meeting follow-up

Deborah, as per my earlier email copied below, TransCanada has been in discussions with the Town of Oakville with respect to terminating the actions noted below. We have now reached a tentative settlement agreement with the Town and I am pleased to report that the settlement costs are coming in just below \$500K. You will recall that we provided an earlier estimated range of \$400K to \$900K.

Both parties have been urged by Justice Echlin to settle this out by noon tomorrow, so we plan on letting the Town know we will accept the settlement first thing tomorrow morning. The final amount of the settlement will be subject only to confirmation of some costs.

I trust this is satisfactory to the OPA and unless we hear from you otherwise, will proceed as outlined.

Regards,

Terry

---

**From:** Terry Bennett  
**Sent:** Tuesday, October 19, 2010 8:02 PM  
**To:** Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chin; Michael Killeavy (michael.killeavy@powerauthority.on.ca); Amir Shalaby (amir.shalaby@powerauthority.on.ca)  
**Cc:** Karl Johansson; John Mikkelsen; Terri Steeves; Chris Breen; Finn Greflund  
**Subject:** Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Livable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035)
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1500 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal.
4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should

11/25/2010



**TransCanada**  
In business to deliver

November 8, 2010

TransCanada Corporation  
450 - 1 Street, SW  
Calgary, AB T2P 5H1

tel (403) 920-2122  
fax (403) 920-2410  
email [alex.pourbaix@transcanada.com](mailto:alex.pourbaix@transcanada.com)  
web [www.transcanada.com](http://www.transcanada.com)

Alex Pourbaix  
President, Energy & Oil Pipelines

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

Dear Mr. Anderson:

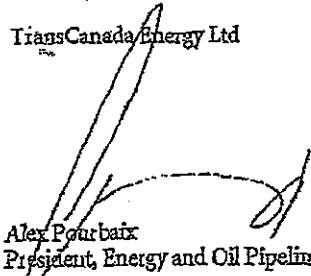
*Re: Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd and Ontario Power Authority dated October 9, 2009*

As you know, on October 7, 2010, OPA notified TransCanada Energy Ltd that it would not proceed with the Contract, the effect of which was to repudiate the Contract. OPA also acknowledged that TCE was entitled to its reasonable damages, including the financial value of the Contract. In a without prejudice letter dated October 8, 2010, TCE acknowledged OPA's October 7<sup>th</sup> letter and expressed its willingness to initiate discussions on an efficient and economical wind-up of the Contract work. TCE looks forward to continuing to meet and proceeding on the basis of its October 8, 2010 letter.

In the interim, TCE wishes to confirm its acceptance of the OPA's repudiation of the Contract. TCE continues to reserve its right to sue the OPA and others for damages should our settlement negotiations not proceed satisfactorily.

Sincerely,

TransCanada Energy Ltd



Alex Pourbaix  
President, Energy and Oil Pipelines

**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Monday, November 08, 2010 12:01 PM  
**To:** 'Deborah Langelaan'  
**Subject:** Meeting follow-up

Hi Deborah, thanks again for meeting with us on Friday. I wanted to briefly summarize the main conclusions and take-aways from the meeting to ensure we have a common understanding

**Conclusions:**

- That TransCanada and the OPA agreed that utilizing the Mitsubishi G class machine was preferred over a change to the Mitsubishi F class machine given the benefits of the G class machine related to heat rate and output relative to MPS's F class machine. In addition, a switch out to the F class machine would likely result in significant cancellation costs. Both parties therefore agreed that the F class machine would be eliminated from further consideration.
- That TransCanada and the OPA agreed that utilizing the Mitsubishi G class machine with fast start capability seemed to offer increased flexibility with only minor penalties for heat rate and performance. Terri Steeves undertook to provide additional information on minimum turn down, start time and ramp rate, as well as the cost to switch to the fast start option and to provide that information to the OPA by Wednesday, November 10. At that point, the OPA (Amir) would reach out to the IESO and Hydro One to see if there were any concerns regarding locating power generation in the area.
- After reviewing several potential sites, TransCanada and the OPA agreed to focus on the Boxwood Drive site as offering the best potential for the alternative project. TransCanada agreed to start stakeholder outreach activities as soon as practically possible.

Deborah, I believe these are the major conclusions and take-aways from the meeting. Please let me know if I have misinterpreted any of the above

Regards,

Terry

11/25/2010

**From:** Chris Breen  
**Sent:** Thursday, November 04, 2010 12:22 PM  
**To:** Ben Chin  
**Cc:** deborah.langelan@powerauthority.on.ca; joanna.butler@powerauthority.on.ca;  
michael.killeavy@powerauthority.on.ca; Terry Bennett  
**Subject:** CONFIDENTIAL AND SUBJECT TO COMMON INTEREST PRIVILEGE

CONFIDENTIAL AND SUBJECT TO COMMON INTEREST PRIVILEGE

Ben,

Here is a listing of current court and OMB matters and issues relating to the Oakville Generation Station and TCE planned actions.

Application to Quash PM By-law and ICBL -- ICE proposed to the Town's lawyers that we give up the Dec 20-23 court dates and adjourn sine die (indefinitely); Town refused. Presiding Judge has asked Town and TCE to resolve in the next 1 to 2 weeks, failing which, he will reluctantly consider submissions. Our lawyers will start discussions with the Town this week on a possible discontinuation of the Applications if the Town would agree to no costs, on the basis that the Province's actions have triggered the discontinuation. We expect that the Town will insist on receiving at least some of their costs. If the parties can't agree, the matter will be decided by the presiding Judge by the end of November.

TCE's counsel believe that TCE is not prejudiced by dropping the Applications, Ford might try to argue that the ICBL Application is part of TCE's obligation to get appropriate zoning for a power plant on the Ford site; TCE's view is that this is not the case. Counsel advises that TCE has the better argument and that there is only a slight risk of Ford winning on the matter. TCE is therefore prepared to discontinue the PM by-law quash and all of the ICBL related matters.

Divisional Ct Application for Leave to Appeal original OMB decision re ICBL -- adjourned sine die. For now, we will leave this as is.

OMB Appeal re: Site Plan; Minor Variance; ICBL Extension -- combined with Ford's appeal re Severance -- Nov 1 pre-hearing adjourned to Jan 28, . We intend to continue with the Minor Variance (required by the Ford Option Agreement) but drop the site plan (we can always reapply) and the ICBL extension appeal (as noted above, moot with the new by-law passed, subject to the comment above re possible Ford argument that matter should be continued). We expect Ford to continue with their severance appeal.

CONFIDENTIAL

Letter Agreement  
between TransCanada Energy Ltd.  
and MPN Canada, Inc.

Attachment 1  
Project Options

Options	Configuration	GT	Output(MW)	COD	GT Delivery	Emission s	Remarks
S/C (Fast Start) C/C (no Fast Start)	2on1 C/C (with Duct Firing)	GAC Fast	475 MW - 900 MW	S/C May/Jun-2015 C/C Jun-2017	Jan-14	15ppm	GAC Fast information is required within 20 days. CC Fast is not required.
CC (Single or Multi)	1on1 C/C (with Duct Firing) x 2 Block	GAC	450 MW x 2	May/Jun-2015	Jun-13	SCR	Potential for Single Shaft subject to capacity of Duct firing. Could be one or two sites.
S/C (Fast Start) C/C (no Fast Start)	1on1 C/C (with Duct Firing) x 2 Block	GAC Fast	240 MW x 2 - 450 MW x 2	S/C May/Jun-2015 C/C Jun-2017	Jun-13	15ppm	GAC Fast information is required within 20 days. Single Shaft Capacity for Duct Firing is required.
CC	2on1 C/C (with Duct Firing)	GAC	900 MW	May/Jun-2015	Jun-13	SCR	Original Specification
CC	2x1 C/C (with Duct Firing)	F3	600 MW	May/Jun-2015	Jun-13	SCR	
SC	3 x S/C	F3	500 MW	May/Jun-2015	Jan-14	15ppm	
S/C (Fast Start)	2 x S/C	GAC Fast	475 MW	May/Jun-2015	Jan-14	15ppm	

\*Note: All information provided herein is preliminary and subject to change.

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: 

Name: Terry Bennett

Title: Vice President

Accepted this 29<sup>th</sup> day of October, 2010.

MPS Canada, Inc.

By: 

Name: Shinichi Ueki

Title: President



Furthermore, Purchaser agrees to work exclusively with Supplier and Supplier agrees to cooperate with Purchaser for furnishing the heat recovery steam generators and steam turbine generators, if such equipment is required by such alternative project(s). For greater clarity, the Parties agree that the obligations to identify an alternative project(s) and to work exclusively with each other for the furnishing of the heat recovery steam generators and steam turbine generators shall terminate if the Contract is terminated.

3. Defined Terms Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

4. Other Terms and Conditions Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

5. Governing Law This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

6. Entire Agreement This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

7. Amendments in Writing No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

8. Counterparts Signatures This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

9. Confidentiality The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



October 29, 2010

MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "Contract")

Dear Mr. Ueki,

This letter (this "Letter Agreement") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("Purchaser") and MPS Canada, Inc. (the "Supplier") regarding the Contract

1. Background. Purchaser has been informed by the Ontario Power Authority (the "OPA") that the Project will not proceed forward based on the current site location designated in the Contract. OPA has requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. Attachment 1 contains a list of the potential alternative projects and potential configurations that TransCanada will pursue with OPA. Therefore, Purchaser hereby suspends Supplier's Work effective immediately until November 30, 2010. As a result of such suspension, the Scheduled Delivery Dates will be redefined and any amounts determined in accordance with Article 14 will be paid.
2. Commitment. The Parties agree to amend the amount of the termination payment included in the Cancellation Schedule in Appendix VI, "Payment and Cancellation Schedule" for the date that corresponds to "Month 15" or November 2010 from "55%" to "50%." The Parties agree to cooperate with each other and use all reasonable good faith efforts to identify a viable alternative project(s). The Parties shall provide updated information to each other regarding the progress of selecting an alternative project(s) and meet no later than November 19, 2010 to further discuss the ongoing status of an alternative project(s). Supplier agrees to provide information to Purchaser to support its efforts to identify an alternative project(s) with the configuration as listed in Attachment 1. Upon identifying an alternative project(s) and site(s), the Parties shall meet on a regular basis to identify and agree upon the changes to the Contract based upon the alternative project(s), including without limitation changes to the equipment delivery schedules and performance guarantees based upon the configuration of the alternative project(s).

Terry Bennett

From: Terry Bennett  
Sent: Tuesday, November 02, 2010 12:40 PM  
To: Deborah Langelan  
Subject: MPS Letter Agreement  
Attachments: MPS Letter Agreement Oct 29\_2010.pdf

Deborah, as a follow up to the call between the OPA and TransCanada last Friday, I am attaching the Letter Agreement between Mitsubishi Power Systems Americas, Inc. (MPS) and TransCanada Energy Ltd. (TCE)

As communicated to the OPA earlier, the options available to us with respect to the MPS gas turbines were to either terminate the contract and face the cancellation charges of approximately \$92 million (45% of the value of the contract), or to allow the contract to continue into November, with the corresponding cancellation fee increasing to approximately \$106 million (or 55% of the value of the contract).

TCE was successful in negotiating terms with MPS with the following provisions:

- Allow the contract to continue, but roll back the cancellation fee to only 50% of the value of the contract for the month of November
- MPS agrees to work with TCE to supply equipment changes for an alternative project – including a fast start option on the G machine and the option to supply an F class machine
- MPS has exclusive rights to supply the balance of the equipment for the power island, including as necessary, the steam turbine and HRSG, if the event the configuration is a combined cycle.

As discussed and agreed to on our call with the OPA last Friday afternoon, with the OPA's consent and agreement, TCE executed the Letter Agreement with MPS on Friday (October 29) which allows us additional time to identify a viable alternative site

The agreement commits us to meet with MPS no later than November 19 to determine whether and/or how to proceed beyond this interim agreement.

We look forward to a productive session on Friday

Regards,

Terry

11/25/2010

Terry Bennett

From: Terry Bennett  
Sent: Thursday, October 21, 2010 4:00 PM  
To: Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chir  
Cc: Finn Greifund; Karl Johansson; Chris Breen; Terri Steeves  
Subject: MPS Update

Confidential and Without Prejudice

Deborah, we wanted to keep the OPA updated on our discussion with respect to the gas turbines. Below is a brief summary of where we are.

As discussed at our Tuesday meeting, TransCanada is attempting to determine what options are available with respect to the purchase of the two Mitsubishi GAC combustion turbines.

The two options that TransCanada is pursuing are the viability of third party sale and re-negotiating the terms of the MPS Agreements to support the needs and timeframe of the OPA.

First, viability of third party sales, TransCanada has contacted Thomassen Amcot International to get an opinion on the available market for re-sale.

Timeframe: by December 31, 2010

Consequence: Below market value price

Market Assessment: Currently there is little or no market, potential projects, in North America. If discount were significant, a large utility may consider early purchase and storage for a future project. Discount is made higher by the recent softening of the equipment market, which would result in new equipment being less expensive than the purchase price of our equipment.

Key Consideration: for any potential buyers include assignment language, payment and delivery terms, as well as LTSA obligations.

Update: TransCanada intends to set up a meeting with TAI the first week of November in case this option is pursued.

