December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

<u>Kitchener-Waterloo-Cambridge Area New Supply</u>

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

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

<u>Southwest Greater Toronto Area Supply</u>

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

Direction

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

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

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

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

I further direct that the SWGTA Directive is hereby revoked.

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

____

Brad Duguid
Minister of Energy

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, December 15, 2010 5:04 PM
To: Michael Killeavy; 'RSebastiano@osler.com'
Cc: Deborah Langelaan; 'ESmith@osler.com'; 'PIvanoff@osler.com'
Subject: RE: Revised TCE and OPA MOU

I'm good too.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: December 15, 2010 5:01 PM
To: 'RSebastiano@osler.com'; Susan Kennedy
Cc: Deborah Langelaan; 'ESmith@osler.com'; 'PIvanoff@osler.com'
Subject: Re: Revised TCE and OPA MOU

This looks alright to me. Thanks.

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 15, 2010 04:56 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; Smith, Elliot <ESmith@osler.com>; Ivanoff, Paul <PIvanoff@osler.com>
Subject: Revised TCE and OPA MOU

Michael and Susan,

Further to our discussion this afternoon, please find enclosed a revised draft of the MOU with TCE. Please let me know whether you have any further comments or concerns on this revised draft, particularly as it relates to the OPA's authority to enter into this MOU without a directive from the Minister.

Thanks, Rocco

OSLER

Rocco Sebastiano
Partner

416.862.5859 DIRECT

416.862.6666 FACSIMILE
rsebastiano@osler.com

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

osler.com

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, December 16, 2010 9:27 AM
To: Irene Mauricette
Cc: Michael Killeavy
Subject: Fw: TransCanada Acknowledgement and MOU

Irene, would Colin have a time this morning to sign a document.

I'm tied up in a meeting all AM but if there is a Colin time available, I'll step out of other meeting. Tx, Susan

---

From: Michael Killeavy
Sent: Thursday, December 16, 2010 09:06 AM
To: Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TransCanada Acknowledgement and MOU

Ok. Thx. Will you be able to get Colin to sign the acknowlegement this morning? I apologize for jamming you, but you know the timing pressure we have given that the meeting is tomorrow.

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

From: Susan Kennedy
Sent: Thursday, December 16, 2010 09:00 AM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TransCanada Acknowledgement and MOU

I agree.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: December 16, 2010 8:22 AM
To: Susan Kennedy
Cc: Deborah Langelaan
Subject: TransCanada Acknowledgement and MOU

Susan,

The undertaking looks fine to me. I'd propose that if you are in agreement that it is alright, too, that we ask Colin to execute it, ask Osler to execute it, and then get it over to TCE as soon as possible so that we can see the MPS-TCE Equipment Supply Agreement. I don't think we need to wait for Safouh since we only need to look at the commercial terms right now, and SMS will provide a separate undertaking to TCE and MPS. Does this sound like a reasonable way forward?

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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120 Adelaide Street West, Suite 1600
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M5H 1T1
416-969-6288
416-5209788 (CELL)
416-967-1947 (FAX)

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: December 15, 2010 9:33 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan; Smith, Elliot; Ivanoff, Paul
Subject: Fw: TransCanada Acknowledgement and MOU

Here are further revised drafts from McCarthys.

There are only a couple of remaining outstanding points:

On the MPS acknowledgment, addition of clause that SMS will provide a similar acknowledgment should not be an issue but we'll need to get Safouh's concurrence before we can agree to that change.

On the MOU, it looks like McCarthys is not prepared to drop the "with prejudice" designation at the top of the document. They re-inserted it again in square brackets. I will discuss this with David Lever tomorrow.

Michael, did you want to get Safouh's input on the MPS acknowledgment?

Thanks, Rocco

From: Lever, David A.N. [mailto:DLEVER@MCCARTHY.CA]
Sent: Wednesday, December 15, 2010 08:25 PM
To: Sebastiano, Rocco
Cc: Terry Bennett <terry_bennett@transcanada.com>; Terri Steeves <terri_steeves@transcanada.com>; John Mikkelsen <john_mikkelsen@transcanada.com>; John Cashin <john_cashin@transcanada.com>; Huber, Harold R. <HHUBER@MCCARTHY.CA>
Subject: TransCanada Acknowledgement and MOU

Rocco,

Many thanks for sending your comments on the two documents.

Please find attached a revised draft of each of the MOU and the Acknowledgement. I would appreciate if we could discuss the attached tomorrow morning in order that I can explain the changes. Please note that we have not had an opportunity to review the Acknowledgement with MPS and, accordingly, it remains subject to any comments that they may have thereon and we have not had an opportunity to fully review the MOU and the Acknowledgement with TCE and it remains subject to any additional comments that they may have thereon.

David.

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, December 16, 2010 9:43 AM
To: Irene Mauricette
Cc: Michael Killeavy
Subject: Re: TransCanada Acknowledgement and MOU

Thanks

From: Irene Mauricette
Sent: Thursday, December 16, 2010 09:35 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: RE: TransCanada Acknowledgement and MOU

Yes – right after LARA Team Meeting – let's say 11:30 – thanks - Irene

---

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Sent: December 16, 2010 9:27 AM
To: Irene Mauricette
Cc: Michael Killeavy
Subject: Fw: TransCanada Acknowledgement and MOU

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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Susan Kennedy
Sent: Thursday, December 16, 2010 09:00 AM

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Cc: Deborah Langelaan
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Director, Corporate/Commercial Law Group

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Michael

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Cc: Deborah Langelaan; Smith, Elliot; Ivanoff, Paul
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Thanks, Rocco

From: Lever, David A.N. [mailto:DLEVER@MCCARTHY.CA]
Sent: Wednesday, December 15, 2010 08:25 PM
To: Sebastiano, Rocco
Cc: Terry Bennett <terry_bennett@transcanada.com>; Terri Steeves <terri_steeves@transcanada.com>; John Mikkelsen <john_mikkelsen@transcanada.com>; John Cashin <john_cashin@transcanada.com>; Huber, Harold R. <HHUBER@MCCARTHY.CA>
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David.

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, December 16, 2010 5:17 PM
To: Michael Killeavy
Subject: Re: TCE Matter ....

Yes

----- Original Message -----
From: Michael Killeavy
Sent: Thursday, December 16, 2010 05:01 PM
To: Susan Kennedy
Subject: Re: TCE Matter ....

Are you alright with this approach?

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

----- Original Message -----
From: Susan Kennedy
Sent: Thursday, December 16, 2010 04:59 PM
To: Michael Killeavy
Subject: RE: TCE Matter ....

Thanks.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: December 16, 2010 4:41 PM
To: Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter ....

Susan,

Here is the plan.

We (Rocco, Paul and I) are drafting a "reliance letter" that we plan to take to the TCE meeting tomorrow. It will necessarily be very "weasely", but we feel that TCE is jamming us. We still don't have MPS sign-off on the changes to the confidentiality undertaking, so we still haven't seen the Equipment Supply Agreement ("ESA"). Any reliance letter will need to address this risk. We plan to draft it such that it is valid only for a month. By that time we ought to have seen the ESA and determined whether or not we were fully informed about the substance of the agreement.

If we don't provide something like this tomorrow our fear is that we might be forced into signing the Indemnity Agreement by others who don't know of the risks in doing that. Tuesday is the deadline for informing MPS about whether the agreement continues or is cancelled.

We'll send you a draft of the letter as soon as we can.

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, December 16, 2010 5:49 PM
To: 'rsebastiano@osler.com'; Michael Killeavy
Cc: 'PIvanoff@osler.com'
Subject: Re: OPA Letter on MPS Contract Extension

Think it does job. Wee typo:

"The OPA have entered into a Memorandum of . . ."

Think should be:

"The OPA and TCE have entered into a Memorandum of . . ."

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, December 16, 2010 05:29 PM
To: Michael Killeavy
Cc: Susan Kennedy; Ivanoff, Paul <PIvanoff@osler.com>
Subject: OPA Letter on MPS Contract Extension

Michael,

Here is a first cut at a draft letter to TCE on the further extension of the MPS Contract to January 31, 2011. Let's discuss.

Susan, if you are still around, we'd certainly like to get your input on this letter.

Thanks, Rocco

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, December 16, 2010 6:14 PM
To: Michael Killeavy
Subject: Re: Revised MPS Acknowledgement

I'll do my best. He has resigned himself to being stalked by me for signatures.

From: Michael Killeavy
Sent: Thursday, December 16, 2010 06:06 PM
To: Susan Kennedy; 'RSebastiano@osler.com' <RSebastiano@osler.com>
Cc: 'PIvanoff@osler.com' <PIvanoff@osler.com>; 'ESmith@osler.com' <ESmith@osler.com>; Deborah Langelaan
Subject: Re: Revised MPS Acknowledgement

Rocco says it is fine. Can you please arrange have Colin execute the clean version with TCE draft removed from the top.

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

From: Susan Kennedy
Sent: Thursday, December 16, 2010 05:55 PM
To: 'rsebastiano@osler.com' <rsebastiano@osler.com>; Michael Killeavy
Cc: 'PIvanoff@osler.com' <PIvanoff@osler.com>; 'esmith@osler.com' <esmith@osler.com>; Deborah Langelaan
Subject: Re: Revised MPS Acknowledgement

I'm okay with the changes. Doew it meet Oslers needs?

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, December 16, 2010 05:50 PM
To: Michael Killeavy; Susan Kennedy
Cc: Ivanoff, Paul <PIvanoff@osler.com>; Smith, Elliot <ESmith@osler.com>; Deborah Langelaan
Subject: Revised MPS Acknowledgement

Just arrived from David Lever...

From: Lever, David A.N. [mailto:DLEVER@MCCARTHY.CA]
Sent: Thursday, December 16, 2010 5:44 PM
To: Sebastiano, Rocco
Cc: Huber, Harold R.; 'Terry Bennett'; 'Terri Steeves'; 'John Mikkelsen'; 'John Cashin'; Lever, David A.N.
Subject:

Rocco,

Please find attached a revised draft of the Acknowledgement that incorporates the point we discussed earlier today and two small comments from MPS. This has now been approved by MPS and TCE. If it is in a form acceptable to you and your client, please arrange to have it executed and circulated to the addressees of this email, in which case we will arrange for the MPS Contract to be provided to you.

If you have any questions or concerns with the attached, please call me at 416 997 7655

Best Regards,

David,

Christine Lafleur

From:	Susan Kennedy
Sent:	Friday, December 17, 2010 8:25 AM
To:	Robert Godhue
Subject:	FW: Revised MPS Acknowledgement
Attachments:	9923817vdoc - acknowledgement to mps re equipment supply agr.doc; 9923817v3 - acknowledgement to mps re equipment supply agr.doc

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: December 16, 2010 5:50 PM
To: Michael Killeavy; Susan Kennedy
Cc: Ivanoff, Paul; Smith, Elliot; Deborah Langelaan
Subject: Revised MPS Acknowledgement

Just arrived from David Lever...

From: Lever, David A.N. [mailto:DLEVER@MCCARTHY.CA]
Sent: Thursday, December 16, 2010 5:44 PM
To: Sebastiano, Rocco
Cc: Huber, Harold R.; 'Terry Bennett'; 'Terri Steeves'; 'John Mikkelsen'; 'John Cashin'; Lever, David A.N.
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If you have any questions or concerns with the attached, please call me at 416 997 7655

Best Regards,

David,

TCE Draft: December ~~15,~~16, 2010

ACKNOWLEDGEMENT

TO:	MPS Canada, Inc. ("**MPS**")
AND TO:	TransCanada Energy Inc. ("**TCE**")
RE:	Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS and TCE as amended by letter agreements dated October 29, 2010 and November 19, 2010, and as may be further amended form time to time, and any other proposal, information and technical specifications relating or ancillary thereto (the "**Contract**")

Whereas the Ontario Power Authority (the "**OPA**") has requested that it be permitted to review the Contract;

And Whereas MPS and TCE regard the Contract as containing highly confidential and proprietary information;

And Whereas the OPA has, effective December 14, 2010, designated the Contract pursuant to Section 25.13(3) of the *Electricity Act*, 1998 as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act*;

Now Therefore, the undersigned acknowledge and agree as follows:

1. TCE shall deliver a copy of the redacted Contract to the OPA's outside counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), attention Mr. Rocco Sebastiano;

2. Except as contemplated herein, Osler shall keep the Contract confidential and shall protect the Contract against disclosure;

3. Osler and the OPA agree that no copy of the Contract shall be given, transmitted or otherwise provided to the OPA or any third party, except as expressly set forth below;

4. Osler shall ensure that each person who reviews or otherwise has access to the Contract complies with the terms of this Acknowledgement;

5. The OPA may only review the Contract at Osler's office, but shall not take, transmit or otherwise remove the Contract or any copy or part thereof from Osler's office;

6. Except as provided in paragraph 7 hereof, without the prior written consent of TCE and MPS, Osler and/or the OPA shall not disclose the Contract, any confidential information contained in the Contract or any report, summaries or any other work product derived from or containing information from the Contract, to any third party;

7. Provided that if SMS Energy Engineering Inc. ("**SMS**") has provided an acknowledgement substantially in the form hereof to MPS and TCE, Osler may disclose the Contract, any confidential information contained in the Contract or any report, summaries or any other work product derived from or containing information from the

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Contract to SMS for the purpose of providing consulting engineering services to the OPA on matters relating to the Contract;

8. All reports, summaries or any other work product derived from or containing confidential information from the Contract and prepared by or on behalf of the OPA must be clearly marked on its face with the following statement:

> "Highly Confidential: This record contains information provided to or obtained by the OPA and that is designated by the OPA as highly confidential and intended, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization."