Second, re-negotiate terms with MPS, TransCanada has requested such changes as delayed delivery, equipment swap, MPS credit and 60 day suspension without harm

Timeframe: October 31, 2010 / December 31, 2010

Consequence: Significant and escalating cancellation provisions or in the future equipment storage and double handling costs

Assessment: To date MPS has not been receptive to our requests. The request to allow for delayed delivery, equipment swap or MPS credit was declined, though we are not adverse to asking again if we had a more specific ask that is supported by the OPA. Our second request for a no-harm 60 day suspension has not received much support, but we are continuing to pursue and have offered to meet with MPS and/ or Mitsubishi in Orlando, FL or Japan, at their convenience. MPS understands that we are looking for resolution by the end of October, prior to the next step up of cancellation charges.

Thanks, Terry

11/25/2010

**Terry Bennett**

**From:** Terry Bennett  
**Sent:** Tuesday, October 19, 2010 6:02 PM  
**To:** Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chin; Michael Killeavy (michael.killeavy@powerauthority.on.ca); Amir Shalaby (amir.shalaby@powerauthority.on.ca)  
**Cc:** Karl Johansson; John Mikkelsen; Terri Steeves; Chris Breen; Finn Greflund  
**Subject:** Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Livable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035).
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1600 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal
4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

11/25/2010

**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Tuesday, October 19, 2010 6:02 PM  
**To:** Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chin; Michael Killeavy (michael.killeavy@powerauthority.on.ca); Amir Shalaby (amir.shalaby@powerauthority.on.ca)  
**Cc:** Karl Johansson; John Mikkelsen; Terri Steeves; Chris Breen; Finn Greflund  
**Subject:** Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Liable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035).
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15).
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1500 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal.
4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

11/25/2010

**Terry Bennett**

**From:** Terry Bennett  
**Sent:** Thursday, October 21, 2010 4:00 PM  
**To:** Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chir  
**Cc:** Finn Gröflund; Karl Johansson; Chris Breen; Terri Steeves  
**Subject:** MPS Update

Confidential and Without Prejudice

Deborah, we wanted to keep the OPA updated on our discussion with respect to the gas turbines. Below is a brief summary of where we are.

As discussed at our Tuesday meeting, TransCanada is attempting to determine what options are available with respect to the purchase of the two Mitsubishi GAC combustion turbines.

The two options that TransCanada is pursuing are the viability of third party sale and re-negotiating the terms of the MPS Agreements to support the needs and timeframe of the OPA.

First, viability of third party sales, TransCanada has contacted Thomassen Amcot International to get an opinion on the available market for re-sale.

Timeframe: by December 31, 2010

Consequence: Below market value price.

Market Assessment: Currently there is little or no market, potential projects, in North America. If discount were significant, a large utility may consider early purchase and storage for a future project. Discount is made higher by the recent softening of the equipment market, which would result in new equipment being less expensive than the purchase price of our equipment.

Key Consideration: for any potential buyers include assignment language, payment and delivery terms, as well as LTSA obligations.

Update: TransCanada intends to set up a meeting with TAI the first week of November in case this option is pursued.

Second, re-negotiate terms with MPS, TransCanada has requested such changes as delayed delivery, equipment swap, MPS credit and 60 day suspension without harm.

Timeframe: October 31, 2010 / December 31, 2010

Consequence: Significant and escalating cancellation provisions or in the future equipment storage and double handling costs

Assessment: To date MPS has not been receptive to our requests. The request to allow for delayed delivery, equipment swap or MPS credit was declined, though we are not adverse to asking again if we had a more specific ask that is supported by the OPA. Our second request for a no-harm 60 day suspension has not received much support, but we are continuing to pursue and have offered to meet with MPS and/ or Mitsubishi in Orlando, FL or Japan, at their convenience. MPS understands that we are looking for resolution by the end of October, prior to the next step up of cancellation charges.

Thanks, Terry

11/25/2010

**Terry Bennett**

**From:** Terry Bennett  
**Sent:** Tuesday, November 02, 2010 12:40 PM  
**To:** Deborah Langelaan  
**Subject:** MPS Letter Agreement  
**Attachments:** MPS Letter Agreement Oct 29\_2010.pdf

Deborah, as a follow up to the call between the OPA and TransCanada last Friday, I am attaching the Letter Agreement between Mitsubishi Power Systems Americas, Inc. (MPS) and TransCanada Energy Ltd. (TCE)

As communicated to the OPA earlier, the options available to us with respect to the MPS gas turbines were to either terminate the contract and face the cancellation charges of approximately \$92 million (45% of the value of the contract), or to allow the contract to continue into November, with the corresponding cancellation fee increasing to approximately \$106 million (or 55% of the value of the contract).

TCE was successful in negotiating terms with MPS with the following provisions:

- Allow the contract to continue, but roll back the cancellation fee to only 50% of the value of the contract for the month of November
- MPS agrees to work with TCE to supply equipment changes for an alternative project – including a fast start option on the G machine and the option to supply an F class machine
- MPS has exclusive rights to supply the balance of the equipment for the power island, including as necessary, the steam turbine and HRSG, if the event the configuration is a combined cycle.

As discussed and agreed to on our call with the OPA last Friday afternoon, with the OPA's consent and agreement, TCE executed the Letter Agreement with MPS on Friday (October 29) which allows us additional time to identify a viable alternative site.

The agreement commits us to meet with MPS no later than November 19 to determine whether and/or how to proceed beyond this interim agreement.

We look forward to a productive session on Friday.

Regards,

Terry

11/25/2010





October 29, 2010

MPS Canada, Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 3220  
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "Contract")

Dear Mr. Ueki,

This letter (this "Letter Agreement") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("Purchaser") and MPS Canada, Inc. (the "Supplier") regarding the Contract.

1. Background. Purchaser has been informed by the Ontario Power Authority (the "OPA") that the Project will not proceed forward based on the current site location designated in the Contract. OPA has requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. Attachment 1 contains a list of the potential alternative projects and potential configurations that TransCanada will pursue with OPA. Therefore, Purchaser hereby suspends Supplier's Work effective immediately until November 30, 2010. As a result of such suspension, the Scheduled Delivery Dates will be redefined and any amounts determined in accordance with Article 14 will be paid.

2. Commitment. The Parties agree to amend the amount of the termination payment included in the Cancellation Schedule in Appendix VI, "Payment and Cancellation Schedule" for the date that corresponds to "Month 15" or November 2010 from "55%" to "50%." The Parties agree to cooperate with each other and use all reasonable good faith efforts to identify a viable alternative project(s). The Parties shall provide updated information to each other regarding the progress of selecting an alternative project(s) and meet no later than November 19, 2010 to further discuss the ongoing status of an alternative project(s). Supplier agrees to provide information to Purchaser to support its efforts to identify an alternative project(s) with the configuration as listed in Attachment 1. Upon identifying an alternative project(s) and site(s), the Parties shall meet on a regular basis to identify and agree upon the changes to the Contract based upon the alternative project(s), including without limitation changes to the equipment delivery schedules and performance guarantees based upon the configuration of the alternative project(s).

Furthermore, Purchaser agrees to work exclusively with Supplier and Supplier agrees to cooperate with Purchaser for furnishing the heat recovery steam generators and steam turbine generators, if such equipment is required by such alternative project(s). For greater clarity, the Parties agree that the obligations to identify an alternative project(s) and to work exclusively with each other for the furnishing of the heat recovery steam generators and steam turbine generators shall terminate if the Contract is terminated.

3. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

4. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

5. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

6. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

7. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

8. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

9. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**CONFIDENTIAL**

*Letter Agreement  
between TransCanada Energy Ltd.  
and MPS Canada, Inc.*

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

By: 

Name: Terry Bonnett

Title: Vice President

Accepted this 29<sup>th</sup> day of October, 2010.

MPS Canada, Inc.

By: 

Name: Shinichi Ueki

Title: President

CONFIDENTIAL

Letter Agreement  
between TransCanada Energy Ltd.  
and MFS Canada, Inc.

Attachment 1  
Project Options

Options	Configuration	GT	Output(MW)	COD	GT Delivery	Emission s	Remarks
S/C (Fast Start) C/C (no Fast Start)	2on1 C/C (with Duct Firing)	GAC Fast	475 MW - 900 MW	S/C May/Jun-2015 C/C Jun-2017	Jan-14	15ppm	GAC Fast information is required within 20days. CC Fast is not required.
CC (Single or Multi)	1on1 C/C (with Duct Firing) x 2 Block	GAC	450 MW x 2	May/Jun - 2015	Jun-13	SCR	Potential for Single Shaft subject to capacity of Duct firing. Could be one or two sites.
S/C (Fast Start) C/C (no Fast Start)	1on1 C/C (with Duct Firing) x 2 Block	GAC Fast	240 MW x2 - 450 MWx2	S/C May/Jun-2015 C/C Jun-2017	Jun-13	15ppm	GAC Fast information is required within 20 days. Single Shaft Capacity for Duct Firing is required.
CC	2on1 C/C (with Duct Firing)	GAC	900 MW	May/Jun - 2015	Jun-13	SCR	Original Specification
CC	2x1 C/C (with Duct Firing)	F3	600MW	May/Jun - 2015	Jun-13	SCR	
SC	3 x S/C	F3	500 MW	May/Jun - 2015	Jan-14	15ppm	
S/C (Fast Start)	2 x S/C	GAC Fast	475 MW	May/Jun - 2015	Jan-14	15ppm	

\*Note: All information provided herein is preliminary and subject to change.

From: Chris Breen  
Sent: Thursday, November 04, 2010 12:22 PM  
To: Ben Chin  
Cc: deborah.langelaan@powerauthority.on.ca; joanne.butler@powerauthority.on.ca;  
michael.killeavy@powerauthority.on.ca; Terry Bennett  
Subject: CONFIDENTIAL AND SUBJECT TO COMMON INTEREST PRIVILEGE

CONFIDENTIAL AND SUBJECT TO COMMON INTEREST PRIVILEGE

Ben,

Here is a listing of current court and OMB matters and issues relating to the Oakville Generation Station and TCE planned actions.

Application to Quash PM By-law and ICBL – TCE proposed to the Town's lawyers that we give up the Dec 20-23 court dates and adjourn sine die (indefinitely); Town refused. Presiding Judge has asked Town and TCE to resolve in the next 1 to 2 weeks, failing which, he will reluctantly consider submissions. Our lawyers will start discussions with the Town this week on a possible discontinuation of the Applications if the Town would agree to no costs, on the basis that the Province's actions have triggered the discontinuation. We expect that the Town will insist on receiving at least some of their costs. If the parties can't agree, the matter will be decided by the presiding Judge by the end of November.

TCE's counsel believe that TCE is not prejudiced by dropping the Applications, Ford might try to argue that the ICBL Application is part of TCE's obligation to get appropriate zoning for a power plant on the Ford site; TCE's view is that this is not the case. Counsel advises that TCE has the better argument and that there is only a slight risk of Ford winning on the matter. TCE is therefore prepared to discontinue the PM by-law quash and all of the ICBL related matters.

Divisional Ct Application for Leave to Appeal original OMB decision re ICBL – adjourned sine die. For now, we will leave this as is.

OMB Appeal re: Site Plan; Minor Variance; ICBL Extension – combined with Ford's appeal re Severance – Nov 1 pre-hearing adjourned to Jan 28, . We intend to continue with the Minor Variance (required by the Ford Option Agreement) but drop the site plan (we can always reapply) and the ICBL extension appeal (as noted above, moot with the new by-law passed, subject to the comment above re possible Ford argument that matter should be continued). We expect Ford to continue with their severance appeal.

Terry Bennett

---

From: Terry Bennett  
Sent: Monday, November 08, 2010 12:01 PM  
To: 'Deborah Langelaan'  
Subject: Meeting follow-up

Hi Deborah, thanks again for meeting with us on Friday. I wanted to briefly summarize the main conclusions and take-aways from the meeting to ensure we have a common understanding.

Conclusions:

- That TransCanada and the OPA agreed that utilizing the Mitsubishi G class machine was preferred over a change to the Mitsubishi F class machine given the benefits of the G class machine related to heat rate and output relative to MPS's F class machine. In addition, a switch out to the F class machine would likely result in significant cancellation costs. Both parties therefore agreed that the F class machine would be eliminated from further consideration.
- That TransCanada and the OPA agreed that utilizing the Mitsubishi G class machine with fast start capability seemed to offer increased flexibility with only minor penalties for heat rate and performance. Terri Steeves undertook to provide additional information on minimum turn down, start time and ramp rate, as well as the cost to switch to the fast start option and to provide that information to the OPA by Wednesday, November 10. At that point, the OPA (Amir) would reach out to the IESO and Hydro One to see if there were any concerns regarding locating power generation in the area.
- After reviewing several potential sites, TransCanada and the OPA agreed to focus on the Boxwood Drive site as offering the best potential for the alternative project. TransCanada agreed to start stakeholder outreach activities as soon as practically possible.

Deborah, I believe these are the major conclusions and take-aways from the meeting. Please let me know if I have misinterpreted any of the above.