9. When and if requested by TCE or MPS, all copies of the Contract shall be returned to TCE or MPS or destroyed by Osler and shall be confirmed in writing, provided that Osler shall not be required to return or destroy copies of the Contract while TCE and OPA are continuing to discuss and negotiate one or more potential alternative projects and configurations as set forth in paragraph 1 of the Letter Agreement between MPS and TCE dated November 19, 2010, and further provided that in any event Osler shall return or destroy the copies of the Contract by June 30, ~~2011.~~2011, unless TCE and the OPA successfully enter into a definitive agreement in connection with the construction and operation of a replacement facility, in which case Osler may retain one copy of the Contract for its records.

Dated as of this ______ day of December, 2010.

ONTARIO POWER AUTHORITY	OSLER, HOSKIN & HARCOURT LLP
Per: ______________________	Per: ______________________
Per: ______________________	

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Document comparison by Workshare Professional on Thursday, December 16, 2010 5:31:41 PM

Input:	
Document 1 ID	PowerDocs://DOCS/9923817/2
Description	DOCS-#9923817-v2-acknowledgement_to_mps_re_equipment_supply_agr
Document 2 ID	PowerDocs://DOCS/9923817/3
Description	DOCS-#9923817-v3-acknowledgement_to_mps_re_equipment_supply_agr
Rendering set	MTStandard

Legend:	
Insertion	
~~Deletion~~	
~~*Moved from*~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	4
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	10

ACKNOWLEDGEMENT

TO: MPS Canada, Inc. ("**MPS**")

AND TO: TransCanada Energy Inc. ("**TCE**")

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ONTARIO POWER AUTHORITY	**OSLER, HOSKIN & HARCOURT LLP**
Per: ______________________	Per: ______________________
Per: ______________________	

CONFIDENTIAL

Christine Lafleur

From:	Susan Kennedy
Sent:	Friday, December 17, 2010 8:28 AM
To:	'RSebastiano@osler.com'
Cc:	Michael Killeavy
Attachments:	acknowledgement to mps - execution copy.pdf

Attached is the execution copy that Colin Andersen will be signing (hopefully before I have to leave for TCE meeting).

Can't guarantee timing on signing.

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

Christine Lafleur

From: Susan Kennedy
Sent: Monday, December 20, 2010 6:02 PM
To: Michael Killeavy
Cc: Michael Lyle
Subject: Re: Binders

Solicitor and Client Privilege

I'll double check but I don't believe we have any latitude/discretion in the matter.

I'll try and do the double check tomorrow but I'm a bit "back to back", so I may not get to it until Wednesday.

Since Auditor General suggested the option, you might want to push the meeting back into new year, although Thursday should provide enough time for me to get back to you.

----- Original Message -----
From: Michael Killeavy
Sent: Monday, December 20, 2010 05:42 PM
To: Susan Kennedy
Subject: Fw: Binders

I don't think we should answer these questions. Any advice?

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: Kevin Dick
Sent: Monday, December 20, 2010 05:27 PM
To: Michael Killeavy
Subject: FW: Binders

Questions that the AG has with respect to SWGTA

-----Original Message-----
From: Ariane Chan [mailto:Ariane.Chan@auditor.on.ca]
Sent: December 20, 2010 5:11 PM
To: Kevin Dick
Subject: RE: Binders

Hi Kevin,

Great! It's confirmed then. I'll meet with the contract management people on Thur at 10am in the morning.

And would you mind scheduling a meeting for me with Michael with regards to the Oakville contract. I understand that this contract has no renewable components but I just want to find out more information about it. Tue and Wed our team will be back at our office for meetings. I'm open Thur afternoon and Friday for meeting with Michael. I do understand that this is the week before Christmas so if he prefers, I can meet with him after the holidays. I don't expect this meeting to be too long. I just want to find out the following information.

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

Thanks,
Ariane

From: Kevin Dick [Kevin.Dick@powerauthority.on.ca]
Sent: Monday, December 20, 2010 4:03 PM
To: Ariane Chan
Subject: RE: Binders

Ariane,

Thanks for the donuts.

I spoke to the contract management people and they mentioned they are still meeting with you on Thursday. However, you can always coordinate any contract management meetings through me or Michael Killeavy. Let me know if you would like me to put anything in calendar.

With respect to the Oakville contract, I think you mean the one signed in 2009? Please confirm. Please be aware that this contract has no renewable energy components.

If so, the appropriate person to discuss that Contract and the current status would be Michael Killeavy.

Regards,
Kevin

-----Original Message-----
From: Ariane Chan [mailto:Ariane.Chan@auditor.on.ca]
Sent: December 20, 2010 2:33 PM
To: Kevin Dick
Subject: RE: Binders

Hi Kevin,

I bought over some donuts. Help yourself. I left them with the contract management guys. I have just rescheduled a meeting with them for Thur morning from 10am to 11:30am. Unfortunately, I don't have their email addresses to confirm the calendar booking.

I also want to find out if I can get a copy of the Oakville natural gas plant contract signed back in 2008. What was the reason for cancelling the contract?

Thanks,
Ariane

From: Kevin Dick [Kevin.Dick@powerauthority.on.ca]
Sent: Thursday, December 16, 2010 3:03 PM
To: Ariane Chan
Subject: Binders

Ariane,

I can directly give you the binders I showed you this morning. Do you want to come by to pick them up?

I can also explain the payment mechanism now?

Let me know if you have time this afternoon.

Kevin

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

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

Christine Lafleur

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

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

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

ONTARIO POWER AUTHORITY

MEMORANDUM

DATE: December 22, 2010

TO: Michael Killeavy

FROM: Susan Kennedy

RE: Auditor General Request for Oakville Generating Station Information and Documentation

---

Privileged and Confidential (Solicitor and Client Privilege)

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

Background

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

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

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

Answer

Yes.

Executive Summary

Summary Rationale

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

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

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

Confidentiality Agreement with TransCanada

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

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

> If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.

Section 8.2 of the Contract requires:

> If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by law only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

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

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

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

Suggested Responses

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

    - The OPA received a direction from the Minister of Energy and Infrastructure pursuant to section ● of the *Electricity Act,* ● to procure ●:

      http://www.powerauthority.on.ca/sites/default/files/page/7561_August_18,_1008_-_Southwest_GTA_Supply.pdf

    - Pursuant to the SWGTA Directive, the OPA conducted a competitive procurement. TransCanada Energy Ltd. was the successful proponent and pursuant to the requirements of the RFP process, the OPA signed the contract with TransCanada on October 9, 2009. Public disclosure relating to the procurement is located at:

      http://www.powerauthority.on.ca/gp/southwest-greater-toronto-area

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

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

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

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

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

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

3. When did the OPA/Ministry decide that the Oakville plant is no longer needed?

    - We [I] do not know when the Ministry decided the Oakville plant was no longer needed. Based on the timing of the Ministry's announcement, it would appear to have been sometime in Q3 2010.

4. Can I [AG] get a copy of the contract?

    - Portions of the contract are subject to confidentiality obligations which require that the OPA provide TransCanada with notice of the request prior to disclosure. The form of the Contract (the "Form") is publicly available and a copy is provided to you at this time. If you require a copy of the actual contract, the OPA has a contractual obligation to notify TransCanada of the disclosure request, see Article 8 of the Form, prior to releasing the Agreement.

5. What is the status of the contract? Has it been determined what the penalty will be for terminating the contract?

    - The contract does not provide for a "penalty" for contract termination. The OPA is currently negotiating the terms of the termination of the contract with TransCanada. Any costs associated with the termination of the contract will not be known until negotiations are completed.

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

Detailed Rationale

Auditor General Act

Section 9.1(3) of the Act provides that:

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

Section 10 of the Act provides, as follows:

> **Duty to furnish information**
>
> **10. (1)** Every ministry of the public service, every agency of the Crown, every Crown controlled corporation and every grant recipient shall give the Auditor General the information regarding its powers, duties, activities, organization, financial transactions and methods of business that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.
>
> **Access to records**
>
> (2) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by a ministry, agency of the Crown, Crown controlled corporation or grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Act. 2004, c. 17, s. 13.
>
> **No waiver of privilege**

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

Section 11.2 of the Act provides

Prohibition re obstruction

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

Offence

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

Penalty, corporation

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

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

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

Power to examine on oath

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

Same

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

ONTARIO
POWER AUTHORITY

NOTICE OF CONFIDENTIALITY OBLIGATION

DATE: •

TO: Auditor General

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

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

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

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

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

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

Michael Killeavy, Director, Contract Management
W: 416-969-6299
E: michael.killeavy@powerauthority.on.ca

or

Susan Kennedy, Director, Corporate/Commercial Law Group
W: 416-969-6054
E: susan.kennedy@powerauthority.on.ca

Thank you.

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, December 22, 2010 11:27 AM
To: Michael Killeavy
Subject: RE: Auditor General Request re Oakville

Yes. That is the approach I'd suggest/concur with.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: December 22, 2010 11:11 AM
To: Susan Kennedy
Cc: Michael Lyle; Deborah Langelaan
Subject: RE: Auditor General Request re Oakville

Susan,

When we meet with the A-G staff could we provide them with the pro forma SWGTA Contract and state that the actual executed contract is substantially in the same form and this? I think Mike had suggested this approach. If they insist on the actual contract we'd then need to notify TCE.

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

From: Susan Kennedy
Sent: December 22, 2010 7:46 AM
To: Michael Killeavy
Cc: Michael Lyle
Subject: Auditor General Request re Oakville

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

Christine Lafleur

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

Privileged and Confidential (Solicitor and Client Privilege)

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

Please see attached and below.

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

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

All input greatly appreciated.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

Thank you.

Carolyn

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

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

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background~~Kitchener-Waterloo-Cambridge Area New Supply~~

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

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

~~Southwest Greater Toronto Area Supply~~

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

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

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

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

~~Procurement of Kitchener-Waterloo-Cambridge Area New Supply~~

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

Direction

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

Formatted: Font: Italic

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

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

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

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

I further direct that the ~~SWGTA~~ 2008 Directi~~ve~~on is hereby revoked.

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

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

Brad Duguid
Minister of Energy

December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Direction

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

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

]
Brad Duguid
Minister of Energy

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, January 05, 2011 4:34 PM
To: 'Calwell, Carolyn (MEI)'
Subject: RE: Revised direction
Attachments: KWC TransCanada Direction 20 12 2010 - OPA Comments_110105.docx

Carolyn,

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

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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Thank you.

Carolyn

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

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

December ■, 2010

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

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Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

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

Direction

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

______________________________]

Brad Duguid
Minister of Energy

Christine Lafleur

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

fyi

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Carolyn,

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

Thanks,

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Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: December 23, 2010 3:28 PM
To: Susan Kennedy
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Thank you.

Carolyn

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

December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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Brad Duguid
Minister of Energy

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 14, 2011 10:45 AM
To: Michael Killeavy
Subject: RE: K-W Directive ...

Did this get resolved -- sorry just seeing email now.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: January 13, 2011 3:12 PM
To: Susan Kennedy
Cc: Deborah Langelaan
Subject: K-W Directive ...

I am in the TCE meeting. Are we comfortable with OPA and TCE approaching the City of Cambridge without a directive? Once they go to the mayor, the siting of the plant is very likely to become public.

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

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 14, 2011 11:10 AM
To: Michael Killeavy
Subject: RE: K-W Directive ...

I really think we need one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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From: Michael Killeavy
Sent: January 14, 2011 10:55 AM
To: Susan Kennedy
Subject: RE: K-W Directive ...

We'll need a directive before anything is publicly announced, right?

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

From: Susan Kennedy
Sent: Monday, January 17, 2011 4:19 PM
To: 'Sebastiano, Rocco'; Deborah Langelaan; Michael Killeavy
Cc: 'Ivanoff, Paul'
Subject: Ministry of Energy Request
Attachments: RE: Revised direction

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

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

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Please let me know if I've missed anything.

Thanks,

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

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

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

December ■, 2010

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

Dear Mr. Anderson,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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I further direct that the 2008 Direction is hereby revoked.

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Brad Duguid
Minister of Energy

Christine Lafleur

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

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

The paragraph:

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

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

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

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

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

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

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

---

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

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E: susan.kennedy@powerauthority.on.ca

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you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Christine Lafleur

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

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

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LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

January ■, 2011 ~~December ■, 2010~~

Mr. Colin Andersen~~on~~
Chief Executive Officer
Ontario Power Authority
Suite 1600
120 Adelaide Street West
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b) concluding and executing a definitive contract with TransCanada by **[June 30, 2011]**, which will address the reliability needs described above.

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

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LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

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

____

Brad Duguid
Minister of Energy

Christine Lafleur

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

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

The paragraph:

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

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

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

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

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

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

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

---

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

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

Please let me know if I've missed anything.

Thanks,

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

---

you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

Christine Lafleur

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

Privileged and Confidential (Solicitor and Client Privilege)

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Murray,

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

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

Many thanks,

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

Christine Lafleur

From: Susan Kennedy
Sent: Tuesday, January 18, 2011 1:02 PM
To: Murray Campbell
Subject: RE: Search needed

Sorry – what memo. I read the one that attached the pricing and thought it was fine. Was there something later??

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Murray Campbell
Sent: January 18, 2011 12:56 PM
To: Susan Kennedy
Subject: RE: Search needed

I'll get on it. In return, could you look at that web accessibility memo, please? I'm presenting to ETM tomorrow and need to know if there are any clangers in it.

Murray Campbell
Director, Corporate Communications
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario M5H 1T1
Tel: 416.969.6400 | Fax: 416.967.1947
Email: murray.campbell@powerauthority.on.ca | Web: www.powerauthority.on.ca

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T: 416-969-6054
F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Tuesday, January 18, 2011 1:03 PM
To: Murray Campbell
Subject: RE: Search needed

I'm good

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Murray Campbell
Sent: January 18, 2011 1:03 PM
To: Susan Kennedy
Subject: RE: Search needed

No, the hard-copy one to you and Ben. I just wanted to know if I had misrepresented the legal situation.

Murray Campbell
Director, Corporate Communications
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario M5H 1T1
Tel: 416.969.6400 | Fax: 416.967.1947
Email: murray.campbell@powerauthority.on.ca | Web: www.powerauthority.on.ca

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Ontario Power Authority
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F: 416-969-6383
E: susan.kennedy@powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, January 19, 2011 10:35 AM
To: 'Sebastiano, Rocco'
Cc: Michael Killeavy; Deborah Langelaan; 'Smith, Elliot'
Subject: RE: Ministry of Energy Request

Rocco,

Question, can you clarify something in your draft note:

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

What exceptions were made for these projects? I probably should be aware but am not and, if I relay this to the Ministry, they will be asking.

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: January 17, 2011 6:55 PM
To: Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; Ivanoff, Paul; Smith, Elliot
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I wonder whether this letter would constitute Confidential Information under Section 8.1 of the Agreement. If so, the OPA may be able to disclose it to the Government under Section 8.1(a) or the OPA's Representative if it's for the purpose of assisting the OPA in complying with its obligations under the Agreement.... perhaps a bit of a stretch as the letter is about cancelling the project and terminating the Agreement.

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From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Monday, January 17, 2011 4:19 PM
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Please let me know if I've missed anything.

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group
Ontario Power Authority
T: 416-969-6054
F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca

SCHEDULE A

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.	ONTARIO POWER AUTHORITY
By: ________	By: ________
Name: Murray Samuel	Name:
Title: Deputy General Counsel	Title:
By: ________	
Name: Donald J. DeGrandis	
Title: Vice-President and Secretary	

LEGAL	
CONTENT	

(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]

1.6 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 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, 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

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.

(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

(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;

CONFIDENTIALITY AGREEMENT

This confidentiality agreement, effective as of the 8th 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.

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

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

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

Christine Lafleur

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Friday, November 26, 2010 12:43 PM
To: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Cc: Sebastiano, Rocco; Smith, Elliot
Subject: Fw: Confidentiality Agreement
Attachments: CA - OPA and TCE.pdf

Here is the CA signed by TCE.

Regards,
Paul

From: John Cashin [mailto:john_cashin@transcanada.com]
Sent: Friday, November 26, 2010 12:34 PM
To: Ivanoff, Paul; Huber, Harold R. <HHUBER@MCCARTHY.CA>
Cc: Sebastiano, Rocco; Lever, David A.N. <DLEVER@MCCARTHY.CA>; Smith, Elliot; Terry Bennett <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

Osler, Hoskin & Harcourt LLP

$82,424,996	$82,846,200	$83,275,828	$83,714,048
$29,000,000	$29,000,000	$29,000,000	$29,000,000
$53,424,996	$53,846,200	$54,275,828	$54,714,048
$8,875,745	$8,102,668	$7,396,925	$6,752,653
$11,137,313	$11,435,883	$11,719,726	$11,990,349
$42,287,683	$42,410,317	$42,556,102	$42,723,699

17	18	19	20
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34
$93,027,182	$84,924,515	$77,527,589	$70,774,936
$10,227	$10,227	$10,227	$10,227
$3,510	$3,580	$3,652	$3,725
$13,737	$13,808	$13,879	$13,952

$80,065,653	$80,439,670	$80,821,167	$81,210,294	$81,607,203	$82,012,051
$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000
$51,065,653	$51,439,670	$51,821,167	$52,210,294	$52,607,203	$53,012,051
$15,334,357	$13,998,735	$12,779,445	$11,666,355	$10,650,216	$9,722,582
$8,932,824	$9,360,234	$9,760,430	$10,135,985	$10,489,247	$10,822,367
$42,132,829	$42,079,436	$42,060,736	$42,074,309	$42,117,956	$42,189,684

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$160,720,259	$146,721,525	$133,942,080	$122,275,725	$111,625,509	$101,902,927
$10,227	$10,227	$10,227	$10,227	$10,227	$10,227
$3,117	$3,179	$3,243	$3,308	$3,374	$3,441
$13,344	$13,407	$13,470	$13,535	$13,601	$13,669

$77,970,623	$78,302,740	$78,641,498	$78,987,032	$79,339,476	$79,698,970
$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000
$48,970,623	$49,302,740	$49,641,498	$49,987,032	$50,339,476	$50,698,970
$26,492,707	$24,185,192	$22,078,662	$20,155,610	$18,400,057	$16,797,412
$5,619,479	$6,279,387	$6,890,709	$7,457,855	$7,984,855	$8,475,389
$43,351,144	$43,023,353	$42,750,789	$42,529,176	$42,354,621	$42,223,580

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$277,671,548	$253,486,356	$231,407,695	$211,252,084	$192,852,028	$176,054,616
$10,227	$10,227	$10,227	$10,227	$10,227	$10,227
$2,768	$2,823	$2,879	$2,937	$2,996	$3,056
$12,995	$13,050	$13,107	$13,165	$13,223	$13,283

		$76,706,015	$77,012,839	$77,325,800	$77,645,019
		$29,000,000	$29,000,000	$29,000,000	$29,000,000
		$47,706,015	$48,012,839	$48,325,800	$48,645,019
		$18,203,900	$34,822,240	$31,789,223	$29,020,382
		$7,375,529	$3,297,650	$4,134,144	$4,906,159
($174,493,492)	**($55,805,674)**	$40,330,486	$44,715,189	$44,191,655	$43,738,860

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$174,493,492	$55,805,674				
$362,194,326	$418,000,000	$399,796,100	$364,973,860	$333,184,637	$304,164,255
		$10,227	$10,227	$10,227	$10,227
		$2,557	$2,608	$2,660	$2,713
		$12,784	$12,835	$12,888	$12,941

REVENUES = CSP

OPEX

EBITDA

Depreciation (Capital Cost Allowance)

Taxes Payable

Total Cash Flow	($13,703,393)	($19,919,525)	($69,935,361)	($84,142,555)

Final NRR	**$12,784**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$66,089,017
XIRR	6.60%

GoalSeek NRR for Adjusted K-W NPV Based on Target OGS NPV and Adj. CAPEX

Baseline NRR Calculation

Actual CAPEX Spend:		$418,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		500 MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in noı $29,000,000

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 5.25%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$13,703,393	$19,919,525	$69,935,361	$84,142,555
Book Value of Capital	$13,703,393	$33,622,919	$103,558,279	$187,700,834
Non-Indexed NRR				
Indexed NRR				
Total NRR				

Target Costing Allocation of Actual CAPEX

Target CAPEX = $425,000,000

CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	$405,000,000	
Overrun (Underrun) =	**($20,000,000)**	
OPA Share	**($7,000,000)**	
TCE Share	($13,000,000)	
Adjusted CAPEX =	**$418,000,000**	Target CAPEX + OPA Share

Initial NRR	$12,901
Final NRR	$12,784

15	16	17	18	19	20
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34
$113,494,836	$103,609,436	$94,585,054	$86,346,696	$78,825,898	$71,960,163
$10,321	$10,321	$10,321	$10,321	$10,321	$10,321
$3,405	$3,473	$3,542	$3,613	$3,685	$3,759
$13,726	$13,794	$13,863	$13,934	$14,006	$14,080
$82,353,627	$82,762,178	$83,178,900	$83,603,956	$84,037,513	$84,479,742
$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000
$53,353,627	$53,762,178	$54,178,900	$54,603,956	$55,037,513	$55,479,742
$10,828,569	$9,885,400	$9,024,382	$8,238,358	$7,520,797	$6,865,736
$10,631,265	$10,969,194	$11,288,629	$11,591,399	$11,879,179	$12,153,502
$42,722,362	$42,792,983	$42,890,270	$43,012,556	$43,158,334	$43,326,240

4	5	6	7	8	9
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23
$309,257,914	$282,321,550	$257,731,343	$235,282,943	$214,789,799	$196,081,607
$10,321	$10,321	$10,321	$10,321	$10,321	$10,321
$2,738	$2,793	$2,849	$2,906	$2,964	$3,023
$13,059	$13,114	$13,170	$13,227	$13,285	$13,344
$78,355,203	$78,683,785	$79,018,939	$79,360,796	$79,709,490	$80,065,158
$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000	$29,000,000
$49,355,203	$49,683,785	$50,018,939	$50,360,796	$50,709,490	$51,065,158
$29,506,369	$26,936,364	$24,590,207	$22,448,400	$20,493,144	$18,708,191
$4,962,208	$5,686,855	$6,357,183	$6,978,099	$7,554,086	$8,089,242
$44,392,994	$43,996,930	$43,661,756	$43,382,697	$43,155,404	$42,975,916

Baseline NRR Calculation

CAPEX Spend:		$425,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in noı $29,000,000 GD&M included

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

2	3
1-Jul-16	1-Jul-17
$371,085,862	$338,764,284
$10,321	$10,321
$2,632	$2,684
$12,953	$13,006
$77,717,240	$78,033,063
$29,000,000	$29,000,000
$48,717,240	$49,033,063
$35,405,388	$32,321,579
$3,327,963	$4,177,871
$45,389,277	$44,855,192

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 5.25%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Ju
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%	
Yearly CAPEX Spend	$13,932,876	$20,253,106	$71,106,527	$85,551,641	$177,415,631	$56,740,219	
Book Value of Capital	$13,932,876	$34,185,982	$105,292,509	$190,844,150	$368,259,781	$425,000,000	$406,491,
Non-Indexed NRR							$10,
Indexed NRR							$2,
Total NRR							$12,
REVENUES = CSP							$77,407,
OPEX							$29,000,
EBITDA							$48,407,
Depreciation (Capital Cost Allowance)							$18,508,
Taxes Payable							$7,474,
Total Cash Flow	($13,932,876)	($20,253,106)	($71,106,527)	($85,551,641)	($177,415,631)	($56,740,219)	$40,932,

NRR	**$12,901**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$66,223,624
XIRR	6.58%

GoalSeek NRR for Target K-W NPV Based on Target OGS NPV

Christine Lafleur

From: Michael Killeavy
Sent: Saturday, March 19, 2011 8:32 PM
To: Susan Kennedy; Smith, Elliot; Anshul Mathur
Cc: Deborah Langelaan; gene.meehan@nera.com; safouh@smsenergy-engineering.com
Subject: TCE Matter - OPA Counter-Proposal NRR Model ....
Attachments: OPA Counter-Proposal NRR Model 19 Mar 2011 v2 Wintel.xls

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

Some of you were having trouble with the VBA macro. I wrote it on a MacBook Pro using MS Office for Mac 2011. I am attaching a version of the spreadsheet that has been tested on a Wintel notebook running MS-Windows 7 and MS-Office 2010. You may need to turn off the security feature that disables macros on your security options. If it still doesn't work you'll just need to manually use the GoalSeek function from the command toolbar to solve for the NPV by changing NRR, i.e., pick the NPV cell, enter the target NPV , and the NRR cell to change. I apologize for any confusion all this may have caused.

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

Please recall that we explained that TransCanada expects to receive a 9% unlevered after-tax IRR on these projects. We then use our cost of capital to calculate an NPV.

I understand the OPA's counter offer will include a premium over a typical return on the Cambridge plant itself. We would consider a 9% IRR as consistent with a typical return. The premium from OGS would therefore need to be above that rate. For clarity, we do NOT expect to earn a typical return on Cambridge AND our full return from OGS - the two are not additive.

We continue to believe the compromise on NPV tabled by Alex in his discussion with Colin represents a fair and equitable compromise that would compensate TransCanada for building Cambridge and includes a discount to the full OGS value.