Regards,

Terry

11/25/2010



**TransCanada**

*In business to deliver*

November 8, 2010

TransCanada Corporation  
450 - 1 Street, SW  
Calgary, AB T2P 5H1

tel (403) 920-2122  
fax (403) 920-2410  
email [alex.pourbaix@transcanada.com](mailto:alex.pourbaix@transcanada.com)  
web [www.transcanada.com](http://www.transcanada.com)

Alex Pourbaix  
President, Energy & Oil Pipelines

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

Dear Mr. Anderson:

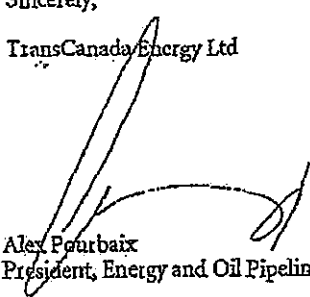
**Re: Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd and Ontario Power Authority dated October 9, 2009**

As you know, on October 7, 2010, OPA notified TransCanada Energy Ltd that it would not proceed with the Contract, the effect of which was to repudiate the Contract. OPA also acknowledged that TCE was entitled to its reasonable damages, including the financial value of the Contract. In a without prejudice letter dated October 8, 2010, TCE acknowledged OPA's October 7<sup>th</sup> letter and expressed its willingness to initiate discussions on an efficient and economical wind-up of the Contract work. TCE looks forward to continuing to meet and proceeding on the basis of its October 8, 2010 letter.

In the interim, TCE wishes to confirm its acceptance of the OPA's repudiation of the Contract. TCE continues to reserve its right to sue the OPA and others for damages should our settlement negotiations not proceed satisfactorily.

Sincerely,

TransCanada Energy Ltd



Alex Pourbaix  
President, Energy and Oil Pipelines

**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Thursday, November 18, 2010 3:50 PM  
**To:** 'Deborah Langelaan'; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); 'Ben Chin'; 'Michael Killeavy' (michael.killeavy@powerauthority.on.ca); 'Amir Shalaby' (amir.shalaby@powerauthority.on.ca)  
**Cc:** Karl Johannson; John Mikkelsen; Terri Steeves; Chris Breen; Terry Bennett  
**Subject:** RE: Meeting follow-up

Deborah, as per my earlier email copied below, TransCanada has been in discussions with the Town of Oakville with respect to terminating the actions noted below. We have now reached a tentative settlement agreement with the Town and I am pleased to report that the settlement costs are coming in just below \$500K. You will recall that we provided an earlier estimated range of \$400K to \$900K.

Both parties have been urged by Justice Echlin to settle this out by noon tomorrow, so we plan on letting the Town know we will accept the settlement first thing tomorrow morning. The final amount of the settlement will be subject only to confirmation of some costs.

I trust this is satisfactory to the OPA and unless we hear from you otherwise, will proceed as outlined.

Regards,

Terry

---

**From:** Terry Bennett  
**Sent:** Tuesday, October 19, 2010 8:02 PM  
**To:** Deborah Langelaan; JoAnne C. Butler (joanne.butler@powerauthority.on.ca); Ben Chin; Michael Killeavy (michael.killeavy@powerauthority.on.ca); Amir Shalaby (amir.shalaby@powerauthority.on.ca)  
**Cc:** Karl Johannson; John Mikkelsen; Terri Steeves; Chris Breen; Finn Greflund  
**Subject:** Meeting follow-up

Deborah, further to our discussion today, consistent with the OPA directive to cease activities in connection with the Facility, TransCanada is currently considering the following actions to terminate its proceedings at Superior Court and the Ontario Municipal Board:

1. The discontinuation of its Applications in Ontario Superior Court to quash the Town of Oakville Interim Control By-law, The Town of Oakville Official Plan Livable Oakville (Oakville By-Law 2009-112) and the Town of Oakville Health Protection and Air Quality By-law (Oakville By-Law 2010-035).
2. TransCanada will not appeal to the Ontario Municipal Board the new bylaws passed by the Town of Oakville with respect to planning requirements for power generation facilities passed on September 27, 2010 (By-laws 2010-151, 2010-152 and 2010-15)
3. TransCanada will withdraw its appeals to the Ontario Municipal Board with respect to the rejection its site plan application and its rejection by the Committee of Adjustment of its application for minor variances, and the extension of the Interim Control Bylaw. These appeals were combined with Ford Canada's appeal of the rejection of its application for consent to sever the lands at 1500 Royal Windsor Drive in Oakville; at this time, we do not know if Ford will proceed with its appeal.
4. TransCanada will withdraw its Motion for leave to Appeal (Court File No. 619-09) the decision of the Ontario Municipal Board (Decision PL090414) from December 4, 2009

Note that these actions may result in TransCanada being required to pay some or all of the Town of Oakville's legal costs.

Please let us know at your earliest convenience, but no later than 12 noon Thursday October 21, 2010, should

11/25/2010



you wish that TransCanada not proceed with any component of the above termination plan.

Regards,

Terry

11/25/2010

**Terry Bennett**

**From:** Terry Bennett  
**Sent:** Thursday, November 18, 2010 4:25 PM  
**To:** 'Deborah Langelan'; 'JoAnne C. Butler (joanne.butler@powerauthority.on.ca)'; 'Michael Killeavy (michael.killeavy@powerauthority.on.ca)'; 'Amir Shalaby (amir.shalaby@powerauthority.on.ca)'; 'Ben Chln'  
**Cc:** Chris Breen; Karl Johansson; Terri Steeves; Terry Bennett; John Mikkelsen  
**Subject:** Equipment Supply Contract and related contracts between TransCanada Energy Ltd., and MPS Canada, Inc. (the "MPS Contract")

**Importance:** High

Further to our recent meetings and telephone calls, we have advised you that TCE has the right to terminate the MPS Contract by notice given on or before November 19, 2010 upon payment of a termination payment equal to 50% of the contract price payable under the MPS Contract, as per the MPS Letter Agreement sent to you October 29th.

Under the current terms of the MPS Contract, after November 19, 2010 the termination payment under the MPS Contract increases to 60% of such contract price provided that notice of termination is given on or before December 21, 2010. As we have discussed, MPS has proposed amending the MPS Contract to reduce the termination payment due for termination after November 19 and on or before December 21 to 55%. Termination of the MPS Contract after December 21st will trigger a substantial termination payment (75% of the contract price) which may be avoided if the OPA and TCE reach an agreement on an alternative project.

In light of the ongoing discussions regarding a viable alternative project, TCE is of the view that it would be imprudent to terminate the MPS Contract at this time. Accordingly, unless directed to do otherwise by the OPA before noon EST on November 19, 2010, TCE will not terminate the MPS Contract by November 19, 2010 and will accept MPS's proposed amendment. TCE trusts that the OPA concurs with this decision. In the event TCE and the OPA do not reach agreement on an alternative project, any costs incurred by TCE as a result of the termination of the MPS Contract shall form part of any damage claim which TCE will have against the OPA for termination of the OGS project.

Regards,

Terry

11/25/2010

**Terry Bennett**

---

**From:** Terry Bennett  
**Sent:** Friday, November 19, 2010 3:32 PM  
**To:** Deborah Langelaan; Michael Killeavy  
**Cc:** JoAnne Butler; Terri Steeves  
**Subject:** RE: TCE - OPA Communications ....  
**Importance:** High

Thank you Deb, we very much appreciate your response.

We will request that MPS allow us to share the MPS Contract with you (under the provisions of our own Confidentiality Agreement which I am told our respective lawyers are working on).

We believe we can also obtain a firm price from MPS for the conversion to the fast start. However, the extension offer from MPS only remains in place for the month of December (with a 10 day notice provision) and so the cancellation fee will only remain at 55% until that time. The cancellation fee for January increases to 75%, and then to 90% for February. We do not believe MPS will agree to hold the 55% cancellation fee through January. So, while we may be able to get a firm price that remains valid through to January 31, 2011, the penalty for cancelling the contract after December 21 (accounting for the 10 day notice period) will rise significantly.

We believe that we can work together to firm up equipment selection by December 21 and remain committed to the goal of finding a viable replacement project that provides the highest value to Ontario ratepayers.

I have copied Terri Steeves on this email as she is the main contact with MPS and can correct or clarify any of the points I have made here.

Regards,

Terry

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

**From:** Terry Bennett <terry\_bennett@transcanada.com>  
**To:** Michael Killeavy

11/25/2010

Re: TCE - OPA Communications ....

Page 2 of 3

CC: Deborah Langelaan; JoAnne Butler  
Sent: Fri Nov 19 16:46:49 2010  
Subject: RE: TCE - OPA Communications ....

Michael, I believe there have been some misunderstandings here. I need to give instructions to Mitsubishi today with respect to extending the Letter Agreement. Could you and Deb please call me at 416-869-2133 to discuss?

Thanks, Terry

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11/25/2010

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This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

11/25/2010



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

November 11, 2010

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

Dear Mr. Pourbaix:

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

We acknowledge receipt of your letter to the OPA dated November 8, 2010. We are of the view that since our letter to you dated October 7, 2010, we have engaged in productive negotiations to reach mutual agreement to terminate the Contract. We do not accept the assertion in your November 8, 2010 letter that the OPA has repudiated the Contract.

We appreciate your willingness to move forward on the basis of your October 8, 2010 letter, that is, to continue to meet and discuss our request that the Contract be mutually terminated, and we would like to express our continued willingness to do the same.

Sincerely,

**ONTARIO POWER AUTHORITY**

Per: 

Name: Colin Andersen  
Title: Chief Executive Officer

## **Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Monday, September 13, 2010 5:07 PM  
**To:** Michael Killeavy  
**Subject:** RE: SWGTA

No idea on the legal fees – certainly more than they budgeted for ...

I'd guess north of \$200,000 (possibly pushing \$500,000) – figuring some novel analysis and two OMB hearings, plus all the other stuff they've probably had to look at.

You probably have the same take I've got, if they are really suffering and don't believe they'll ever get it done, they are probably counting the days until Feb 8, 2013. In which case, hey, maybe you could get them to pay you. Since they'd really have to approach us in order to do that and, so far, it looks like they are going to out-wait us, I don't you can actually make money off this one. If they really want it to end, \$0 isn't entirely out of the question but I'd assume some cash will change from our hands to theirs as [as you've already said] if we approach them, they are unlikely to go for free.

Also, just by way of a heads up. Mike L did mention to Carolyn that it would also depend on whether or not they were getting offered a new contract for another facility. For the purposes of your own sanity, you should probably assume straight termination without a "new facility" sweetener.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Michael Killeavy  
**Sent:** September 13, 2010 4:24 PM  
**To:** Susan Kennedy  
**Subject:** RE: SWGTA

It's really hard to do this unless we were to approach TC. TC is an ongoing partner with the OPA in two contract facilities right now – PEC and Halton Hills GS. It would not want to "gouge" us, presumably. I like \$0 to \$1.4 billion myself. Let me see what I can do. Any idea on what they've spent on legal fees?

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

---

**From:** Susan Kennedy  
**Sent:** September 13, 2010 3:56 PM  
**To:** Michael Killeavy  
**Subject:** SWGTA

This is the final version that went over to the Ministry. The Ministry (in the form of Carolyn Calwell) called and they want more information on the possible cost of a negotiated termination.

Presumably the number is somewhere between zero and \$1.4 billion. My "guesstimate" on the phone was they might go for costs to date for early termination – although if they are keen to ease their pain, maybe they'd be just happy to walk away and stop the bleeding.

In any event, the net result of the call, is that I have been asked to ask you to do some back of the envelope work on what you think it might cost to terminate the contract sooner than later.

I wasn't given actual timing on the request but I'd say based on the anxiety level and the fact that the attached rearranged my entire morning that timing for the negotiated cost analysis is also sooner than later. Let me know if I can help in any way.

Thanks,

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



## **Christine Lafleur**

---

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

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

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

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

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

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

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

**Christine Lafleur**

---

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

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

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

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

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

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

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T: 416-969-6054  
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E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca)

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Tuesday, October 05, 2010 5:24 PM  
**To:** Colin Andersen  
**Cc:** Michael Lyle  
**Subject:** Draft Letter Agreement  
**Attachments:** TransCanada Energy6 Ltd.docx

Privileged and Confidential (Solicitor and Client Privilege)

Attached is draft letter agreement re TC/SWGTA.

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

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

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

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

TransCanada Energy Ltd.  
450-1<sup>st</sup> Street  
Calagary, AB T2P 5H1

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

Dear Sirs/Mesdames:

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

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

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

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

Sincerely,

**ONTARIO POWER AUTHORITY**

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the corporation.

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

**TRANSCANADA ENERGY LTD.**

**Per:** \_\_\_\_\_

Name:

Title:

I have the authority to bind the corporation.

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

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

## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Tuesday, October 05, 2010 5:52 PM  
**To:** Colin Andersen  
**Cc:** Michael Lyle  
**Subject:** Re: Draft Letter Agreement

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

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

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

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

Privileged and Confidential (Solicitor and Client Privilege)

Attached is draft letter agreement re TC/SWGTA.

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

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

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

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

T: 416-969-6054

F: 416-969-6383

E: [susan.kennedy@powerauthority.on.ca](mailto:susan.kennedy@powerauthority.on.ca) <<mailto:susan.kennedy@powerauthority.on.ca>>

Christine Lafleur

---

From: Susan Kennedy  
Sent: Wednesday, October 06, 2010 8:23 AM  
To: Michael Lyle  
Subject: FW: Letter from OPA to TC

n ...

Couple of thoughts:

1. M. Killeavy estimated the expectation damages for the contract at approximately \$1.4billion. He estimated TransCanada costs to date at around \$10million (however, I am given to understand that TransCanada had claimed to the Ministry a substantially higher number, although I cannot recall exactly what it was - M. Killeavy may remember).
2. Has anyone considered whether or not board approval is required for this? TransCanada is clearly characterizing this as an OPA breach (which puts us in the expectation damages risk range). There is a huge liability attached to a decision to enter into an agreement which either implies or expressly acknowledges a breach.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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

From: Colin Andersen  
Sent: October 6, 2010 8:13 AM  
To: Michael Lyle; Susan Kennedy  
Subject: Fw: Letter from OPA to TC

Fyi, pls review and we'll discuss

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

From: Mullin, Sean (OPO) <[Sean.Mullin@ontario.ca](mailto:Sean.Mullin@ontario.ca)>  
To: Colin Andersen  
CC: MacLennan, Craig (MEI) <[Craig.MacLennan@ontario.ca](mailto:Craig.MacLennan@ontario.ca)>; Steeve, Jamison (OPO) <[Jamison.Steeve@ontario.ca](mailto:Jamison.Steeve@ontario.ca)>; MacLennan, Craig (MEI) <[Craig.MacLennan@ontario.ca](mailto:Craig.MacLennan@ontario.ca)>  
Sent: Wed Oct 06 07:56:18 2010  
Subject: Fw: Letter from OPA to TC

Colin,

As discussed. Let's connect later today.

Thanks,  
Sean

---

From: Chris Breen <[sixthman@rogers.com](mailto:sixthman@rogers.com)>

To: Mullin, Sean (OPO)  
Cc: Steeve, Jamison (OPO); Chris Breen <[chris.breen@transcanada.com](mailto:chris.breen@transcanada.com)>  
Sent: Wed Oct 06 00:40:44 2010  
Subject: Letter from OPA to TC

Sean,

I am sending this from my personal account as my TC blackberry just ran out of power.

As discussed today, we are very focused on what the letter from the OPA to TC must say for TC to generally align with the language in your Key Messages and Q&A. We see this letter as the foundation of any comments that TC could make in the wake of the announcement being contemplated.

So as per your suggestion, please consider the following language for the letter from the OPA to TC: Re Southwest GTA Clean Energy Supply (CES) Contract between TransCanada Energy Ltd and the Ontario Power Authority dated as of the 9th day of October, 2009 (the "Contract").

As you are no doubt aware, the Minister today announced that your Oakville gas plant will not proceed. As a result, we will not be able to honour our obligations to TransCanada under the Contract. We acknowledge that we do not have a unilateral right to terminate the Contract and that this action puts us in breach of the Agreement. We therefore wish to reach an agreement with TransCanada under which the parties mutually agree to terminate the Contract. We agree that TransCanada is entitled to compensation as a result of such termination and as a result of our inability to perform our obligations under the Contract.

With this said, in recognition of our ongoing need for power generation and your desire to generate power in Ontario, we wish to negotiate an agreement through which energy alternatives to the Oakville gas plant could be built, owned and operated by TransCanada to the mutual benefit of both parties and to an extent which would satisfy TransCanada's anticipated commercial benefits under the original CES contract. We would like to meet with you as soon as possible to conclude the arrangements contained herein.

In the interim, you are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion. You are under no further obligation to the OPA to proceed with the development of the Facility.

I look forward to your feedback on this suggested language.

Thanks,  
Chris Breen  
TransCanada



416.605.3524

Please note our new address:  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2400 (PO Box 43)  
Toronto, Ontario M5J 2J1

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message.

Thank you.

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Wednesday, October 06, 2010 1:54 PM  
**To:** Michael Lyle  
**Attachments:** TransCanada Energy Ltd(version 2).docx

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

TransCanada Energy Ltd.  
450-1<sup>st</sup> Street  
Calgary, AB T2P 5H1

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

Dear Sirs/Mesdames:

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed.

The OPA and the Supplier each confirm and agree the Parties shall negotiate in good faith the terms (including the amount, and form, of compensation to be paid, or provided, to TransCanada) on which the Contract will be terminated.

The OPA and the Supplier each confirms and agrees that, as and from the date of this letter agreement, and until either the formal termination of the Contract or such other time as the Parties agree in writing (the “**Suspension Period**”), each of the Supplier and the OPA shall be excused and relieved from performing or complying with any and all of its respective obligations under the Contract and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses in the case of the Supplier) to, or incurred by, the other Party in respect of or relating to such Party’s failure to so perform or comply during the Suspension Period.

The OPA and the Supplier each confirms and agrees that, during the Suspension Period the Supplier shall cease all further work and activities in connection with the Facility, other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

**[The Parties shall use good faith efforts to identify other projects which may be of mutual benefit to the Parties and the manner in which any such identified projects might be pursued.]**

Capitalized terms used in this letter and not otherwise defined, have the meaning ascribed to such terms in the Contract.

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

Sincerely,

**ONTARIO POWER AUTHORITY**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

I have the authority to bind the corporation.

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

**TRANSCANADA ENERGY LTD.**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

I have the authority to bind the corporation.

## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Thursday, October 07, 2010 8:29 AM  
**To:** Michael Lyle  
**Subject:** Have contacted Ron  
**Attachments:** TransCanada Energy Ltd (RevisedDraft\_101007\_00).doc

He will be here at 9AM.

Revised draft attached.

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

TransCanada Energy Ltd.  
450-1<sup>st</sup> Street  
Calgary, AB T2P 5H1

October [7], 2010

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

Dear Sirs/Mesdames:

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed.

In light of the Minister's announcement, the OPA will be unable to proceed with the Contract. The OPA acknowledges that you are entitled to compensation as a result of the OPA's inability to move forward. As such, the OPA wishes to reach an agreement with the Supplier you under which the Parties we mutually agree to terminate the Contract.

~~You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.~~

~~In recognition of Given~~ Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects (which may form all, or part, of your compensation in respect of the termination of the Contract) which offer you a commercial value that is reasonably equivalent to that which is provided for under the Contract, while appropriately protecting the interests of ratepayers.

You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

To indicate the Supplier's agreement to enter into good faith negotiations with the OPA to reach a mutual agreement to terminate the Contract, please sign and date the duplicate copy of this letter and return it to the OPA to the attention of Michael Lyle, General Counsel and Vice President.

Sincerely,

ONTARIO POWER AUTHORITY

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the corporation.

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

**TRANSCANADA ENERGY LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the corporation.

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Thursday, October 07, 2010 12:55 PM  
**To:** Nimi Visram  
**Subject:** FW: See attached  
**Attachments:** TransCanada Energy Ltd (101007.2).doc

Nimi,

Attached needs to go on letterhead.

Addressee should change to:

Alex Pourbaix, President, Energy and Oil Pipelines

Attention:

Dear Mr. Pourbaix

Susan H. Kennedy  
Director, Corporate/Commercial Law Group



TransCanada Energy Ltd.  
450-1<sup>st</sup> Street  
Calgary, AB T2P 5H1

October {7}, 2010

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

Dear Sirs/Mesdames:

As you are no doubt aware, the Minister of Energy today announced that your Oakville gas plant will not proceed. This announcement is supported by the OPA's planning analysis of the current circumstances in southwest GTA.

The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial ~~benefits~~ value of the Contract. We would like to begin negotiations with you to reach mutual agreement to terminate the Contract.

Given Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects and the extent to which such projects may compensate you for termination of the Contract while appropriately protecting the interests of ratepayers.

You are hereby directed to cease all further work and activities in connection with the Facility (as defined in the Contract), other than anything that may be reasonably necessary in the circumstances to bring such work or activities to a conclusion.

We undertake that we will not disclose this letter without giving you prior notice and we request that you do the same.

Sincerely,

**ONTARIO POWER AUTHORITY**

Per: \_\_\_\_\_

Name:

Title:

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Wednesday, October 20, 2010 10:32 AM  
**To:** Michael Killeavy  
**Subject:** RE: Request for Submissions for Litigation Counsel ...  
**Attachments:** Request For Submissions - Litigation Counsel 19 Oct 2010.doc

I'm going to suggest you go with two separate requests – identical except for disclosure of the counterparties.. This is just to simplify the response process – i.e. depending on how much information someone is given they may pitch slightly differently for TransCanada matter than . Alternatively, someone may be conflicted out on one or other and it will help clarify exactly which one they are pitching for if you get separate submissions (even if they are very similar submissions).

I've done a mark-up with some suggestions (I've done for TransCanada but would suggest same , mutatis mutandis). We should also perhaps do up a "matter description" which you can send out quickly if you get calls for more information.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Michael Killeavy  
**Sent:** October 20, 2010 8:25 AM  
**To:** Susan Kennedy  
**Subject:** Request for Submissions for Litigation Counsel ...  
**Importance:** High

Susan,

Could you please review and comment on the attached Request for Submissions? It is modelled on the one I did last year to obtain contract management counsel.

Thank you,  
Michael

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

ONTARIO POWER AUTHORITY  
REQUEST FOR SUBMISSIONS

Legal Services – Litigation Counsel

CONFIDENTIAL

Services Required

The Ontario Power Authority ("OPA") is seeking Ontario counsel to assist it in defending potential actions against it by ~~two of its contract counterparties~~ a contract counterparty, TransCanada Energy Ltd.

~~The OPA may select more than one firm to provide the services requested herein.~~

Background

The OPA was established under the *Electricity Act, 1998*, S.O. 1998, c.15, Sched. A and began operations in January 2005. A non-profit corporation without share capital, the OPA reports to the Ontario Legislative Assembly through the Minister of Energy and Infrastructure and is licensed and regulated by the Ontario Energy Board. The OPA's mandate is to ensure an adequate, long-term supply of electricity for Ontario. Further information regarding OPA, may be found at the following site: <http://www.powersauthority.on.ca/>

The OPA is currently managing over 16,000 MW of electricity generation contracts, which include large-scale gas-fired generation and hydropower contracts, as well as smaller-scale Feed-in Tariff and Renewable Energy Standard Offer Program ("RESOP") contracts. The OPA has two potential disputes with different contract counterparties, which may result in actions being commenced against the OPA.

Scope of Services and Qualifications

The retained counsel (the "Litigation Counsel") will be required to provide advice on managing ~~these~~ this disputes to avoid litigation, or to defend actions to protect the interests of the ratepayer if they are commenced against the OPA (the "Services").

Counsel must demonstrate an ability to provide strong litigation advice in relation to managing the disputes and defending claims made against the OPA, must have a strong working knowledge of the electricity sector in Ontario, and electricity generating contracts (both contingent support payment and power purchase agreements). Knowledge of the OPA's electricity generation contracts will be considered an asset.

It is imperative that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA.

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA.

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We understand that you may require additional information with respect to the potential litigation matter in order to prepare your submission. Additional information is available upon your request (together with your confirmation that you have completed conflict searches and not identified any conflicts which would preclude you from acting in connection with the matter for which you are seeking additional information).

Please note that counsel for generation procurements, contract management, and for regulatory hearing work is not being retained pursuant to this Request for Submissions. Counsel for generation procurements, contract management and regulatory hearing work will be retained if, and as, needed pursuant to a separate process.

#### Term of Retainer

The term of the retainer will be for a period of 12 months and will be extended, as needed, upon written notice. Retainers will be non-exclusive. The OPA may terminate the retainer at any time, in its sole discretion, upon written notice.

#### Submission Request

If you wish to be considered to provide the above-noted services, please submit the following, preferably not later than 5:00:00 pm on 25 October 2010:

##### **A. Description of background and qualifications:**

1. Describe the names of the partners and associates you would expect to assign to the Services, describe the expected services to be provided by each lawyer and provide their resumes. If your firm has multiple offices and you anticipate drawing on the expertise of lawyers not located in Toronto, please identify the jurisdiction in which such lawyers are located. Please identify the partner who will be in charge of the retainer for your firm;
2. Describe your firm's relevant experience, including a brief summary of any notable litigations, issues and/or matters or cases handled by your firm which you feel demonstrate the nature and extent of your firm's expertise;

It is imperative therefore that your firm consider and identify the nature of any potential conflict of interest your firm might have in providing the requested services to the OPA. [INTD: Should we disclose the identities of the counterparties? If not we really can't ask for this in the submissions. They'll need to know who the parties are to identify a conflict.]

Given the confidential nature of this matter, please use discretion when completing your conflicts search. Discuss fully any conflicts of interest, actual or potential, which might arise in connection with your firm's involvement with the OPA. If your firm believes that a conflict of interest might arise, please describe how such conflict would be resolved.

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**B. Cost:**

1. State the rates at which the services of partners, associates and non-lawyer law clerks, paralegals or other paraprofessionals would be provided to the OPA. Include:
  - a. For each lawyer whose resume is provided, the rate you propose to charge the OPA.
  - b. For each applicable category of billable, non-lawyer personnel including law clerk, paralegal or other paraprofessional, the rate you propose to charge the OPA.
  - c. A schedule of all out-of-pocket disbursements which you anticipate will result in a charge to the OPA and the rate for each. Note that the OPA expects that disbursements will be charged at the firm's actual out-of-pocket cost, without mark-up.
2. In addition, you may propose any alternative fee structure deemed appropriate as a supplement to the fees requested above.

In setting forth its qualifications, each law firm should provide, in concise but adequate detail, the information sought above. Responses should not exceed 20 single-sided pages (including resumes) and should be prepared on 8 1/2 x 11-inch paper using at least 12 point type with margins of no less than one-inch.