Finally, I am hoping that the counter offer we will receive on the 28th will be a mix of NRR and Value Propositions. To avoid any chance of misunderstanding I am hoping you can also tell us what return you are offering - that is, what proportion of the NPV of OGS is assumed to be included in your counter.

I'd be happy to talk this afternoon before you leave or anytime next week to discuss further.

Thanks,
Terry

Christine Lafleur

From: JoAnne Butler
Sent: Friday, March 18, 2011 3:54 PM
To: Michael Killeavy; Deborah Langelaan; Anshul Mathur; Kevin Dick; Susan Kennedy
Subject: FW: Update

FYI. I will want to know how all of these are addressed in our proposal.

Michael, I may call you at the end of next week to see how things have gone.

Good luck!

JCB

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

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

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

-----Original Message-----
From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Viernes, 18 de Marzo de 2011 03:41 p.m.
To: JoAnne Butler
Cc: Brandon Anderson
Subject: Update

Hi JoAnne,

I talked to Brandon and Jordan this morning after Jordan's call with Anshul. It sounded like the call went well overall, but there were a few points that needed further clarification.

O&M: our O&M estimate (the $29 million in our assumption sheet) included GD&M charges. I don't think Anshul's estimate included this cost. Perhaps it would be most expedient to exclude those costs for now which is one of the value propositions given in our proposal. This is another item that "will be what it will be" and we can figure out how to deal with it later (in a Value Proposition or otherwise).

Timing: Given the assumption that TransCanada is receiving the sunk costs to date as a lump sum, we are looking into the timing assumption in the model to ensure we are handling this correctly. We will send a further email to the team once we've clarified this in our analysis.

There seemed to be some confusion between our expected IRR (9%) and our cost of capital (5.25%). Perhaps we misunderstood Anshul, but he seemed to say that your calculation of NRR was made using our cost of capital. If that is true, your resulting NRR will result in payments to TC that just repay our cost of capital, but not any return premium. Perhaps you can look into this and let me know if we need to focus on this further.

Christine Lafleur

From: Susan Kennedy
Sent: Monday, March 21, 2011 9:52 AM
To: Robert Godhue
Attachments: FW: Update; TCE Matter - OPA Counter-Proposal NRR Model ....; TCE Matter - Analysis of TCE Purported Value Propositions ...; TCE Matter - OPA Counter-Proposal NRR Model ....

Please print.

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

you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

From: JoAnne Butler
Sent: February 24, 2011 11:16 AM
To: 'Terry Bennett'
Cc: John Cashin; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Subject: RE: FIPPA designation letter

Terry, I talked with Michael and Susan...yes, please carry on with John talking directly to Susan on this.

Thanks...

JCB

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

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

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

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Jueves, 24 de Febrero de 2011 10:46 a.m.
To: JoAnne Butler
Cc: John Cashin
Subject: FIPPA designation letter

JoAnne, we were thinking it may be more efficient to have John Cashin talk to Susan Kennedy on the FIPPA designation letter so they can deal with it directly. We are hoping to be able to cover not just the proposal we shared with you today, but the next draft of the Implementation Agreement and possibly a draft of Alex's letter to Colin. As discussed, we hope to send those items to you over the next week or so.

Let me know it you agree and if so, John will call Susan.

Regards,

Terry

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.

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

What I wanted to discuss with you is how best to handle some documents that would be circulated in a few weeks. In particular, there would be a letter from TCE to Colin, cc'd to the Ministry of Energy, setting out our proposal (including pricing); we will probably provide the OPA with a draft before formally issuing. Both the letter and draft would need to be designated.
In addition, we will be revising the draft Implementation Agreement to incorporate our proposal, including pricing. We'd like to be able to designate the draft IA as well as future drafts and, when and if executed, the final, executed IA.
I'd like to discuss how to best handle these designations.
Regards,

John Cashin
TransCanada

403-920-2157

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Thursday, February 24, 2011 09:37 AM
To: John Cashin
Subject: RE: FIPPA designation letter

I'm in and out of meetings – in one now, in fact.

If you provide a list of the records you are looking to have designated, I can have a look and call you with questions, if any, and sort out finalization.

It will also allow me to start the process. I'm confident of CEO access today and tomorrow. As far as I know he is around next week as well.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: John Cashin [mailto:john_cashin@transcanada.com]
Sent: February 24, 2011 11:33 AM
To: Susan Kennedy
Subject: Re: FIPPA designation letter

Susan - are you available to chat by phone to discuss what we are considering? If so, what is your phone number?

Regards,

John Cashin
TransCanada

403-920-2157

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Thursday, February 24, 2011 09:20 AM
To: John Cashin
Cc: Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>; Terry Bennett
Subject: RE: FIPPA designation letter

I just need a description of the document/documents that are intended to be covered by the designation.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, March 02, 2011 4:33 PM
To: 'John Cashin'
Cc: 'John Mikkelsen'; Deborah Langelaan; Michael Killeavy; Robert Godhue
Subject: RE: FIPPA designation letter

Sorry for the delayed response.

Where I believe we are at is that we have, most recently done designations (both on February 24th) for:

1. TransCanada Potential Project Pricing and Terms Proposal designated as Schedule B1, B2, and B3 and Schedule C all dated February 24, 2011 and any and all amendments and updates thereto or any amended version thereof.

2. TransCanada Oakville Generating Station Development Cost Summary – Development Phase/Volume 1/Project 2067945/February 24, 2011

3. TransCanada Oakville Generating Station Development Cost Summary – Implementation Phase/Volume 2/Project 2116164 /February 24, 2011

That leaves (in the foreseeable future/near term), designations for:

1. There would be a letter from TCE to Colin, cc'd to the Ministry of Energy, setting out our proposal (including pricing); we will probably provide the OPA with a draft before formally issuing. Both the letter and draft would need to be designated.
2. Draft Implementation Agreement to incorporate our proposal, including pricing. We'd like to be able to designate the draft IA as well as future drafts and, when and if executed, the final, executed IA.

With respect to the next documents, I would suggest essentially the same approach as was taken re the "TransCanada Potential Project Pricing and Terms Proposal" – describe the document – starting with the relevant draft and include and updates, amendments, future drafts, etc. of the document in the designation.

The drafts will need to be described.

On the Implementation Agreement, I'm content to either designate more generally – i.e. describing the draft and either expressly or by implication starting with the original draft (which according to my records is January 24, 2011) or begin with the draft (draft dated "XXX, 2011") that contains the pricing information.

If you need to speak, please contact Robert Godhue (he is cc'd on this email) and he will find a time that works.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: John Cashin [mailto:john_cashin@transcanada.com]
Sent: February 24, 2011 12:01 PM
To: Susan Kennedy
Cc: John Mikkelsen
Subject: Re: FIPPA designation letter

Thanks Susan. I believe that John Mikkelsen will be calling Deb to discuss designating some material regarding pricing for the Cambridge project that was shown to Joanne this morning, as well as the back-up material for the Oakville sunk costs, which will be ready this week.

Christine Lafleur

From: Susan Kennedy
Sent: Tuesday, March 01, 2011 12:43 PM
To: Michael Lyle
Subject:

has b

1. The joint policy statement refers to "possible" claims. The A&B memo uses the term "potential", I've assumed they mean "possible" when they say "potential".

2.

3.

ority.	

CLAIMS/POTENTIAL CLAIMS	
Southwest GTA Clean Energy Supply ("CES") Contract between Transcanada Energy Ltd. ("TEL") and Ontario Power Authority dated December 19, 2008.	Potential liability for OPA by giving notice that it does not intend to proceed with the CES Contract. Extent of liability can only be approximated as actual amount of damages or the value of a settlement

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Lyle
Sent: February 28, 2011 2:02 PM
To: Susan Kennedy
Subject ms

2. We will make reference to TCE consistent with Oslers response.

n it.

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

From: Jonathan Laski [mailto:jlaski@airdberlis.com]
Sent: February 16, 2011 4:37 PM
To: Michael Lyle
Subject: Audit Inquiry - List of potential claims

Michael,

I have been working with Ron Clark to put together our list of potential claims for our response to the OPA's audit inquiry.

Attached you will find our draft list of potential claims based on our review. Please confirm that these can be included in our reply letter to you and the auditors.

Thank you,
Jonathan

Jonathan Laski

T 416.865.4638
F 416.863.1515
E jlaski@airdberlis.com

Brookfield Place • 181 Bay Street
Suite 1800 • Box 754
Toronto ON • M5J 2T9 • Canada
www.airdberlis.com

AIRD & BERLIS LLP
Barristers and Solicitors

ONTARIO
POWER AUTHORITY

ONTARIO POWER AUTHORITY
Designation Pursuant To Section 25.13(3) of the *Electricity Act, 1998*

Article I. Authority for Designation

Section 1.01 Section 25.13(3) of the *Electricity Act, 1998* provides that a record that is designated by the Ontario Power Authority as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Article II. Effect of Designation

Section 2.01 Section 17(1)(a) of the *Freedom of Information and Protection of Privacy Act* provides that a head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to, prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Section 2.02 The undersigned is the designated head of the Ontario Power Authority pursuant to Regulation made under the *Freedom of Information and Protection of Privacy Act* (R.R.O. 1990, Regulation 460).

Article III. Designation

The following record**[s]** is **[are]** hereby designated pursuant to section 25.13(3) of the *Electricity Act, 1998*:

> TransCanada Potential Project Pricing and Terms Proposal designated as Schedule B1, B2, and B3 and Schedule C, all dated February 24, 2011 and any and all amendments and updates thereto or any amended version thereof.

DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

Cc: John Cashin
Subject: TransCanada- Oakville Costs - Request for designation as confidential

Dear Deborah,

I spoke with John Cashin and we would like to have the Ontario Power Authority designate the materials to be provided to the OPA as substantiation of our costs in the development of the Oakville project as confidential pursuant to Section 25.13(3) of the Electricity Act. There are two volumes of materials.

TransCanada Oakville Generating Station Development Cost Summary - Development Phase Volume 1
Project 2067945 February 24, 2011
TransCanada Oakville Generating Station Development Cost Summary - Implementation Phase Volume 2
Project 2116164 February 24, 2011

It is our intention to provide you with one hard copy of each binder.
Please let me know if this description is sufficient for the purpose of designation.

Thank you,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

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.

Dear Deborah,

Thank you for the designation letter. I should have the Oakville project material over to you shortly.

I understand that our Terry Bennett and Brandon Anderson met with JoAnne Butler this morning to discuss the TransCanada NRR Proposal.
In order for us to provide the NRR proposal material that was discussed in written form we would like to have the Ontario Power Authority also designate the materials as confidential pursuant to Section 25.13(3) of the Electricity Act. The description of the proposal document is as follows:

"TransCanada Potential Project Pricing and Terms Proposal designated as Schedule B1, B2, and B3 and Schedule C all dated February 24, 2011 and as amended from time to time"

Please let me know if this description is sufficient for the purpose of designation.

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Thursday, February 24, 2011 1:15 PM
To: John Mikkelsen
Cc: John Cashin; Michael Killeavy
Subject: RE: TransCanada- Oakville Costs - Request for designation as confidential

John;

Please find attached OPA's letter designating the documents identified below as confidential pursuant to Section 25.3(3) of the Electricity Act.

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 24, 2011 11:58 AM
To: Deborah Langelaan

Christine Lafleur

From:	Susan Kennedy
Sent:	Thursday, February 24, 2011 5:55 PM
To:	John Zych
Subject:	FW: TransCanada- Oakville Costs - Request for designation as confidential
Attachments:	MISC_110224 _FIPPADesignation_TransCanadaPotentialProjectPricingandTermsProposal.pdf

And another one. Filed:

L:\Freedom of Information and Protection of Privacy Act Requests\Designations Under Electricity Act\TransCanada_Southwest GTA (Oakville Generating Station)\MISC_110224_FIPPADesignation_TransCanadaPotentialProjectPricingandTermsProposal.pdf

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: February 24, 2011 5:53 PM
To: Deborah Langelaan
Cc: Michael Killeavy
Subject: RE: TransCanada- Oakville Costs - Request for designation as confidential

But wait ... there's more ...

Just so we're clear, neither Colin nor I are willing to do another one of these for at least an hour...

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: February 24, 2011 4:09 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada- Oakville Costs - Request for designation as confidential

Susan;

In John Mikkelsen's e-mail below he has provided the description of the additional materials they would like designated confidential under the Electricity Act. Please let me know if you require more detail.

Thanks,
Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 24, 2011 2:50 PM
To: Deborah Langelaan
Cc: John Cashin; Michael Killeavy
Subject: RE: TransCanada- Oakville Costs - Request for designation as confidential

but the next draft of the Implementation Agreement and possibly a draft of Alex's letter to Colin. As discussed, we hope to send those items to you over the next week or so.

Let me know it you agree and if so, John will call Susan.

Regards,

Terry

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.

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From: John Cashin [mailto:john_cashin@transcanada.com]
Sent: February 24, 2011 11:33 AM
To: Susan Kennedy
Subject: Re: FIPPA designation letter

Susan - are you available to chat by phone to discuss what we are considering? If so, what is your phone number?