The OPA may follow-up with requests for additional information (for example, references) and may wish to interview candidates.

This request for submissions is a non-binding invitation to submit a response for consideration. This request does not create, and should not be construed as creating, any contractual relations or obligations between the OPA and any candidate.

Submissions can be made by email to the email address given below.

**Selection Timing**

The OPA expects to complete its selection process not later than 29 October 2010, however, this timing may be subject to change.

**Questions and Submissions**

Questions and submissions should be directed to:

Michael Killeavy  
Director, Contract Management  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario, M5H 1T1  
Direct: 416-969-6288  
Fax: 416-969-6071  
Email: [michael.killeavy@powerauthority.on.ca](mailto:michael.killeavy@powerauthority.on.ca)

**Please reference: Legal Services – Litigation Counsel (TransCanada Energy Ltd.) in your submission.**

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## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Thursday, October 21, 2010 8:13 AM  
**To:** Michael Killeavy  
**Subject:** RE: Response

Hadn't seen it - I was guessing \$500k - \$1M, so I feel validated, which is always nice first thing in the AM.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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

**From:** Michael Killeavy  
**Sent:** October 21, 2010 8:08 AM  
**To:** Susan Kennedy  
**Subject:** FW: Response

I don't know if Mike sent this to you or not. It's TCE's estimate of the Town's legal costs incurred to date. Please see below.

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

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

**From:** Deborah Langelaan  
**Sent:** October 20, 2010 5:57 PM  
**To:** Michael Lyle  
**Cc:** Michael Killeavy  
**Subject:** Fw: Response

Michael;

Please see below with respect to the magnitude of TCE's reimbursement of the Town of Oakville's legal costs:

Deb

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

**From:** Terry Bennett <[terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)>  
**To:** Deborah Langelaan  
**Sent:** Wed Oct 20 17:45:34 2010  
**Subject:** Response

Deborah, here is the response from our lawyers:

Costs are completely within the discretion of the Court, but are normally calculated in circumstances such as this on a partial indemnity basis. Depending on the rates of the lawyers, costs on a partial indemnity basis are usually about 55-60% of a party's actual costs.

Our VERY rough estimate of the Town's costs based on the activities undertaken is in the ball park (order of magnitude) range of \$750,000 to \$1,500,000. Given the percentage allocation quoted above, our portion would therefore fall in the \$400,000 to \$900,000 range.

Please note again that these are at best educated estimates. The Town's actual costs may be quite different from these estimates.

Regards, Terry .

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## Christine Lafleur

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**From:** Susan Kennedy  
**Sent:** Monday, November 01, 2010 9:55 AM  
**To:** Robert Godhue  
**Subject:** FW: Draft Engagement Letter for SWGTA TEC Matter  
**Attachments:** Engagement Letter - OPA.pdf; OslerClientServiceTerms.pdf; 4882838\_4.pdf

**Importance:** High

One small suggestion. I'm happy to discuss with Rocco if necessary.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** Michael Killeavy  
**Sent:** October 29, 2010 10:11 AM  
**To:** Susan Kennedy  
**Cc:** Deborah Langelaan; Derek Leung  
**Subject:** FW: Draft Engagement Letter for SWGTA TEC Matter  
**Importance:** High

Susan,

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

Michael

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

---

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

Michael,

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

Thanks, Rocco





Rocco Sebastiano  
Partner

416.862.5859 DIRECT  
416.862.6666 FACSIMILE  
[rsebastiano@osler.com](mailto:rsebastiano@osler.com)

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

**osler.com**

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\*\*\*\*\*

October 29, 2010

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

**SENT BY COURIER**

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

Dear Mr. Killeavy:

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

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

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

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

1. **Conflicts**

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

2. **Fees**

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

3. **Term**

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

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

Yours very truly,

Rocco Sebastiano  
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

**PRINCIPLE LAWYERS AND HOURLY RATES**

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

October 29, 2010

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

**SENT BY COURIER**

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

Dear Mr. Killeavy:

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

Yours very truly,

Rocco Sebastiano  
RMS/lh

Attachments

c: Michael Lyle, General Counsel, *OPA*

**PRINCIPLE LAWYERS AND HOURLY RATES**

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

Osler, Hoskin & Harcourt LLP  
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Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

OSLER

October 25, 2010

Rocco Sebastiano  
Direct Dial: 416.862.5859  
rsebastiano@osler.com

Toronto

Montréal

Ottawa

Calgary

New York

**Confidential**

**Delivered by Email**

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

Attention: Michael Killeavy

Dear Mr. Killeavy:

**Legal Services – Litigation Counsel (TransCanada Energy Ltd.)**

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

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

Yours very truly,

Rocco Sebastiano  
RMS:es

Attachments



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

**OCTOBER 25, 2010**

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# Executive Summary

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

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

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

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

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

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

# A. Description of Background and Qualifications

## 1. Proposed Team

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

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

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

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

## 2. Relevant Experience and Notable Litigation and Transactions

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

### *Extensive Litigation Experience*

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

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

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

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

### ***Strong Understanding of the Electricity Sector in Ontario***

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

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

### ***Unsurpassed Knowledge of the OPA's Electricity Generating Contracts***

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

### *General Electricity Industry Expertise*

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

### **Representative Litigation and Project Matters**

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

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



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

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

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

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

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

### 3. Potential Conflicts

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

## B. Cost

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

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

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

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

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

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

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

## C. Resumes

### Rocco M. Sebastiano



416-862-5859

[rsebastiano@osler.com](mailto:rsebastiano@osler.com)

#### Education

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

#### Year of Call

1994 Ontario

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

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

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

#### Professional Affiliations

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

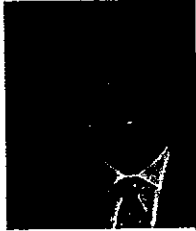
#### Representative Work

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

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

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

# Richard G.C. Wong



416-862-6467  
rwong@osler.com

## Education

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

## Year of Call

1997 Ontario  
2000 New York

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

## Professional Affiliations

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

## Representative Work

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

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

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



# Elliot A. Smith



416.862.6435  
esmith@osler.com

## Education

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

## Year of Call

2008 Ontario

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

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

## Representative Work

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

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

# Brett Ledger



**Partner,  
Litigation**  
Toronto

416.862.6687  
bledger@osler.com

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

**Bar Admission(s)**  
Ontario (1979)

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

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

## Recent Matters

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

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

# Paul Ivanoff



**Partner,  
Litigation**  
Toronto

416.862.4223  
pivanoff@osler.com

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

**Bar Admission**  
Ontario (1993)

**Practice Area(s):** Litigation; Construction; Infrastructure

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

## Recent Matters

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

# Evan Thomas



**Associate,  
Litigation**  
Toronto

416.862.4907  
ethomas@osler.com

## **Education**

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

## **Bar Admission(s)**

Ontario (2007)

## **Practice Area(s): Litigation**

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

## **Recent Matters**

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

## **Publications/Events/Education**

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

# Riyaz Dattu



Partner,  
Corporate  
Toronto

416.862.6569  
rdattu@osler.com

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

Bar Admission(s)  
Ontario (1984)

**Practice Area(s):** International Trade

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

## **Recent Matters**

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

# Client Service Terms

# OSLER

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

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

We look forward to working with you.

## 1. Your Service Team

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

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

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

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

## 2. Scope of Our Role

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

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

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

## 3. How We Manage Conflicts

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

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

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

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

## 4. Fees and Disbursements

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

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

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

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

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

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

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

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

### 5. Limited Liability Partnership

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

### 6. Privacy

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

### 7. Our Client and Our Reporting Obligations

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

### 8. Electronic Communications

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

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

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

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

### 9. Termination

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

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

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

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

### 10. Governing Law and Arbitration

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

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

### 11. For More Information

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

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



**Christine Lafleur**

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**From:** Susan Kennedy  
**Sent:** Wednesday, November 10, 2010 2:59 PM  
**To:** John Zych  
**Subject:** RE: Letter re Southwest GTA Clean Energy Supply Contract

If you send them to me, I can forward on to Rocco.

Thanks,

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

**From:** John Zych  
**Sent:** November 10, 2010 1:04 PM  
**To:** Susan Kennedy  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

Susan, Do you want to forward the October 7, 2010 Board minutes to Rocco or shall I? You already have him as a contact and I do not. Whatever you prefer.

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

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**From:** Michael Lyle  
**Sent:** November 10, 2010 12:16 PM  
**To:** John Zych  
**Cc:** Susan Kennedy  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

John: Rocco is the external counsel that we should be running the Board minutes of our special meeting through.

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

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**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
**Sent:** November 10, 2010 11:42 AM  
**To:** Michael Killeavy; Deborah Langelaan  
**Cc:** Ivanoff, Paul; Smith, Elliot; Susan Kennedy; Michael Lyle  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

Michael and Deb,

Following our call with Mike and Susan yesterday late afternoon, we sent them a draft OPA response letter to TCE. A copy is enclosed. Our view is that we want to keep pushing our position that we have not repudiated and that we are seeking a mutual termination of the Contract. If they are right that we have repudiated and they have accepted our alleged repudiation then the contract is terminated and they could seek certain remedies at any time, including commencing a legal action and insisting that their Performance Security be returned, which would not be the case if the Contract is not yet terminated.

By the way, how much Performance Security is the OPA holding? Under the contract, TCE was to have posted \$30 million up until Oct 9, 2010 when it was to have been bumped up to \$45 million.

Thanks, Rocco

---

**From:** Smith, Elliot  
**Sent:** Tuesday, November 09, 2010 5:44 PM  
**To:** Michael Lyle; Susan Kennedy  
**Cc:** Ivanoff, Paul; Sebastiano, Rocco  
**Subject:** RE: Letter re Southwest GTA Clean Energy Supply Contract

Mike / Susan,

Further to our call, I have attached our proposed response to TCE. If you have any comments, please let any one of us know.

Elliot

**OSLER**

Elliot Smith  
Associate

416.862.6435 DIRECT  
416.862.6666 FACSIMILE  
esmith@osler.com

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

osler.com

---

**From:** Michael Lyle [mailto:Michael.Lyle@powerauthority.on.ca]  
**Sent:** Tuesday, November 09, 2010 4:42 PM  
**To:** Sebastiano, Rocco; Susan Kennedy  
**Cc:** Smith, Elliot; Ivanoff, Paul  
**Subject:** RE: Letter re Southwest GTA Clean Energy Supply Contract

Are you available for a call in the next 5 minutes?

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

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---

**From:** Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
**Sent:** November 9, 2010 3:31 PM  
**To:** Susan Kennedy; Michael Lyle  
**Cc:** Smith, Elliot; Ivanoff, Paul  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

Please find enclosed a copy of the TCE letter of October 8 responding to the OPA's letter of Oct 7 and a copy of their letter of November 8 wherein TCE states that it confirms "its acceptance of the OPA's reputation of the Contract" and reserves "its right to sue the OPA and others for damages should our settlement not proceed satisfactorily."

This is somewhat at odds with the OPA's letter of October 7 which stated that the OPA "would like to begin negotiations with you to reach mutual agreement to terminate the Contract." Admittedly, the earlier statement in the letter which states that the "OPA will not proceed with the Contract" could be viewed as a statement of repudiation were it not for the subsequent statement about reaching a mutual agreement to terminate. We are in the process of considering the potential legal implications of a repudiation as opposed to a mutual termination (particularly as it relates to the survival of Article 14.1 dealing with the exclusion of indirect or consequential damages). However, even if ultimately there isn't a difference, the characterization of this as a repudiation as opposed to a mutual termination may have some practical significance.

Following our meeting this morning with JoAnne, Amir, Ben, Michael and Deb, we are preparing a brief response to TCE's last letter.

If TCE's characterization of the OPA's letter and conduct is that the Contract has been repudiated and such repudiation has been accepted by TCE then the confidentiality provisions of Article 8 no longer continue to apply and therefore, we would also like to speak with you about putting in place a short agreement with TCE to preserve the confidentiality (consistent with Article 8 of the Contract) and without prejudice characterization of the discussions, meetings and exchange of information which has been taking place since October 7. Following our discussion on this point, we would suggest putting a

call in to John Cashin at TCE to get his thoughts on whether TCE would be prepared to enter into such an agreement. If he is so disposed, we can quickly put together a short agreement and circulate it for review. At our meeting this morning, I recommended that we do this before exchanging any further information and emails, or have more meetings, with TCE.

Would you have a few minutes this afternoon to discuss this? Thanks, Rocco

---

**From:** Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]  
**Sent:** Tuesday, November 09, 2010 11:03 AM  
**To:** Sebastiano, Rocco; Smith, Elliot  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

FYI

Deborah Langelaan | Manager, Natural Gas Projects|OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

---

**From:** Irene Mauricette  
**Sent:** November 9, 2010 9:31 AM  
**To:** Michael Killeavy; Deborah Langelaan  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

FYI...Nov and Oct 8 letters from TC - Irene

---

**From:** Irene Mauricette  
**Sent:** November 9, 2010 9:14 AM  
**To:** Michael Lyle; Ben Chin; JoAnne Butler  
**Cc:** Nimi Visram; Jacquie Davidson; Sylvie Doucet  
**Subject:** FW: Letter re Southwest GTA Clean Energy Supply Contract

FYI

---

**From:** Linda Lee [mailto:linda\_lee@transcanada.com]  
**Sent:** November 8, 2010 5:22 PM  
**To:** Colin Andersen  
**Subject:** Letter re Southwest GTA Clean Energy Supply Contract

Good afternoon Mr. Anderson,  
Please see attached letter from Alex Pourbaix, President of Energy & Oil Pipelines. The original will be sent via regular mail.