Regards,

John Cashin
TransCanada

403-920-2157

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Thursday, February 24, 2011 09:20 AM
To: John Cashin
Cc: Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>; Terry Bennett
Subject: RE: FIPPA designation letter

I just need a description of the document/documents that are intended to be covered by the designation.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: JoAnne Butler
Sent: February 24, 2011 11:16 AM
To: 'Terry Bennett'
Cc: John Cashin; Michael Killeavy; Susan Kennedy; Deborah Langelaan
Subject: RE: FIPPA designation letter

Terry, I talked with Michael and Susan...yes, please carry on with John talking directly to Susan on this.

Thanks...

JCB

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

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

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

From: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: Jueves, 24 de Febrero de 2011 10:46 a.m.
To: JoAnne Butler
Cc: John Cashin
Subject: FIPPA designation letter

JoAnne, we were thinking it may be more efficient to have John Cashin talk to Susan Kennedy on the FIPPA designation letter so they can deal with it directly. We are hoping to be able to cover not just the proposal we shared with you today,

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, February 24, 2011 1:02 PM
To: 'John Cashin'
Cc: 'John Mikkelsen'; Deborah Langelaan
Subject: RE: FIPPA designation letter

Short term issue dealt with – designation signed and sent to Deb.

I'm a bit jammed up today, and cannot deal with the slightly longer term [which I do understand is still near term] designations. I will have my assistant arrange a time for a call.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: John Cashin [mailto:john_cashin@transcanada.com]
Sent: February 24, 2011 12:01 PM
To: Susan Kennedy
Cc: John Mikkelsen
Subject: Re: FIPPA designation letter

Thanks Susan. I believe that John Mikkelsen will be calling Deb to discuss designating some material regarding pricing for the Cambridge project that was shown to Joanne this morning, as well as the back-up material for the Oakville sunk costs, which will be ready this week.
What I wanted to discuss with you is how best to handle some documents that would be circulated in a few weeks. In particular, there would be a letter from TCE to Colin, cc'd to the Ministry of Energy, setting out our proposal (including pricing); we will probably provide the OPA with a draft before formally issuing. Both the letter and draft would need to be designated.
In addition, we will be revising the draft Implementation Agreement to incorporate our proposal, including pricing. We'd like to be able to designate the draft IA as well as future drafts and, when and if executed, the final, executed IA.
I'd like to discuss how to best handle these designations.
Regards,

John Cashin
TransCanada

403-920-2157

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Thursday, February 24, 2011 09:37 AM
To: John Cashin
Subject: RE: FIPPA designation letter

I'm in and out of meetings – in one now, in fact.

If you provide a list of the records you are looking to have designated, I can have a look and call you with questions, if any, and sort out finalization.

It will also allow me to start the process. I'm confident of CEO access today and tomorrow. As far as I know he is around next week as well.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

ONTARIO POWER AUTHORITY

ONTARIO POWER AUTHORITY
Designation Pursuant To Section 25.13(3) of the *Electricity Act, 1998*

Article I. Authority for Designation

Section 1.01 Section 25.13(3) of the *Electricity Act, 1998* provides that a record that is designated by the Ontario Power Authority as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Article II. Effect of Designation

Section 2.01 Section 17(1)(a) of the *Freedom of Information and Protection of Privacy Act* provides that a head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to, prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Section 2.02 The undersigned is the designated head of the Ontario Power Authority pursuant to Regulation made under the *Freedom of Information and Protection of Privacy Act* (R.R.O. 1990, Regulation 460).

Article III. Designation

The following records are hereby designated pursuant to section 25.13(3) of the *Electricity Act, 1998*:

1. TransCanada Oakville Generating Station Development Cost Summary – Development Phase/Volume 1/Project 2067945/February 24, 2011

2. TransCanada Oakville Generating Station Development Cost Summary – Implementation Phase/Volume 2/Project 2116164 /February 24, 2011

DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

ONTARIO POWER AUTHORITY

ONTARIO POWER AUTHORITY
Designation Pursuant To Section 25.13(3) of the *Electricity Act, 1998*

Article I. Authority for Designation

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DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

I spoke with John Cashin and we would like to have the Ontario Power Authority designate the materials to be provided to the OPA as substantiation of our costs in the development of the Oakville project as confidential pursuant to Section 25.13(3) of the Electricity Act. There are two volumes of materials.

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Project 2067945 February 24, 2011
TransCanada Oakville Generating Station Development Cost Summary - Implementation Phase Volume 2
Project 2116164 February 24, 2011

It is our intention to provide you with one hard copy of each binder.
Please let me know if this description is sufficient for the purpose of designation.

Thank you,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, February 24, 2011 12:58 PM
To: John Zych
Subject: FW: TransCanada- Oakville Costs - Request for designation as confidential
Attachments: MISC_110224_FIPPADesignation_DevelopmentCostSummary.pdf

FYI. Have filed:

L:\Freedom of Information and Protection of Privacy Act Requests\Designations Under Electricity Act\TransCanada Southwest GTA (Oakville Generating Station)\MISC 110224 FIPPADesignation DevelopmentCostSummary.pdf

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: February 24, 2011 12:56 PM
To: Deborah Langelaan
Cc: Michael Killeavy
Subject: RE: TransCanada- Oakville Costs - Request for designation as confidential

There you go.

Remember to put the appropriate "legend" on any paper copies and if you get soft copies (that don't have a legend on the soft copy) – ensure file gets marked as FIPPA designated for future reference.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: February 24, 2011 12:26 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada- Oakville Costs - Request for designation as confidential

Susan;

Below is another TCE request to have documents designated as confidential. Do you require more information than has been provided?

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: February 24, 2011 11:58 AM
To: Deborah Langelaan
Cc: John Cashin
Subject: TransCanada- Oakville Costs - Request for designation as confidential

Dear Deborah,

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DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
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Christine Lafleur

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Susan H. Kennedy
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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 |

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It is our intention to provide you with one hard copy of each binder.
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Thank you,

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, February 24, 2011 12:35 PM
To: Deborah Langelaan
Cc: Michael Killeavy
Subject: RE: TransCanada- Oakville Costs - Request for designation as confidential

Ahh, finally the list I've been asking John Cashin for all morning.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: February 24, 2011 12:26 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada- Oakville Costs - Request for designation as confidential

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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 |

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Project 2116164 February 24, 2011

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Please let me know if this description is sufficient for the purpose of designation.

Thank you,

John Mikkelsen, P.Eng.

capacity of [redacted] in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with negotiations in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

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It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

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February~~January~~ , 2011

Mr. Colin Andersen
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Ontario Power Authority
Suite 1600
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Christine Lafleur

From: Susan Kennedy
Sent: Tuesday, February 22, 2011 9:45 AM
To: 'Calwell, Carolyn (MEI)'
Subject: RE: KWC Directive - Suggested Revisions - Just caught a typo
Attachments: MISC_110222_KWC TransCanada Direction.docx

Carolyn,

My apologies - just caught a typo in draft I sent over on Friday (eventually I will become less of a dinosaur and better at working just off a screen; however, apparently, not quite yet).

Typo correction is highlighted in green.

Regards,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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Director, Contract Management
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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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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

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Sent: Fri 04-Feb-11 9:18 AM
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Subject: Latest Attempt at Directive

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Ontario Power Authority

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E: susan.kennedy@powerauthority.on.ca
<mailto:susan.kennedy@powerauthority.on.ca>

Other option is "up to 500 MW".

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Legal, Aboriginal & Regulatory Affairs
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Fax: 416.969.6383
Email: michael.lyle@powerauthority.on.ca

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Subject: RE: Latest Attempt at Directive

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capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

February~~January~~ , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of ~~approximately 450~~up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

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Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant-with contract

Ontario Power Authority

T: 416-969-6054

F: 416-969-6383

E: susan.kennedy@powerauthority.on.ca <mailto:susan.kennedy@powerauthority.on.ca>

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416-969-6288 (office)

Sent: February 16, 2011 9:31 AM
To: Susan Kennedy
Subject: FW: SMS Contract

Susan,

Sorry to burden you with another question, but I need your advice. SMS Energy has prepared a preliminary cost estimate for the K-W Peaking Plant. It is a bit rough, with lots of caveats, however, it's the best we have to date. It is considerably less than the cost estimate referred to by TCE. JoAnne wants to share it with TCE to try to see if we can bridge the gap. SMS Energy doesn't want us to share it with TCE. My position is that the estimate that was prepared for us is Newly Created Intellectual Property as set out in s. 7(b) and we can share it with TCE if we so desire since we own the intellectual property. Am I interpreting the OPA's rights correctly?

Michael

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Subject: SMS Contract

The message is ready to be sent with the following file or link attachments:

SMS_Contract_20101001

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, February 16, 2011 5:51 PM
To: Michael Killeavy
Subject: Re: SMS Contract

No worries. I had a look at the contract, and, unless there is a nuance I'm missing, we own any IP we paid for (so unless he did the report for free), he sold us the copyright.

----- Original Message -----
From: Michael Killeavy
Sent: Wednesday, February 16, 2011 05:46 PM
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Subject: Re: SMS Contract

You may now stand down. We've reached a compromise solution.

I will ask everyone to be more diligent in reviewing consultant materials for such disclaimers in future so we (and you) aren't jammed like this again. I conveyed my displeasure at seeing something like this disclaimer and that in my opinion it was contrary to the letter, intent, and spirit of the agreement. I think he got the point I was making.

Again, I apologize for the last minute rush on this, but we had to send something to TCE today.

Michael

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Director, Contract Management
Ontario Power Authority
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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

----- Original Message -----
From: Susan Kennedy
Sent: Wednesday, February 16, 2011 11:52 AM
To: Michael Killeavy
Subject: RE: SMS Contract

Having a day - can this wait until tomorrow -- I can look on train tonight if necessary but I'm back to back until end of day.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Michael

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

-----Original Message-----
From: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

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Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

Ontario Power Authority

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E: susan.kennedy@powerauthority.on.ca
<mailto:susan.kennedy@powerauthority.on.ca>

Other option is "up to 500 MW".

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

-----Original Message-----
From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

I specifically asked Susan to include Contract Capacity of 450 MW but based on yesterday's discussions it looks like we need a little wiggle room. Perhaps the language could be "approximately 450 MW".

Deb

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

-----Original Message-----
From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

Could we mention the nameplate capacity of instead of referring to the Contract Capacity, or not mention capacity at all? We may need some flexibility in this regard as we go forward with TCE.

Is it possible to mention the 7 October 2010 letter from the OPA to TCE in the last sentence on the second page,e.g., "... to reprofile investments already made by TransCanada and minimize overall costs in the context of the 7 October 2010 letter from the OPA to TransCanada"? I am thinking that we need something that links that letter's commitment to the negotiations, otherwise why are we doing it.

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Further to the below, attached is my "later [and greater, hopefully] attempt at a KWC Directive that might meet MEI and OPA needs if not wants).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: JoAnne Butler
Sent: February 4, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; ''; ''
Subject: RE: Latest Attempt at Directive

Yes, that could work - it would need to be changed in both background and directive paragraph. I am comfortable with the other red lines that Susan made....

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

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

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

-----Original Message-----
From: Michael Killeavy
Sent: Viernes, 04 de Febrero de 2011 01:34 p.m.
To: Michael Lyle; Deborah Langelaan; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Sure, up to 500 MW is good.

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

-----Original Message-----
From: Michael Lyle
Sent: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, February 16, 2011 5:20 AM
To: 'rsebastiano@osler.com'; Deborah Langelaan
Cc: Michael Killeavy; 'esmith@osler.com'
Subject: Re: Latest Attempt at Directive

That might even be more palatable "up the street". I'll make the suggested change and punt it over. Thanks

----- Original Message -----
From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, February 15, 2011 07:33 PM
To: Deborah Langelaan
Cc: Michael Killeavy; Susan Kennedy; Smith, Elliot <ESmith@osler.com>
Subject: RE: Latest Attempt at Directive

Paul suggested deleting the words "settlement discussions" and replacing with the word "negotiations". With this change, the sentence would read as follows:

"To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with negotiations in respect of the mutual termination of the contract for the Oakville Generating Station..."

Thanks, Rocco

-----Original Message-----
From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Tuesday, February 15, 2011 9:50 AM
To: Sebastiano, Rocco
Cc: Michael Killeavy
Subject: FW: Latest Attempt at Directive

Rocco;

Do you have any comments on the latest version of the Directive? I recall you mentioning a concern with the "settlement discussions"
language.

Deb

Deborah Langelaan | Manager, Natural Gas Projects|OPA | Suite 1600 - 120 Adelaide St. W. |
Toronto, ON M5H 1T1 |
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deborah.langelaan@powerauthority.on.ca |

-----Original Message-----
From: Susan Kennedy
Sent: February 8, 2011 9:31 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Deborah Langelaan; ''; ''
Subject: RE: Latest Attempt at Directive

Privileged and Confidential (Solicitor and Client Privilege)

(c) Contract conditions related to the construction of a new clean energy facility stipulate that the OPA is contingently liable to repay upgrade costs, up to a maximum of $1,000, as incurred by the energy supplier. While none of these costs have been incurred to date, the OPA is liable to cover such costs over a 20-year period ending in 2025. As at December 31, 2010, management is not aware of any information to suggest that these upgrade costs will be incurred by the supplier.