Thank you.

Kind regards,

Linda Lee  
Executive Assistant

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## Christine Lafleur

---

From: Susan Kennedy  
Sent: Friday, November 26, 2010 7:19 AM  
To: Michael Killeavy  
Subject: RE: Confidentiality Agreement

Got your v-mail and have reviewed the correspondence. I think the approach is sound (given the circumstances).

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

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

From: Michael Killeavy  
Sent: November 25, 2010 8:01 PM  
To: Sebastiano, Rocco; Deborah Langelaan  
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy  
Subject: RE: Confidentiality Agreement

Yes. Good point. It shows that we still believe that the contract is in place.

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

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
Sent: Thu 11/25/2010 7:28 PM  
To: Michael Killeavy; Deborah Langelaan  
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy  
Subject: RE: Confidentiality Agreement

One further thought, I think that the OPA's letter to TCE of November 11 which was in response to TCE's letter of November 8 should be added to the list in Schedule A. If their letter is found to be with prejudice at a later date then we would want our response letter to also be with prejudice. Do you agree?

From: Sebastiano, Rocco  
Sent: Thursday, November 25, 2010 7:21 PM  
To: 'Michael Killeavy'; Deborah Langelaan  
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy  
Subject: RE: Confidentiality Agreement

Further to our meeting this evening, I think that we can accept TCE's proposed list for Schedule A provided that we further amend Section 1.7 to read as follows:

"The Parties acknowledge and agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this Agreement (other than correspondence listed in Schedule A hereto), whether oral or written, and whether Confidential Information or not, in connection with the differences between the Parties respecting the SWGTA Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged. For greater certainty, the Parties acknowledge that the Parties have not reached any agreement as to whether or not the correspondence listed in Schedule A hereto is without prejudice and privileged.

Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from communicating with the other Party on a with prejudice basis at any point in time by designating its communication, whether oral or written, as a "with prejudice" communication, provided that such "with prejudice" communication does not include or refer to any prior without prejudice and privileged discussions, communications and correspondence.

Any thoughts on this revised wording?

Thanks, Rocco

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
Sent: Thursday, November 25, 2010 3:59 PM  
To: Sebastiano, Rocco; Deborah Langelaan  
Cc: Smith, Elliot; Ivanoff, Paul; Susan Kennedy  
Subject: RE: Confidentiality Agreement

OK. I was going to suggest that we redact our emails in the "chain", but perhaps this won't work. They are trying to get our "without prejudice" communications as "with prejudice" via the backdoor. This is what I was afraid of.

I can be in your office in 15 minutes if it's convenient? Please advise.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
Sent: November 25, 2010 3:44 PM  
To: Michael Killeavy; Deborah Langelaan  
Cc: Smith, Elliot; Michael Lyle; Ivanoff, Paul  
Subject: RE: Confidentiality Agreement

Paul and I have been discussing this same point. I am not sure that you can come to the conclusion that they are only excluding their communication and not the OPA's; for example, email of Terry Bennett to Deborah and you dated November 19, 2010 was a response to Deborah's email stating that the OPA was in agreement with TCE's recommendation to accept MP's proposed amendment. You cannot read Terry's email and make sense of it without referring to Deborah's email.

The bigger point, however, is the fact that many of these emails either refer to or are in contemplation of a replacement facility which, as a concept, is part of the settlement process that has been taking place between the parties. This is part of the settlement privilege that we are looking to protect in the event that we are unable to reach an agreement on the terms of the "mutual termination" and TCE were to commence an action against the OPA.

The exclusion to the settlement privilege concept should be that only those communications that would impact TCE's obligations or ability to mitigate their damages flowing from a termination of the SWGTA CES Contract should in principle be excluded from Section 1.7. An example of this would be Deborah's email of last Friday, where we agreed with their recommendation to extend the MPS contract as opposed to terminating it. The challenge is that Deborah's email also refers to the reconfiguration of the equipment to fast start.... the sole purpose of which is to facilitate a replacement facility (even though the replacement facility is not expressly referred to in the email).

Not sure what to do here... maybe we should get together and talk this through. Are you around to come over here to discuss this in person with me and Paul?

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
Sent: Thursday, November 25, 2010 1:29 PM  
To: Sebastiano, Rocco; Deborah Langelaan  
Cc: Smith, Elliot; Michael Lyle; Ivanoff, Paul  
Subject: RE: Confidentiality Agreement

Yes. I cross-checked the attachment with the list and it matches.

In some instances TCE is responding to an OPA email and the messages contain a "chain" of other emails. For clarity, they are excluding their communication from s. 1.7 and not our communication in the email chain, correct?

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
Sent: November 25, 2010 1:18 PM  
To: Michael Killeavy; Deborah Langelaan



Cc: Smith, Elliot; Michael Lyle; Ivanoff, Paul  
Subject: Re: Confidentiality Agreement

Aren't they attached to the email the Harold sent over as PDF's?

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]  
Sent: Thursday, November 25, 2010 01:04 PM  
To: Sebastiano, Rocco; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>  
Cc: Smith, Elliot; Michael Lyle <Michael.Lyle@powerauthority.on.ca>; Ivanoff, Paul  
Subject: RE: Confidentiality Agreement

We'll get copies to you right away. I'd like you to review the content and provide advice.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]  
Sent: November 25, 2010 12:45 PM  
To: Michael Killeavy; Deborah Langelaan  
Cc: Smith, Elliot; Michael Lyle; Ivanoff, Paul  
Subject: FW: Confidentiality Agreement  
Importance: High

Here is what TCE is proposing should go into the list in schedule A which would be excluded from the privileged communications provisions of Section 1.7 of the CA. It just arrived and I have not reviewed it yet. We'll need to consider whether we agree with the list and whether we have any items that we'd also like to include in the list, for example, the OPA's response to TCE's letter of November 8 on the repudiation issue.

Regards, Rocco

From: Rahim, Ilsa [mailto:irahim@miccarthy.ca] On Behalf Of Huber, Harold R.  
Sent: Thursday, November 25, 2010 12:28 PM  
To: Sebastiano, Rocco  
Cc: Lever, David A.N.; Huber, Harold R.  
Subject: Confidentiality Agreement  
Importance: High

Rocco,

Further to our conversation last night, attached please find a list of correspondence that we would propose for Schedule A in the Confidentiality Agreement.

1. T Bennett email to D Langelaan and others dated October 19, 2010; Subject: Meeting follow-up
2. T Bennett email to D Langelaan and others dated October 21, 2010; Subject: MPS Update
3. T. Bennett email to D Langelaan dated November 2, 2010; Subject: FW: MPS Letter Agreement
4. C. Breen email to B Chin dated November 4, 2010; Subject: FW: CONFIDENTIAL AND SUBJECT TO COMMON INTEREST PRIVILEGE
5. T Bennett email to D Langelaan dated November 8, 2010; Subject: Meeting follow-up
6. A Pourbaix letter to C Anderson dated November 8, 2010; Re: SouthWest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. and Ontario Power Authority dated November 9, 2009.
7. T Bennett email to D Langelaan dated November 18, 2010; Subject: RE: Meeting follow-up
8. T Bennett email to D Langelaan and others dated November 18, 2010; Subject: Equipment Supply Contract and related contracts between TransCanada Energy Ltd. and MPS Canada Inc. (the "MPS Contracts")
9. T Bennett email to D Langelaan and others dated November 19, 2010; Subject: RE: TCE-OPA Communications

I look forward to discussing the same with you.

Regards,

Harold Huber  
Partner  
T: 416-601-8169  
F: 416-868-0673  
  
Email: [hhuber@mccarthy.ca](mailto:hhuber@mccarthy.ca)

McCarthy Tétrault LLP  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto ON M5K 1E6

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**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Friday, November 26, 2010 2:12 PM  
**To:** Michael Lyle  
**Cc:** Nimi Visram; Robert Godhue; Deborah Langelaan; Michael Killeavy  
**Subject:** Confidentiality Agreement  
**Attachments:** RE: Confidentiality Agreement; Fw: Confidentiality Agreement

Signed TCE/OPA Confidentiality Agreement – delivered to GC as per s. 4.3 of Procurement Policy.

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

**Christine Lafleur**

---

**From:** Deborah Langelaan  
**Sent:** Friday, November 26, 2010 1:41 PM  
**To:** 'Ivanoff, Paul'  
**Cc:** 'Sebastiano, Rocco'; 'Smith, Elliot'; Michael Killeavy; Susan Kennedy  
**Subject:** RE: Confidentiality Agreement  
**Attachments:** Confidentiality\_Agreement\_OPA\_Executed\_20101008.pdf

Paul;

Attached is the OPA executed copy of the CA.

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

---

**From:** Ivanoff, Paul [<mailto:PIvanoff@osler.com>]  
**Sent:** November 26, 2010 12:43 PM  
**To:** Michael Killeavy; Deborah Langelaan; Susan Kennedy  
**Cc:** Sebastiano, Rocco; Smith, Elliot  
**Subject:** Fw: Confidentiality Agreement

Here is the CA signed by TCE.

Regards,  
Paul

---

**From:** John Cashin [[mailto:john\\_cashin@transcanada.com](mailto:john_cashin@transcanada.com)]  
**Sent:** Friday, November 26, 2010 12:34 PM  
**To:** Ivanoff, Paul; Huber, Harold R. <[HHUBER@MCCARTHY.CA](mailto:HHUBER@MCCARTHY.CA)>  
**Cc:** Sebastiano, Rocco; Lever, David A.N. <[DLEVER@MCCARTHY.CA](mailto:DLEVER@MCCARTHY.CA)>; Smith, Elliot; Terry Bennett <[terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)>  
**Subject:** RE: Confidentiality Agreement

Thanks Paul. Attached is the CA executed on behalf of TCE. One executed original will go out by courier to you this afternoon.

Regards,

John

Tel: (403) 920-2157  
Fax: (403) 920-2354

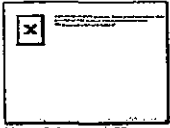
---

**From:** Ivanoff, Paul [<mailto:PIvanoff@osler.com>]  
**Sent:** Friday, November 26, 2010 10:00 AM  
**To:** John Cashin; Huber, Harold R.  
**Cc:** Sebastiano, Rocco; Lever, David A.N.; Smith, Elliot  
**Subject:** RE: Confidentiality Agreement

John and Harold,

JoAnne Butler's delegate will be signing the CA at 1:30 today. I'll send you the signed PDF copy as soon as I have it and have asked Michael Killeavy to walk two signed originals into the meeting set for this afternoon.

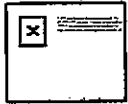
Regards,



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
[pivanoff@osler.com](mailto:pivanoff@osler.com)

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



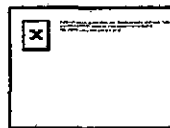
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**From:** Ivanoff, Paul  
**Sent:** Friday, November 26, 2010 11:20 AM  
**To:** 'John Cashin'  
**Cc:** Huber, Harold R.; Sebastiano, Rocco; Lever, David A.N.; Smith, Elliot  
**Subject:** Confidentiality Agreement

John,

Further to my discussion with Harold, attached is the execution version of the Confidentiality Agreement along with a blackline version reflecting the changes from the last version reviewed by TCE. Would you please return an executed version of the CA to us in PDF format by email as soon as possible with two originals to follow by mail or courier. We will have our client do the same.

Regards,



Paul Ivanoff  
Partner

416.862.4223 DIRECT  
416.862.6666 FACSIMILE  
[pivanoff@osler.com](mailto:pivanoff@osler.com)

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



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## CONFIDENTIALITY AGREEMENT

This confidentiality agreement, effective as of the 8<sup>th</sup> day of October, 2010 ("Agreement"), is between TRANSCANADA ENERGY LTD. (the "Supplier") and ONTARIO POWER AUTHORITY (the "Buyer"), each referred to as a "Party" and together referred to as the "Parties". As used herein, "Receiving Party" is the Party receiving Confidential Information and may be the Buyer or the Supplier, as applicable, and "Disclosing Party" is the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Buyer and the Supplier shall be deemed to be the Disclosing Party.

WHEREAS the Parties wish to ensure that certain communications between them are confidential, without prejudice and subject to settlement privilege;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

### 1.1 Definitions

The following terms shall have the following meanings where used in this Agreement:

- (a) "Affiliate" means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.
- (b) "Confidential Information" means:
  - (i) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives, including, without limitation, information in connection with the differences between the Parties respecting the SWGTA Contract or relating to other projects or potential opportunities being discussed between the Parties, whether disclosed before or after the execution of this Agreement, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; (iv) information that is independently developed by the Receiving Party; and (v) information disclosed in connection with the GTA West Contract; and
  - (ii) Mutually Confidential Information.



- (c) “Control” means, with respect to any Person at any time:
- (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or
  - (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

Without limiting the generality of the foregoing, and by way of example, if Person “A” Controls Person “B”, Person “B” Controls Person “C”, and Person “C” Controls Person “D”, then each of Persons “A”, “B”, and “C” are deemed to Control Person “D”.