Thanks,

Bonny Wong, CA| **Manager, Accounting| Business Strategies and Solutions**
ONTARIO POWER AUTHORITY
Direct Phone: (416) 969-6403| Main Phone: (416) 967-7474| Fax: (416) 967-1947
Email: bonny.wong@powerauthority.on.ca
Address: Suite 1600, 120 Adelaide Street West, Toronto, Ontario M5H 1T1
Website: www.powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, February 09, 2011 5:24 AM
To: Bonny Wong
Cc: Terry Gabriele
Subject: Re: Notes to financial statements

I have no comments. Please note that I am aware of the TCE matter (b), so my "no comment" is iformed by that knowledge. I have no idea as to what contract(s) paragraph (c) refers to, so my "no comment" is an uninformed one.

From: Bonny Wong
Sent: Tuesday, February 08, 2011 03:28 PM
To: Susan Kennedy
Cc: Terry Gabriele
Subject: Notes to financial statements

Hi Susan,

Hope you are doing well! I forward the KPMG's revised contingencies note to financial statements for your review. Please let me know if you have any comments.

Contingencies:

(a) In the normal course of its operations, the OPA becomes involved in various legally binding agreements. Some of these agreements contain potential liabilities that may become actual liabilities when one or more future events occur or fail to occur. To the extent that a future event becomes likely to occur or fails to occur, and a reasonable estimate of the loss can be made, an estimated liability will be accrued and the expense recorded on the OPA's financial statements. As at December 31, 2010 in the opinion of management, no such liabilities exist.

(b) In October 2009, the OPA signed a contract with TransCanada Energy Ltd. to design, build and operate a 900 megawatt (MW) electricity generating station in Oakville over a 20-year term. As a result of the cancellation of this natural gas plant at the direction of the Ministry of Energy of Ontario during October 2009, the OPA may be contingently liable under the original contract. At this time, any potential settlement amount is undeterminable.

capacity of 450MW in the KWC Area to address the reliability needs described above, including the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

February~~January~~ , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of ~~approximately 450~~up to 500 MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

Formatted: Highlight

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada the termination of the contract for the Oakville Generating Station and a project that would meet the KWC Area supply requirement.

Formatted: Highlight

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant–with contract

Ontario Power Authority

T: 416-969-6054

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E: susan.kennedy@powerauthority.on.ca <mailto:susan.kennedy@powerauthority.on.ca>

Could we mention the nameplate capacity of instead of referring to the Contract Capacity, or not mention capacity at all? We may need some flexibility in this regard as we go forward with TCE.

Is it possible to mention the 7 October 2010 letter from the OPA to TCE in the last sentence on the second page,e.g., "... to reprofile investments already made by TransCanada and minimize overall costs in the context of the 7 October 2010 letter from the OPA to TransCanada"? I am thinking that we need something that links that letter's commitment to the negotiations, otherwise why are we doing it.

Michael

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

-----Original Message-----
From: Susan Kennedy
Sent: Fri 04-Feb-11 9:18 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive

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Attached is my latest attempt at a KWC Directive that might meet MEI and OPA needs (if not wants).

All input welcome and appreciated.

Susan H. Kennedy

Director, Corporate/Commercial Law Group

416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

-----Original Message-----
From: Michael Lyle
Sent: Fri 04-Feb-11 1:28 PM
To: Deborah Langelaan; Michael Killeavy; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Other option is "up to 500 MW".

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

-----Original Message-----
From: Deborah Langelaan
Sent: February 4, 2011 1:28 PM
To: Michael Killeavy; Susan Kennedy; Michael Lyle; JoAnne Butler; ;
Subject: RE: Latest Attempt at Directive

I specifically asked Susan to include Contract Capacity of 450 MW but based on yesterday's discussions it looks like we need a little wiggle room. Perhaps the language could be "approximately 450 MW".

Deb

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

-----Original Message-----
From: Michael Killeavy
Sent: February 4, 2011 1:20 PM
To: Susan Kennedy; Michael Lyle; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: RE: Latest Attempt at Directive

Christine Lafleur

From: Susan Kennedy
Sent: Tuesday, February 08, 2011 9:31 AM
To: JoAnne Butler; Michael Killeavy; Michael Lyle; Deborah Langelaan; "; "
Subject: RE: Latest Attempt at Directive
Attachments: KWC TransCanada Direction 26 01 2011 cln - OPA Comments_110204v2.docx

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Further to the below, attached is my "later [and greater, hopefully] attempt at a KWC Directive that might meet MEI and OPA needs if not wants).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: JoAnne Butler
Sent: February 4, 2011 1:59 PM
To: Michael Killeavy; Michael Lyle; Deborah Langelaan; Susan Kennedy; ''; ''
Subject: RE: Latest Attempt at Directive

Yes, that could work - it would need to be changed in both background and directive paragraph. I am comfortable with the other red lines that Susan made....

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

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

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

-----Original Message-----
From: Michael Killeavy
Sent: Viernes, 04 de Febrero de 2011 01:34 p.m.
To: Michael Lyle; Deborah Langelaan; Susan Kennedy; JoAnne Butler; ''; ''
Subject: RE: Latest Attempt at Directive

Sure, up to 500 MW is good.

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

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25: Interrogatories received from Intervenors, distributed to authors immediately

February 1: Your responses due to Regulatory Affairs

February 2-3: Regulatory and Legal review, some further edits by authors may be required

February 4: Mike Lyle review; some further edits may be required. Submit full package to Colin for review

February 7: Colin's comments received, some further edits may be required

February 8: Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais
Sent: January 25, 2011 1:53 PM
To: Martha McOuat
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Anna

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy
Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

From: Martha McOuat
Sent: January 25, 2011 2:08 PM
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka
Cc: Michael Lyle; Anna LeBourdais
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

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

-----Original Message-----
From: Martha McOuat
Sent: Thu 03-Feb-11 5:04 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy
Sent: February 2, 2011 4:51 PM
To: Anna LeBourdais
Cc: Martha McOuat; Miriam Heinz
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: February 4, 2011 8:30 AM
To: Martha McOuat; Susan Kennedy
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

Thank you,
Michael

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

Christine Lafleur

From: Susan Kennedy
Sent: Friday, February 04, 2011 10:09 AM
To: Martha McOuat
Subject: RE: BOARD STAFF IR I-1-21

I would translate his response as "go with MK's original response".

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Martha McOuat
Sent: February 4, 2011 9:41 AM
To: Michael Lyle; Susan Kennedy; Michael Killeavy
Cc: JoAnne Butler; Karen Frecker
Subject: RE: BOARD STAFF IR I-1-21

So I'll go with MK's original response?

-----Original Message-----
From: Michael Lyle
Sent: February 4, 2011 9:38 AM
To: Susan Kennedy; Michael Killeavy; Martha McOuat
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21

I would prefer to avoid answering the question directly. There is also an argument that the directive was spent once we executed the original contract with TCE.

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

-----Original Message-----
From: Susan Kennedy
Sent: February 4, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle

the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should, if it deems appropriate, combine such negotiations with settlement discussions in respect of the mutual termination of the contract for the Oakville Generating Station, looking for opportunities to reprofile investments already made by TransCanada and minimize overall costs.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

February~~January~~ , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project –that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant–with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

Christine Lafleur

From: Susan Kennedy
Sent: Friday, February 04, 2011 9:19 AM
To: Michael Lyle; Michael Killeavy; Deborah Langelaan; JoAnne Butler; 'rsebastiano@osler.com'; 'ESmith@osler.com'
Subject: Latest Attempt at Directive
Attachments: KWC TransCanada Direction 26 01 2011 cln - OPA Comments_110204v1.docx

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All input welcome and appreciated.

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

Please call me as soon as possible if you have concerns with the questions that have been assigned to you. If there are some in particular that you feel require legal input we have arranged a meeting with our legal counsel for the 26th to advise us early in the process so you can incorporate this into your draft.

As you can see below, we are working on very tight timelines. I will forward others as soon as they are received.

Our time lines are as follows:

January 25: Interrogatories received from Intervenors, distributed to authors immediately

February 1: Your responses due to Regulatory Affairs

February 2-3: Regulatory and Legal review, some further edits by authors may be required

February 4: Mike Lyle review; some further edits may be required. Submit full package to Colin for review

February 7: Colin's comments received, some further edits may be required

February 8: Responses filed with OEB

Please feel free to submit your responses to Regulatory Affairs as they are completed, rather than holding the whole package to the deadline date.

Your assistance with these is greatly appreciated.

From: Anna LeBourdais
Sent: January 25, 2011 1:53 PM
To: Martha McOuat
Subject:

Attached is the scanned version of the BOARD STAFF's interrogatories.

Cheers,

Michael,

Martha McOuat has asked me to forward this Interrogatory to you to complete. I've attached the template for that purpose.

Thank you,

Anna LeBourdais

From: Kevin Dick
Sent: January 25, 2011 6:31 PM
To: Martha McOuat; Michael Killeavy
Cc: Michael Lyle; Anna LeBourdais
Subject: RE:

Martha,

Interrogatory #21 (SWGTA questions) are best addressed by Michael Killeavy. I am unaware of the specific details of the current status of the SWGTA Contract and Oakville Generating Station.

Regards,

Kevin

From: Martha McOuat
Sent: January 25, 2011 2:08 PM
To: Beverly Nollert; Karen Frecker; Raegan Bond; Bryan Young; Sean Brady; Guy Raffaele; Marc Collins; Richard Duffy; Shawn Cronkwright; Kevin Dick; Michael Killeavy; Ruth Covich; Miriam Heinz; Ed Nelimarkka
Cc: Michael Lyle; Anna LeBourdais
Subject: FW:

Today is the deadline for intervenors to submit their interrogatories. I am attaching my handwritten triage sheet for Board Staff's IRs so you can see how they have been assigned. If your name is in the "Sent To" category, at least one of the 30 IRs contained has been assigned to you. Anna will send you templates to use for your responses shortly.

Thank you,
Michael

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

-----Original Message-----
From: Martha McOuat
Sent: Thu 03-Feb-11 5:04 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: BOARD STAFF IR I-1-21

Are you able to help out with this?

From: Michael Killeavy
Sent: February 2, 2011 4:51 PM
To: Anna LeBourdais
Cc: Martha McOuat; Miriam Heinz
Subject: Re: BOARD STAFF IR I-1-21

This is going to take a while to answer. I don't think I can answer (a) and I can't say much about (b) either.

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

From: Anna LeBourdais
Sent: Wednesday, February 02, 2011 04:44 PM
To: Michael Killeavy
Cc: Martha McOuat; Miriam Heinz
Subject: BOARD STAFF IR I-1-21

Christine Lafleur

From: Susan Kennedy
Sent: Friday, February 04, 2011 8:41 AM
To: Michael Killeavy; Martha McOuat
Cc: JoAnne Butler; Michael Lyle
Subject: RE: BOARD STAFF IR I-1-21

I concur with Michael's proposed response.

The only thing we should probably try to address is the following part of the question:

"What is the status of the August 18, 2008 directive?"

I would suggest modifying Michael's proposed response to (a), as follows:

(a) The August 18, 2008 directive remains in force. The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

Michael Lyle should check as to whether we are comfortable saying that. I considered, "The August 18, 2008 directive remains in force; however, the OPA anticipates that the directive will be rescinded by the Minister of Energy". I'm uncomfortable going there at this point but I, in turn, defer to Mike Lyle on this one.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: February 4, 2011 8:30 AM
To: Martha McOuat; Susan Kennedy
Cc: JoAnne Butler
Subject: RE: BOARD STAFF IR I-1-21
Importance: High

Martha,

I can answer most of questions, but not all. I defer to Susan or one of her colleagues to comment on the current status of the Oakville directive in answer to (a) I presume it still exists but is unfulfilled or frustrated as a result of the government's decision).

(a) The OPA has not yet finalized its plans for procuring supply in the SWGTA in the absence of the OGS contract. The Electricity Resources and Power System Planning divisions will be working on a plan to procure whatever supply is required in 2011;

(b) The OPA has entered into negotiations with TransCanada Energy to terminate the OGS contract on mutually satisfactory terms. Three staff have been deployed to negotiate the termination of the OGS contract. Performance will be measured in terms of limiting the cost to the ratepayer.

I hope this is alright. I recognize that it's not terribly detailed, but at this point in time we don't have a lot of detail and as the negotiations with TransCanada are ongoing, we need to be very mindful of what we say.

This enquiry is made in accordance with the Joint Policy Statement of January 1978 approved by The Canadian Bar Association and the Auditing Standards Committee of The Canadian Institute of Chartered Accountants.