- (d) “FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.
- (e) “Government of Ontario” means Her Majesty the Queen in right of Ontario.
- (f) “Governmental Authority” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the Ontario Energy Board, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the Ontario Power Authority.
- (g) “GTA West Contract” means the GTA West Trafalgar Clean Energy Supply (CES) Contract between the Buyer and Supplier, dated November 14, 2006.
- (h) “IESO” means the Independent Electricity System Operator established under Part II of the *Electricity Act, 1998*, or its successor.
- (i) “Laws and Regulations” means:
  - (i) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
  - (ii) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
  - (iii) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;

- (iv) any requirements under or prescribed by applicable common law; and
  - (v) the IESO market rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.
- (j) **"Mutually Confidential Information"** means information contained in Exhibit B of the SWGTA Contract and the "Economic Bid Statement" submitted to the Buyer by the Supplier in its "Proposal" (as such term is defined in the SWGTA Contract), which information shall be deemed to be Confidential Information of both the Buyer and the Supplier, and includes, without limitation, any information required for or related to the derivation of the financial parameters contained in Exhibit B of the SWGTA Contract or the "Economic Bid Statement" or related to or part of the financial parameters for any other project or potential opportunity being discussed between the Parties.
- (k) **"Person"** means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.
- (l) **"Representatives"** means a Party's directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates, and in the case of the Buyer, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, shareholders, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.
- (m) **"SWGTA Contract"** means the "Southwest GTA Clean Energy Supply Contract" between the Buyer and the Supplier, dated October 9, 2009.

## 1.2 Confidential Information

From the date of this Agreement, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in resolving the differences between the Parties respecting the SWGTA Contract or evaluating other projects or potential opportunities being discussed between the Parties. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Agreement by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the

Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 1.3.

### **1.3 Notice Preceding Compelled Disclosure**

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

### **1.4 Return of Information**

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will be deleted from the emails and directories of the Receiving Party's and its Representatives' computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, (ii) found in electronic format as part of the Receiving Party's off-site or on-site data storage/archival process system or (iii) which is Mutually Confidential information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party's option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Agreement.

### **1.5 Injunctive and Other Relief**

The Receiving Party acknowledges that breach of any provisions of this Agreement may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third party) or any other remedy against any actual or potential breach of the provisions of this Agreement.

## 1.6 FIPPA Records and Compliance

The Parties acknowledge and agree that the Ontario Power Authority is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Ontario Power Authority ("FIPPA Records") and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Ontario Power Authority if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Ontario Power Authority's request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Ontario Power Authority.

## 1.7 Privileged Communications

The Parties acknowledge and agree that all discussions, communications and correspondence between the Parties or their Representatives from and after the date of this Agreement (other than correspondence attached as Schedule A hereto), whether oral or written, and whether Confidential Information or not, in connection with the differences between the Parties respecting the SWGTA Contract or relating to other projects or potential opportunities being discussed between the Parties are without prejudice and privileged. For greater certainty, the Parties acknowledge that the Parties have not reached any agreement as to whether or not the correspondence attached as Schedule A hereto is without prejudice and privileged.

Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from communicating with the other Party on a without prejudice basis at any point in time by designating its communication, whether oral or written, as a "without prejudice" communication, provided that such "without prejudice" communication does not include or refer, either directly or indirectly, to any without prejudice and privileged discussions, communications and correspondence.

## 1.8 Notice

Any notice, consent or approval required or permitted to be given in connection with this agreement ("Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier services or other personal method of delivery), or if transmitted by facsimile:

- (a) To the Supplier at: TransCanada Energy Ltd.  
Royal Bank Plaza  
200 Bay Street  
24th Floor, South Tower  
Toronto, Ontario M5J 2J1

Attention: Terry Bennett, Vice President, Power  
Development  
Facsimile: 416-869-2056

(b) To the Buyer at: Ontario Power Authority  
1600-120 Adelaide Street West  
Toronto, Ontario M5H 1T1

Attention: Michael Killeavy, Director, Contract  
Management  
Facsimile: 416-969-6071

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day then the Notice shall be deemed to have been given and received on the next business day. Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this paragraph.

*[Remainder of Page Intentionally Left Blank]*

### 1.9 Miscellaneous

- (a) This Agreement (i) constitutes the entire agreement between the Parties with respect to the subject matter hereof, (ii) may not be assigned by either Party without the prior written consent of the other Party, and (iii) inures to the benefit of and is binding on the Parties hereto and their successors and permitted assigns.
- (b) No failure or delay in exercising any right or remedy hereunder will operate as a waiver, nor will any single or partial exercise preclude any other exercise of any other right or remedy.
- (c) This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same agreement.
- (d) Signatures by facsimile shall be as effective as original signatures to this Agreement.
- (e) This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario (and the federal laws of Canada applicable in the Province of Ontario) applicable to agreements made and to be performed within such province without regard to the conflict of laws principles thereof.
- (f) The term of this Agreement shall be for a period of five (5) years from the date of this Agreement. Notwithstanding the foregoing, Section 1.7 shall survive the expiration of the term.


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

TRANSCANADA ENERGY LTD.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ONTARIO POWER AUTHORITY

By:   
Name: **JoAnne C. Butler**  
Title: **Vice President, Electricity Resources**

## SCHEDULE A

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Monday, November 29, 2010 2:36 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Lyle  
**Subject:** RE: Estimated Commercial Operation Date

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Assuming transmission, traditionally, OEB preferred EA first; however, not an actual requirement and not what was done in connection with Bruce to Milton.

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Director, Corporate/Commercial Law Group

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T: 416.969.6052 | F: 416.967.1947 | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

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**From:** Deborah Langelaan  
**Sent:** November 29, 2010 9:57 AM  
**To:** Amir Shalaby  
**Cc:** Michael Killeavy; Rocco Sebastiano (rsebastiano@osler.com)  
**Subject:** FW: Estimated Commercial Operation Date

Amir;

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**Cc:** Michael Killeavy; John Mikkelsen  
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Thanks,

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**Sent:** Friday, November 26, 2010 9:16 AM  
**To:** Terry Bennett  
**Cc:** Michael Killeavy  
**Subject:** RE: Estimated Commercial Operation Date

Confidential and Without Prejudice

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Kind Regards,  
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## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Monday, November 29, 2010 6:14 PM  
**To:** Deborah Langelaan  
**Cc:** Michael Lyle  
**Subject:** Re: Estimated Commercial Operation Date

The response assumed it was transmission, the information holds. In terms of how long it might take, I believe 6 - 9 months; however, the length of the line may affect timing. Do you know how long the line will be, more or less?

---

**From:** Deborah Langelaan  
**Sent:** Monday, November 29, 2010 02:42 PM  
**To:** Susan Kennedy  
**Cc:** Michael Lyle  
**Subject:** RE: Estimated Commercial Operation Date

For clarification, we're talking Transmission line and not gas pipeline.

Deb

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**Sent:** November 29, 2010 9:57 AM  
**To:** Amir Shalaby  
**Cc:** Michael Killeavy; Rocco Sebastiano (rsebastiano@osler.com)  
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**Christine Lafleur**

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**To:** Susan Kennedy  
**Subject:** FW: Estimated Commercial Operation Date

Susan;

How familiar are you with Section 92(1) of the OEB Act? Please see my comments below to Amir regarding the discussion between OPA and TCE to relocate OGS to Cambridge. Do you know if a Leave to Construct can be submitted prior to the approval of the EA? Also, generally how long does it take to receive the Leave to Construct?

Deb

Deborah Langelaan | Manager, Natural Gas Projects | OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

---

**From:** Deborah Langelaan  
**Sent:** November 29, 2010 9:57 AM  
**To:** Amir Shalaby  
**Cc:** Michael Killeavy; Rocco Sebastiano (rsebastiano@osler.com)  
**Subject:** FW: Estimated Commercial Operation Date

Amir;

During our meeting with TCE on Friday they wanted the OPA to reconsider the estimated COD (Feb. 8, 2014) that we have provided to them on two separate occasions. Attached are 3 Gant charts TCE created that project estimated COD's under 3 different scenarios. By way of background, the connection line distance of the Boxwood site is greater than 2 km and therefore subject to Section 92(1) of the OEB Act. The earliest simple cycle COD is Q4 2014 and that assumes that TCE can apply to the OEB for Leave to Construct before the EA is complete. The later COD of Q2 2015 assumes that they cannot submit prior to the completion of the EA. The 3<sup>rd</sup> Gant chart provides an estimated COD for Combined Cycle and that is a scenario that we are not pursuing with TCE at this point in time.

As you know the IPSP had recommended an in-service date for a peaking facility in the K/W/C area by end of 2012. Please advise if the OPA is agreeable to an estimated COD of Q4 2014.

Thanks,  
Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

---

**From:** Terry Bennett [[mailto:terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)]  
**Sent:** November 26, 2010 9:25 AM  
**To:** Deborah Langelaan  
**Cc:** Michael Killeavy; John Mikkelsen  
**Subject:** RE: Estimated Commercial Operation Date

Thanks Deb.

John Mikkelsen will be our point of contact from now on. John will follow up with you on this shortly.

Thanks,

Terry

---

**From:** Deborah Langelaan [<mailto:Deborah.Langelaan@powerauthority.on.ca>]  
**Sent:** Friday, November 26, 2010 9:16 AM  
**To:** Terry Bennett  
**Cc:** Michael Killeavy  
**Subject:** RE: Estimated Commercial Operation Date

Confidential and Without Prejudice

Terry;

Further to our telephone conversation on Tuesday afternoon the OPA is reaffirming its original direction that the estimated Commercial Operation Date to be provided to Mitsubishi for purposes of developing a firm price quote for the conversion of the gas turbines to Fast start is February 8, 2014.

Kind Regards,  
Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA |  
Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |  
T: 416.969.6052 | F: 416.967.1947 | | [deborah.langelaan@powerauthority.on.ca](mailto:deborah.langelaan@powerauthority.on.ca) |

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**From:** Deborah Langelaan  
**Sent:** November 23, 2010 3:25 PM  
**To:** [terry\\_bennett@transcanada.com](mailto:terry_bennett@transcanada.com)  
**Cc:** Michael Killeavy  
**Subject:** Estimated Commercial Operation Date

Confidential and Without Prejudice

Terry;

During our conference call yesterday the OPA was asked to provide an estimated Commercial Operation Date that Mitsubishi can use for developing a firm price quote for the conversion of the gas turbines to Fast start. The OPA feels it would be prudent to use the same milestone date for commercial operation that currently exists in the SWGTA CES Contract, February 8, 2014. It is presumed that this is consistent with the date TCE would have provided to Mitsubishi for the original price quote.

## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Wednesday, December 08, 2010 5:12 PM  
**To:** Michael Killeavy; Deborah Langelaan; 'rsebastiano@osler.com'  
**Cc:** 'esmith@osler.com'  
**Subject:** Re: Priviledged and Confidential

I believe we can see it, we just have to do so at Oslers. Perhaps a combo of data room review by OPA and opinion from Oslers (to effectively memorandize the rationale as to whatever decision is reached by OPA) would be a workable compromise.

---

**From:** Michael Killeavy  
**Sent:** Wednesday, December 08, 2010 04:42 PM  
**To:** Deborah Langelaan; 'RSebastiano@osler.com' <RSebastiano@osler.com>; Susan Kennedy  
**Cc:** 'ESmith@osler.com' <ESmith@osler.com>  
**Subject:** Re: Priviledged and Confidential

How in the world are we supposed to provide an indemnity that pertains to an agreement we can't see?

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](mailto:Michael.killeavy@powerauthority.on.ca)

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**From:** Deborah Langelaan  
**Sent:** Wednesday, December 08, 2010 04:07 PM  
**To:** Michael Killeavy; 'Sebastiano, Rocco' <RSebastiano@osler.com>; Susan Kennedy  
**Cc:** 'Smith, Elliot' <ESmith@osler.com>  
**Subject:** Priviledged and Confidential

All;

I just spoke with John Mikkelsen and Terri Steeves and they provided me with the following update:

- Draft MOU will be provided by e-mail today
- Draft gas turbine Indemnity Agreement – TCE needs to complete its internal review of the document before sending it to OPA and they expect to turn that around by tomorrow morning
- MPS Equipment Supply Agreement – In spite of the OPA providing a letter that deals with the FIPPA issue and designating the agreement under Section 25.13 of the Electricity Act MPS is not comfortable providing a redacted copy to the OPA. They have offered to provide a redacted copy to Oslers and they can provide the OPA with a legal opinion memo on the contract and/or a data room can be set up and the OPA can view the redacted agreement in Oslers office or TCE's office. MPS's Canadian legal counsel will provide an opinion to MPS wrt the Electricity Act protection.
- MPS to provide indicative pricing for the conversion of the GT conversion by Dec. 16<sup>th</sup>.
- Friday's meeting scheduled from 1:30 to 5:00 p.m.

**Christine Lafleur**

---

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

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

---

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

FYI

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

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

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



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

Sir,

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

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

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

Message Notes:

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

Thanks,  
Chris Breen  
[www.transcanada.com](http://www.transcanada.com)  
416.605.3524

Please note our new address:  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2400  
Post Office Box 43  
Toronto, Ontario M5J 2J1

This electronic message and any attached documents are intended only for the named addressee(s). This communication from TransCanada may contain information that is privileged, confidential or otherwise protected from disclosure and it must not be disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message.  
Thank you.