Please address your reply, marked "Privileged and Confidential," to this company and send a signed copy of the reply directly to our auditors, KPMG LLP, Attention: Sandra Chiu via email at **schiu1@kpmg.ca**

Yours truly,

Michael Lyle

General Council and VP Legal
cc: KPMG LLP

ONTARIO POWER AUTHORITY

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F 416-967-1947
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Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON, M5X 1B8

Attention: Mr. Rocco Sebastiano

January 24, 2011

Dear Sir(s):

In connection with the preparation and audit of our financial statements for the fiscal period ended December 31, 2010, we have made the following evaluations of claims and possible claims with respect to which your firm's advice or representation has been sought:

Description	Evaluation
TransCanada and Ontario Power Authority - In light of the Ontario Government's announcement with respect to the Oakville Generating Station, that the gas plant in Oakville is no longer needed and the plant will not proceed, TransCanada and Ontario Power Authority (OPA) have begun discussions where both sides have mutually agree to terminate the contract and are in the process of discussing reasonable payments TransCanada is entitled to.	**Likelihood of loss is not determinable and the amount is not reasonably estimable.**

Need text for Greenfield South matter

Would you please advise us, as of February 2, 2011, on the following points:

(a) Are the claims and possible claims properly described?

(b) Do you consider that our evaluations are reasonable?

(c) Are you aware of any claims not listed above which are outstanding? If so, please include in your response letter the names of the parties and the amount claimed.

Contract to SMS for the purpose of providing consulting engineering services to the OPA on matters relating to the Contract;

8. All reports, summaries or any other work product derived from or containing confidential information from the Contract and prepared by or on behalf of the OPA must be clearly marked on its face with the following statement:

> "Highly Confidential: This record contains information provided to or obtained by the OPA and that is designated by the OPA as highly confidential and intended, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization."

9. When and if requested by TCE or MPS, all copies of the Contract shall be returned to TCE or MPS or destroyed by Osler and shall be confirmed in writing, provided that Osler shall not be required to return or destroy copies of the Contract while TCE and OPA are continuing to discuss and negotiate one or more potential alternative projects and configurations as set forth in paragraph 1 of the Letter Agreement between MPS and TCE dated November 19, 2010, and further provided that in any event Osler shall return or destroy the copies of the Contract by June 30, 2011, unless TCE and the OPA successfully enter into a definitive agreement in connection with the construction and operation of a replacement facility, in which case Osler may retain one copy of the Contract for its records.

Dated as of this 17th day of December, 2010.

ONTARIO POWER AUTHORITY

Per: ______________________________
Colin Andersen,
Chief Executive Officer

OSLER, HOSKIN & HARCOURT LLP

Per: ______________________________

ACKNOWLEDGEMENT

TO: MPS Canada, Inc. ("**MPS**")

AND TO: TransCanada Energy Inc. ("**TCE**")

RE: Equipment Supply Agreement NO. 6519 dated July 7, 2009 between MPS and TCE as amended by letter agreements dated October 29, 2010 and November 19, 2010, and as may be further amended form time to time, and any other proposal, information and technical specifications relating or ancillary thereto (the "**Contract**")

Whereas the Ontario Power Authority (the "**OPA**") has requested that it be permitted to review the Contract;

And Whereas MPS and TCE regard the Contract as containing highly confidential and proprietary information;

And Whereas the OPA has, effective December 14, 2010, designated the Contract pursuant to Section 25.13(3) of the *Electricity Act*, 1998 as confidential or highly confidential for the purposes of Section 17 of the *Freedom of Information and Protection of Privacy Act*;

Now Therefore, the undersigned acknowledge and agree as follows:

1. TCE shall deliver a copy of the redacted Contract to the OPA's outside counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), attention Mr. Rocco Sebastiano;

2. Except as contemplated herein, Osler shall keep the Contract confidential and shall protect the Contract against disclosure;

3. Osler and the OPA agree that no copy of the Contract shall be given, transmitted or otherwise provided to the OPA or any third party, except as expressly set forth below;

4. Osler shall ensure that each person who reviews or otherwise has access to the Contract complies with the terms of this Acknowledgement;

5. The OPA may only review the Contract at Osler's office, but shall not take, transmit or otherwise remove the Contract or any copy or part thereof from Osler's office;

6. Except as provided in paragraph 7 hereof, without the prior written consent of TCE and MPS, Osler and/or the OPA shall not disclose the Contract, any confidential information contained in the Contract or any report, summaries or any other work product derived from or containing information from the Contract, to any third party;

7. Provided that if SMS Energy Engineering Inc. ("**SMS**") has provided an acknowledgement substantially in the form hereof to MPS and TCE, Osler may disclose the Contract, any confidential information contained in the Contract or any report, summaries or any other work product derived from or containing information from the

Christine Lafleur

From: Susan Kennedy
Sent: Friday, February 04, 2011 8:21 AM
To: Michael Killeavy
Cc: Bonny Wong; Terry Gabriele; Michael Lyle
Subject: Financial Audit 2010 - Osler Audit Letter
Attachments: 20110204091233.pdf

Attached is the current Audit Letter for Oslers. I have confirmed that Rocco is fine re the TCE description. He mentioned Greenfield South when we were chatting, which I believe is the GCG matter.

I believe that the "evaluation" of the matter is the same as for TCE; however, I don't know enough about the matter to describe it. Can I trouble you to provide the text for the description (and the evaluation if you think something is more appropriate for GCG than what we said for TCE).

If you flip the text to me and Bonny Wong (cc'd on this letter). Finance will update the letter for signature by Michael Lyle

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

Thanks,

Deb

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

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, January 27, 2011 7:18 PM
To: Deborah Langelaan
Cc: Michael Lyle
Subject: RE: TCE Meeting

Hi Deb, Re the below, I just figured out we're playing a bit of broken telephone. JoAnne mentioned that you guys had a 9AM meeting set up with Rocco to discuss the "process letter" approach and she had hoped Mike and/or I could atttend.

Mike and I have a teleconference for 9:30 set up with Rocco to discuss a couple of matters but not, in fact, the actual directive [since I assume your info came from Rocco, he may have not completely understood what we wanted to discuss as we left him a somewhat cryptic voicemail]. Subject to Mike disagreeing, I don't want the participants expanded beyond Mike, myself and Rocco with respect to the scheduled 9:30 call.

As a result, I'm not completely sure if you guys have a 9AM meeting set up with Rocco [presumably in person] or not.

Here is the lay of the land, I can be in the office slightly after 9AM, I have a medical appointment for 8:30 which I can't really reschedule but it shouldn't take too long and is relatively close to office.

I can't speak to Mike's schedule.

Mike and I have a 9:30 teleconference on a different topic [although Rocco may have misunderstood the reason for the call] and a group session on that topic is really appropriate. I'd prefer not to have the 9:30 meeting hijacked but we can probably either start or finish on the process letter.

My blackberry is sitting on my desk, so I have some constraints on my email access until after 9AM tomorrow.

-----Original Message-----
From: Deborah Langelaan
Sent: Thu 1/27/2011 5:46 PM
To: Susan Kennedy
Subject: TCE Meeting

Susan;

We've just returned from a meeting with TCE where we discussed a novel approach to resolving the Directive issue. They suggested handling it in a similar fashion as we did for PEC where the OPA provided a Process Letter that contained Goreway's NRR as a benchmark and the Directive referenced the letter. That way sensitive commercial information was never made public through the Directive. I understand you are meeting with Rocco tomorrow morning to discuss the Directive and if you're okay we (JoAnne, Michael, me) would like to join you for the discussion. Please let me know if you're agreeable to this.

Subject: FW: Direction
Importance: High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

Susan,

I have been instructed to send you the attached as a courtesy. You will see significant editing from the version that you sent me. I have conveyed the messages that you conveyed to me about the OPA's requirements.

Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
Legal Services Branch
Ministry of the Attorney General
777 Bay Street, Suite 425
Toronto ON M5G 2E5
416.212.5409

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contract and the fast-start conversion; however, costs incurred on OGS (such as payments made to Ford for real property, demolition, contract cancellation, legal and other costs on the legal challenges to the municipal interim control by-law, etc...) are sunk costs which cannot be "reprofiled" for use on KWC or any other project. As such, the $33.6 million (unsubstantiated) costs which TCE has listed as "non-recoverable costs" for OGS would not be captured by this statement. Furthermore, the loss of the anticipated financial value of the contract for OGS (i.e., the alleged $503 million NPV that TCE has quoted) could not be characterized as an investment to be "reprofiled" but is an alleged damage flowing from the termination of the contract. To keep this in focus, what we are really talking about is the difference between the anticipated financial value of the OGS contract versus the anticipated financial value of the KWC contract (without any adjustment or "adder" for the OGS non-recoverable costs). It is this difference that TCE would want to recover as an adder to the NRR on the KWC contract, in addition to the adder for the OGS non-recoverable costs.

- Second paragraph under "Direction", not sure how to give legal meaning to "having regard to... the mutual termination of the contract for the Oakville Generation Project..." It could be interpreted simply to mean that by entering into the contract for the KWC project, the OPA and TCE will agree to mutually terminate the OGS contract. Reading between the lines, and in particular, the words that are now omitted, we can certainly speculate that these words are intended to mean a lot more than that, but if we were to ask a third party to read this without any context and ask her whether this could be read to mean that the OPA can include the alleged loss of the anticipated financial value of the terminated contract, we'd have a hard time convincing her of this argument, particularly given that the OGS contract contains a waiver of indirect or consequential damages (such as loss of profits) in Article 14.

All of this to say, if the OPA were to receive this directive as drafted, it would not legally permit the OPA to include in the economic value of the KWC contract those costs which TCE would seek to recover as damages in a breach of contract claim under the OGS contract or under the terms of the October 7 OPA letter to TCE.

Regards, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Wednesday, January 26, 2011 3:33 PM
To: Sebastiano, Rocco; Smith, Elliot
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction
Importance: High

Can we get your comments on this one? Colin is trying to buy us some time....thanks...

JCB

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

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

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

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle

Christine Lafleur

From: Michael Lyle
Sent: Wednesday, January 26, 2011 9:05 PM
To: Susan Kennedy
Subject: RE: Direction

I get the feeling that there is some of Rocco giving the client what he rightly assumed they wanted to hear in all of this.

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

From: Susan Kennedy
Sent: January 26, 2011 9:01 PM
To: Michael Lyle
Subject: Fw: Direction

Should we do something to follow-up on this? Even with the chat we had with Colin, I'm a bit concerned about leaving the statement, "not legally permit" statement hanging out there (on the basis that it may morph into being reported as a legal opinion from external counsel).

I would like to understand exactly what Rocco meant by "not legally permit" and try and get on the same page, preferably before one of JoAnne or Michael says this in a board meeting and one or other of us gets asked to agree or disagree.
I think we should probably call Rocco and have a discussion as to his rationale.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, January 26, 2011 04:49 PM
To: JoAnne Butler
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
Subject: RE: Direction

JoAnne, I'll keep my comments focussed on the key issues in the revised directive, as there are numerous grammatical errors, defined term references and other typos that also need to get cleaned up before this gets finalized.

- Last sentence of the first paragraph under "Direction". The clause "look for opportunities to reprofile investments already made by TransCanada" would address our efforts regarding the MPS equipment supply

Subject: FW: Direction
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Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

Susan,

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Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
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---

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From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle

Christine Lafleur

From: Michael Lyle
Sent: Wednesday, January 26, 2011 9:03 PM
To: Susan Kennedy
Subject: RE: Direction

Fair enough. As usual my schedule sucks but I do have time later in the afternoon.

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

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

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

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
Subject: FW: Direction
Importance: High

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To: Michael Lyle
Subject: Fw: Direction

Should we do something to follow-up on this? Even with the chat we had with Colin, I'm a bit concerned about leaving the statement, "not legally permit" statement hanging out there (on the basis that it may morph into being reported as a legal opinion from external counsel).

I would like to understand exactly what Rocco meant by "not legally permit" and try and get on the same page, preferably before one of JoAnne or Michael says this in a board meeting and one or other of us gets asked to agree or disagree.
I think we should probably call Rocco and have a discussion as to his rationale.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, January 26, 2011 04:49 PM
To: JoAnne Butler
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
Subject: RE: Direction

JoAnne, I'll keep my comments focussed on the key issues in the revised directive, as there are numerous grammatical errors, defined term references and other typos that also need to get cleaned up before this gets finalized.

- Last sentence of the first paragraph under "Direction". The clause "look for opportunities to reprofile investments already made by TransCanada" would address our efforts regarding the MPS equipment supply contract and the fast-start conversion; however, costs incurred on OGS (such as payments made to Ford for real property, demolition, contract cancellation, legal and other costs on the legal challenges to the municipal interim control by-law, etc...) are sunk costs which cannot be "reprofiled" for use on KWC or any other project. As such, the $33.6 million (unsubstantiated) costs which TCE has listed as "non-recoverable costs" for OGS would not be captured by this statement. Furthermore, the loss of the anticipated financial value of the contract for OGS (i.e., the alleged $503 million NPV that TCE has quoted) could not be characterized as an investment to be "reprofiled" but is an alleged damage flowing from the termination of the contract. To keep this in focus, what we are really talking about is the difference between the anticipated financial value of the OGS contract versus the anticipated financial value of the KWC contract (without any adjustment or "adder" for the OGS non-recoverable costs). It is this difference that TCE would want to recover as an adder to the NRR on the KWC contract, in addition to the adder for the OGS non-recoverable costs.