Christine Lafleur

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From: Susan Kennedy  
Sent: Tuesday, December 14, 2010 10:31 AM  
To: John Zych  
Subject: Oakville

Link to folder with emails:

[L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA \(3-10016\)\Contract Termination\Correspondence - Miscellaneous](#)

[L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA \(3-10016\)\Contract Termination\Correspondence - Oakville Litigation Costs](#)

[L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA \(3-10016\)\OMB Hearing - October 13, 2009](#)

[L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA \(3-10016\)\Planning Act Regulation \(Section 62.0.1\)](#)

Feel free to nose around the whole directory if you want:

[L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA \(3-10016\)](#)

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

**Christine Lafleur**

---

**From:** Susan Kennedy  
**Sent:** Tuesday, December 14, 2010 11:56 AM  
**To:** Colin Andersen  
**Cc:** Michael Killeavy; Deborah Langelaan; JoAnne Butler  
**Subject:** TCE - Requested MOU and Turbine Indemnity Agreement  
**Attachments:** DOCS-#9881264-v5-LTR\_-\_OPA\_re\_Gas\_Turbine\_Indemnity\_Agreement (TCE).doc;  
9885782v4 - MOU - TransCanada (OPA) \_1.doc

Colin,

Per your request, attached are the draft "asks" from TCE re MOU and Turbine Indemnity Agreement. As discussed, OPA pushed back on MOU request (to pare it back to what auditors might need). We have also pushed back on Turbine Indemnity Agreement; however, are awaiting a "look" at the actual agreement before proceeding further re same.

*SHK*

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

Draft: December 9, 2010

**WITH PREJUDICE**

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

**Attention: •**

Dear Sirs:

**Re: Gas Turbine Indemnity Agreement**

Background

TransCanada Energy Ltd. ("TCE") and MPS Canada, Inc. ("MPS") have entered into Equipment Supply Agreement No. 6519 dated July 7, 2009 (the "ESA") relating to the design, fabrication and supply of, and the performance of certain services for two M501GAC combustion gas turbines and related ancillary equipment (the "Supplier's Work") as amended by letter agreements dated October 29, 2010, November 19, 2010, and December •, 2010 and as may be further amended from time to time. The October 29, 2010 letter agreement also instructed MPS to suspend the Suppliers Work until November 30, 2010. The November 19, 2010 letter agreement extended the suspension until December 31, 2010.

TCE has the right to cancel the ESA upon payment of a termination payment as specified therein. The ESA provides that the amount of the termination payment increases from month to month.

TCE and the Ontario Power Authority (the "OPA") are engaged in discussions regarding a peaking generation agreement, in respect of a simple cycle natural gas-fired power generation project in Cambridge, Ontario having an approximate season 3 degraded capacity of 450 MW (the "Cambridge Project"). It is anticipated that the gas turbines sourced under the ESA (the "MPS Equipment") will be used in the Cambridge Project.

In light of such ongoing discussions regarding the Cambridge Project, the OPA has requested that TCE refrain from exercising its termination rights under the ESA at this time and has also requested that TCE withdraw its suspension notice under the ESA and direct MPS to recommence the Supplier's Work thereunder including the modification of the equipment from M501GAC to M501GAC Fast start. TCE is prepared to agree to such request on the condition that the OPA agree to indemnify TCE from and against all amounts payable by TCE to MPS pursuant to the ESA.

Indemnity

If prior to September 1, 2011 TCE and the OPA have entered into a binding peaking generation agreement for the Cambridge Project or an alternative project agreed to by the parties, and which, in either case, utilizes the MPS Equipment, then this agreement shall terminate upon the effective date of such agreement; otherwise the following provisions shall apply:



1. If the OPA determines, acting reasonably, that TCE and the OPA will not be able to reach an agreement on the terms of a binding peaking generation agreement for the Cambridge Project or an alternative project agreed to by the parties by September 1, 2011, then the OPA may direct TCE to terminate the ESA on 10 days notice to TCE in which case TCE shall terminate the ESA. TCE shall not terminate the ESA prior to September 1, 2011 without the prior written direction of the OPA.
2. In the event that the OPA directs TCE to terminate the ESA in accordance with section 1 then the OPA hereby agrees to indemnify and hold harmless TCE from and against all claims, liabilities, costs and expenses suffered or incurred by TCE as a result of the termination of the ESA, including reimbursement of all amounts paid by TCE to MPS to the date of termination and any termination payment payable thereunder.
3. If prior to September 1, 2011, TCE and the OPA have not entered into a binding peaking generation agreement in respect of the Cambridge Project or an alternative project agreed to by the Parties which, in either case, utilizes the MPS Equipment and the OPA does not direct TCE to terminate the ESA on or before September 1, 2011, then:
  - (i) on or before October 1, 2011 the OPA shall pay to TCE the total amount of all payments that have been paid or are payable by TCE to MPS under the ESA up to and including September 1, 2011;
  - (ii) the OPA shall reimburse TCE for all payments made by TCE to MPS under the ESA after September 1, 2011 within 30 days of a request for reimbursement by TCE to the OPA;
  - (iii) if TCE has not sold the MPS Equipment to a third party or put the MPS Equipment to a TCE Use as defined in (v) below, then TCE shall arrange for suitable storage and maintenance of same;
  - (iv) the OPA shall reimburse TCE for all costs incurred by TCE in connection with the storage and maintenance of the MPS Equipment including without limitation all transportation costs, insurance costs and storage and maintenance costs within 30 days of a request for reimbursement by TCE to the OPA; and
  - (v) TCE shall use commercially reasonable efforts to re-sell the MPS Equipment to a third party or to use the MPS Equipment in another power generation project developed by TCE (a "TCE Use") and in such event TCE shall pay to the OPA the net proceeds received by TCE upon such resale or the fair market value of the MPS Equipment at the time of such TCE Use whichever is the case, less in each case, all costs incurred by TCE to implement such resale or TCE Use not previously reimbursed by the OPA to TCE.
4. **General.**
  - (a) This agreement and its application and interpretation will be governed exclusively by the laws of the Province of Ontario and the federal laws of Canada applicable therein regardless of the laws that might otherwise govern under applicable conflict of law principles;

- (b) The parties' relationship to each other in the performance of this agreement is that of independent contractors. Nothing contained in this agreement is intended to place the parties in the relationship of partners, joint venturers, principal-agent, or employer-employee, and neither party shall have any right to obligate or bind the other party in any manner whatsoever; and
- (c) This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of executed counterparts hereof may be made electronically.
- (d) The parties acknowledge that this agreement is subject to the terms of the Confidentiality Agreement between the parties dated as of October 8, 2010.
- (e) Neither party will assign this agreement without the prior written consent of the other party.

Please confirm your agreement with the foregoing by signing and returning the enclosed copy of this letter.

Yours very truly,

**TransCanada Energy Ltd.**

Per: \_\_\_\_\_

Name: ●  
Title: ●

Per: \_\_\_\_\_

Name: ●  
Title: ●

Agreed to this \_\_\_\_\_ day of December, 2010.

**ONTARIO POWER AUTHORITY**

Per: \_\_\_\_\_

Name: ●  
Title: ●

Per: \_\_\_\_\_

Name: ●  
Title: ●

[TCE Letterhead]

**WITH PREJUDICE**

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

**Attention:** •

Dear Sirs:

**Re: Cambridge Generation Project**

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

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

TCE entered into contracts for equipment, engineering, construction management and acquisition of land, and expended funds to develop the Facility (as defined in the Contract).

On October 7, 2010 TCE received a letter from Colin Andersen of the OPA Re; Southwest GTA Clean Energy Supply Contract (the "**Contract**") between TransCanada Energy Ltd. and the OPA dated October 9, 2009, (the "**Oakville Termination Letter**") which stated that the OPA will not proceed with the Contract, and directed TCE to cease all further work and activities in connection with the Facility other than anything that may be reasonably necessary in the circumstances to bring such work to a conclusion.

TCE has endeavored to cease activities in accordance with the direction and has made significant progress since October 7, 2010 in this regard.

In accordance with the Oakville Termination Letter, TCE and the OPA have been working cooperatively to identify other generation projects that meet Ontario's electricity system needs as identified in Ontario's Long Term Energy Plan and the IESO's 18-Month Outlook Update (December 3, 2010) and the extent that such projects may compensate TCE for its damages arising from the OPA's refusal to proceed with the Contract. TCE and the OPA have identified the Cambridge Project as a potential project for such purposes. It is anticipated that the Cambridge Project will use the gas turbines sourced under an equipment supply agreement originally entered into by TCE and MPS Canada, Inc. with respect to the Facility and the parties have entered into a Gas Turbine Indemnity Agreement dated December •, 2010 relating thereto.

If the parties determine that the Cambridge Project is not feasible they will attempt to agree on an alternative project.

2. **Project Development.** TCE shall proceed forthwith with the development of the Cambridge Project with the objective of achieving commercial operation by December 31, 2014. TCE will fund all such development costs associated with the Cambridge Project. TCE shall provide the OPA with timely updates on the progress of development and the cost expended on the Cambridge Project. The OPA shall provide all assistance as reasonably requested by TCE including acting as liaison with various levels of government and other stakeholders.
3. **Good Faith Negotiations.** Following the execution of this letter, the parties hereto agree to work together in good faith to negotiate the definitive form of a peaking generation agreement (the "**Definitive Agreement**") in respect of the Cambridge Project, or an alternative project agreed to by the parties, based on the form of the Northern York Region Peaking Generation Contract except that the "NRR" thereunder shall include all gas management and distribution costs, which agreement shall be satisfactory to TCE and the OPA in their sole discretion. The pricing under the Definitive Agreement shall be designed to allow TCE to recover all costs incurred by TCE with respect to the Facility as well as TCE's anticipated financial value of the Contract and the Project Development Costs (as defined below). The target date for completion of such negotiations shall be June 30, 2011.
4. **Transaction Expenses.** The OPA acknowledges that TCE will devote substantial time and incur internal and external expenses in connection with conducting business, financial and legal due diligence investigations in connection with the Transaction, drafting and negotiating this MOU and the Definitive Agreement; designing and engineering the Cambridge Project, or an alternative project agreed to by the parties, advancing the permitting and approvals with respect thereto and other related matters (collectively, "**Project Development Costs**"). To induce TCE to incur the Project Development Costs, the OPA agrees that if TCE and the OPA do not enter into the Definitive Agreement prior to September 1, 2011, then the OPA shall reimburse TCE for all of the Project Development Costs and shall compensate TCE for all of its reasonable damages arising from the OPA's refusal to proceed with the Contract, including the anticipated financial value of the Contract.
5. **Legal Effect.** The parties hereto acknowledge that sections 3, 4, 5 and 7 of this MOU constitute a legally binding agreement regarding the matters contemplated herein. Each party hereby represents and warrants to the other that such party has full power and authority to execute and deliver this MOU, and that the execution and delivery of this MOU by such party has been authorized by all requisite corporate action on the part of such party. The remaining provisions of this MOU do not create any legally binding obligations.
6. **Exclusivity.** The parties agree to work exclusively with each other with respect to the Transaction until such time as the Definitive Agreement is executed or September 1, 2011, whichever is earlier.

**7. General.**

- (a) This MOU and its application and interpretation will be governed exclusively by the laws of the Province of Ontario and the federal laws of Canada applicable therein regardless of the laws that might otherwise govern under applicable conflict of law principles;
- (b) The parties' relationship to each other in the performance of this MOU is that of independent contractors. Nothing contained in this MOU is intended to place the parties in the relationship of partners, joint venturers, principal-agent, or employer-employee, and neither party shall have any right to obligate or bind the other party in any manner whatsoever; and
- (c) This MOU may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of executed counterparts hereof may be made electronically.
- (d) The parties acknowledge that this MOU is subject to the terms of the Confidentiality Agreement between the parties dated as of October 8, 2010.
- (e) Neither party will assign this agreement without the prior written consent of the other party.

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

Yours very truly,

**TRANSCANADA ENERGY LTD.**

Per: \_\_\_\_\_

Name: •  
Title: •

Per: \_\_\_\_\_

Name: •  
Title: •

ACCEPTED AND AGREED to this \_\_\_\_\_ day of ●, 2010.

ONTARIO POWER AUTHORITY

Per:

\_\_\_\_\_

Name: ●

Title: ●

Per:

\_\_\_\_\_

Name: ●

Title: ●

## Christine Lafleur

---

**From:** Susan Kennedy  
**Sent:** Wednesday, December 15, 2010 4:36 PM  
**To:** Michael Killeavy; JoAnne Butler; Michael Lyle  
**Subject:** RE: Revised Draft Directive  
**Attachments:** BL\_KWC Directive\_v3-2.docx

Revised per below suggestion.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

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

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

Michael Killeavy, LL.B., MBA, P.Eng.  
Director, Contract Management  
Ontario Power Authority  
120 Adelaide Street West, Suite 1600  
Toronto, Ontario  
M5H 1T1  
416-969-6288  
416-5209788 (CELL)  
416-967-1947 (FAX)

---

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

Sorry. Attached this time. BL and clean.

Susan H. Kennedy  
Director, Corporate/Commercial Law Group

---

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

Nothing attached...

JoAnne C. Butler  
Vice President, Electricity Resources

## Ontario Power Authority

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

416-969-6005 Tel.  
416-969-6071 Fax.  
[joanne.butler@powerauthority.on.ca](mailto:joanne.butler@powerauthority.on.ca)

---

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

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

Thanks,

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