- Second paragraph under "Direction", not sure how to give legal meaning to "having regard to... the mutual termination of the contract for the Oakville Generation Project..." It could be interpreted simply to mean that by entering into the contract for the KWC project, the OPA and TCE will agree to mutually terminate the OGS contract. Reading between the lines, and in particular, the words that are now omitted, we can certainly speculate that these words are intended to mean a lot more than that, but if we were to ask a third party to read this without any context and ask her whether this could be read to mean that the OPA can include the alleged loss of the anticipated financial value of the terminated contract, we'd have a hard time convincing her of this argument, particularly given that the OGS contract contains a waiver of indirect or consequential damages (such as loss of profits) in Article 14.

To: Susan Kennedy
Subject: Direction

Susan,

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Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
Legal Services Branch
Ministry of the Attorney General
777 Bay Street, Suite 425
Toronto ON M5G 2E5
416.212.5409

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Regards, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Wednesday, January 26, 2011 3:33 PM
To: Sebastiano, Rocco; Smith, Elliot
Cc: Michael Killeavy; Susan Kennedy; Michael Lyle; Deborah Langelaan
Subject: FW: Direction
Importance: High

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JCB

JoAnne C. Butler
Vice President, Electricity Resources
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120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

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

From: Susan Kennedy
Sent: Miércoles, 26 de Enero de 2011 01:06 p.m.
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
Subject: FW: Direction
Importance: High

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: January 26, 2011 1:02 PM

Christine Lafleur

From: Michael Killeavy
Sent: Wednesday, January 26, 2011 5:18 PM
To: 'RSebastiano@osler.com'; JoAnne Butler
Cc: Susan Kennedy; Michael Lyle; Deborah Langelaan; 'ESmith@osler.com'
Subject: Re: Direction

Thank you Rocco.

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

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****

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JCB

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the negotiation and execution of an interim implementation agreement to address the costs of and work on the KWC Project before a definitive agreement is executed. To best protect electricity rate payers, the OPA should look for opportunities to reprofile investments already made by TransCanada.

It is anticipated that the OPA will complete the contract for the KWC Project by June 30, 2011 having regard to a reasonable balance of risk for TransCanada, the mutual termination of the contract for the Oakville Generation Project and the needs and interests of Ontario electricity customers. It is further expected that the contract provide for an in service date of no later than spring of 2015 to meet the demand needs of the community.

As with all electricity generation projects procured by the OPA, the KWC Project shall be required to undergo all applicable municipal and environmental approvals to ensure it meets or exceeds regulated standards, including those for air quality, noise, odour and vibration. Any duty to consult and accommodate Aboriginal communities on the KWC Project must be fulfilled.

For greater clarity, the OPA is not required by this direction to enter into a contract with TransCanada if it is unable to reach agreement with TransCanada on terms that satisfy the requirements of this direction and fully consider rate payers' interests. In such event, the OPA may seek to recover its costs, if any, relating to the implementation agreement in accordance with its statutory authority.

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

January , 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

The 2007 proposed Integrated Power System Plan forecasted need for a gas plant in Kitchener-Waterloo-Cambridge (the "KWC Area"). Building on the needs identified in the 2007 plan, in our Long Term Energy Plan, the Government identified the value of natural gas generation for peak needs where it can address local and system reliability issues. The Government confirmed the continued need for a clean, modern natural gas-fired plant in the KWC Area.

The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, January 26, 2011 1:30 PM
To: Robert Godhue
Subject: FW: Direction
Attachments: KWC TransCanada Direction.26 01 2011.cln.docx

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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Importance: High

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The Government has determined with input and advice from the OPA that it is prudent and necessary to build a simple cycle natural gas-fired power plant that has contract capacity of approximately 450MW for deployment in the KWC Area by the spring of 2015 (the "KWC Project") to meet local system needs. In the KWC Area, demand is growing at more than twice the provincial rate.

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

In light of the foregoing, together with the OPA, the Government has discussed with TransCanada a project that would meet the KWC Area supply requirement.

Direction

Therefore, pursuant to my authority under subsection 25.32(4) of the Act, I direct the OPA to assume responsibility for discussions with TransCanada to procure a gas plant with contract capacity of 450MW in the KWC Area to address the reliability needs described above, including

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, January 26, 2011 1:06 PM
To: Michael Killeavy; JoAnne Butler; Deborah Langelaan; Michael Lyle
Subject: FW: Direction
Attachments: KWC TransCanada Direction.26 01 2011.cln.docx

Importance: High

Attached is the directive from MEI. Carolyn Calwell gave me a call/"heads up". She wanted to assure me that she had conveyed all our comments and concerns to the MO's office and they have not been accepted.

The Directive is considerably gutted from earlier versions and, of significant note, does not provide for an Implementation Agreement.

You will notice that we have been given a 3pm today deadline.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: January 26, 2011 1:02 PM
To: Susan Kennedy
Subject: Direction

Susan,

I have been instructed to send you the attached as a courtesy. You will see significant editing from the version that you sent me. I have conveyed the messages that you conveyed to me about the OPA's requirements.

Please advise if this draft creates any impossibilities for the OPA or conflicts with the OPA's MOU with TransCanada. I need to hear from you by 3.

Thank you for all of the OPA's efforts to assist the Ministry in this regard.

Carolyn

Carolyn Calwell
A/Deputy Director
Ministry of Energy & Ministry of Infrastructure
Legal Services Branch
Ministry of the Attorney General
777 Bay Street, Suite 425
Toronto ON M5G 2E5
416.212.5409

Christine Lafleur

From: Susan Kennedy
Sent: Monday, January 24, 2011 10:19 AM
To: 'Calwell, Carolyn (MEI)'
Subject: October Letter

Have asked M. Killeavy to let TCE know we are passing along the letter. It is possible that Sean Mullin already has a copy.

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

Christine Lafleur

From:	Susan Kennedy
Sent:	Monday, January 24, 2011 10:12 AM
To:	'Calwell, Carolyn (MEI)'
Subject:	RE: Directive Blackline

Further to the below, I could not find language that got us comfortable that we could factor in Oakville cost in negotiating for a Cambridge plant unless directed to do so. My attempts to include language along the lines of "taking into account the context of the negotiations" just didn't get us there from a comfort perspective.

I have confirmed I can send you the October letter. We just need to give TCE prior notice that we are doing so.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: January 24, 2011 10:10 AM
To: 'Calwell, Carolyn (MEI)'
Subject: Directive Blackline

Attached.

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

Christine Lafleur

From: Susan Kennedy
Sent: Monday, January 24, 2011 10:17 AM
To: Michael Killeavy; JoAnne Butler; 'Sebastiano, Rocco'
Cc: Michael Lyle
Subject: Directive
Attachments: RE: Directive Blackline; Directive Blackline; Draft Directive

Importance: High

Attached, fyi, is what I just sent to MEI legal – sorry for the jam but Craig MacLennan gave MEI legal 30 minutes to get him a draft, so we were very much in rush mode.

Based on input from Rocco, I reverted to the earlier language regarding taking into account "costs or damages" (on the theory that the most conservative ask was the best way to go).

Having said that, I have been told by MEI legal that the MO is dead set against any reference to costs, so we need to be prepared to deal with being told they won't do it.

On a related note, could one of Michael or Deb let TCE know that we are sharing the October 7 letter with MEI, I need to get it over to them ASAP in order to support the ask for the cost reference(s).

Thanks.

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

Christine Lafleur

From: Susan Kennedy
Sent: Monday, January 24, 2011 10:12 AM
To: 'Calwell, Carolyn (MEI)'
Subject: RE: Directive Blackline

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I have confirmed I can send you the October letter. We just need to give TCE prior notice that we are doing so.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: January 24, 2011 10:10 AM
To: 'Calwell, Carolyn (MEI)'
Subject: Directive Blackline

Attached.

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

Direction

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

Comment [shk1]: As per October discussions and October 7 letter, this was agreed to with TCE. Language is needed if this is to be considered as part of new plant pricing.

Comment [SHK2]: Under the heading "Direction", in the paragraph starting "As with all electricity generation projects...", if this is to remain in the directive then consider adding the word "applicable" before "local, municipal..." and delete the word "local" as the word does not have a legal meaning given that "municipal" is already there. So, it would read "undergo all applicable municipal and environmental approvals...". This way, if the project if exempted from certain municipal approvals (as in the case of PEC and YEC), then they would not be applicable.

Comment [OPA3]: Consider whether this statement should be deleted. OPA is considering a strategy whereby the OPA/Province provides some sort of assistance on permitting risk in exchange for a reduction in the NRR. This statement may inadvertently prevent use of such a strategy. In addition, this statement is not actually correct for all electricity generation projects procured by the OPA (e.g., legal exemptions granted to YEC and PEC). OPA understands that there is some possibility of facilitative regulation for KWC project and this statement could be limiting.

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

January ■, 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

<u>Background</u>

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

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

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

<u>Procurement of Kitchener-Waterloo-Cambridge Area New Supply</u>

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

Christine Lafleur

From:	Susan Kennedy
Sent:	Monday, January 24, 2011 10:06 AM
To:	'Calwell, Carolyn (MEI)'
Subject:	Draft Directive
Attachments:	KWC TransCanada Direction 20 12 2010 - OPA Comments_110124.docx

I'll follow with a blackline.

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

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

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

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

Please let me know if I've missed anything.

Thanks,

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

Susan,

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

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

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

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

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

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

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

---

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

Privileged and Confidential (Solicitor and Client Privilege)

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

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 21, 2011 5:00 PM
To: Deborah Langelaan
Subject: RE: Ministry of Energy Request

Sorry Deb, realized I haven't picked this change up yet. Will get it with rest of comments.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: January 18, 2011 2:07 PM
To: Susan Kennedy
Cc: Michael Killeavy; 'Ivanoff, Paul'; 'Sebastiano, Rocco'; 'Smith, Elliot'
Subject: RE: Ministry of Energy Request

Susan;

I have one comment with respect to page 1, 3rd paragraph of the proposed Directive. I would like to see "nameplate capacity" changed to "Contract Capacity" to avoid the same issues from cropping up that we experienced with York Energy Centre.

Deb

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

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

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

The paragraph:

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Direction

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

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

~~December ■, 2010~~

January ■, 2011

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

Dear Mr. ~~Anderson~~Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

Background

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

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

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

Procurement of Kitchener-Waterloo-Cambridge Area New Supply

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

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

It was articulated as "nothing about costs".

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

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 21, 2011 4:57 PM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: 'RSebastiano@osler.com'
Subject: RE: Revised draft KWC directive
Attachments: Blackline.docx

This time with attachment – apologies.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Susan Kennedy
Sent: January 21, 2011 3:51 PM
To: Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc: 'RSebastiano@osler.com'
Subject: RE: Revised draft KWC directive

Further to the below, I've had a request from MEI to get them something as soon as possible. I've followed up and said "today if I can" and "Monday at the latest". With a view to meeting that timeline, I am putting out a call for comments/inputs/suggestions.

In case it is helpful, I've attached a blackline which compares the version I circulated per the below email to the version MEI sent over (i.e. the version we've been editing from).

As some additional colour, I note that I have been told that the MO does not even want the following language in the directive, "In negotiating this contract, it is anticipated that the OPA will have regard to a reasonable balance of risk and reward for TransCanada ..." When I was drafting I wasn't feeling creative enough to do without this but if someone can figure out a way to eliminate it (while still giving us appropriate negotiating parameters), I'd welcome the suggestion.

In order to meet the Monday deadline (I expect if I don't get it to them by noon, there will be some panic), I'd appreciate receiving comments by 10AM on Monday.

Many thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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

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

or

Christine Lafleur

From:	Susan Kennedy
Sent:	Friday, January 21, 2011 3:51 PM
To:	Susan Kennedy; Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Cc:	'RSebastiano@osler.com'
Subject:	RE: Revised draft KWC directive

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

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To: Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
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or

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

It was articulated as "nothing about costs".

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

****

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Deborah Langelaan
Sent: January 21, 2011 8:47 AM
To: Susan Kennedy
Subject: FW: K-W Directive ....

Susan;

Before I advise TCE that we cannot share a copy of the draft Directive would you mind providing me with a reason why? I understand the confidential nature of the document but they will probably press me for an explanation.

Thanks,
Deb

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

-----Original Message-----
From: Michael Killeavy
Sent: January 20, 2011 8:04 PM
To: Deborah Langelaan
Cc: Susan Kennedy
Subject: K-W Directive ....

Deb,

Could you please let TCE know that we cannot share a copy of the draft directive with TCE.

Thanks,
Michael

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

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 21, 2011 9:30 AM
To: Deborah Langelaan
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive ....

Dibs on floating that one with MEI...

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Deborah Langelaan
Sent: January 21, 2011 9:29 AM
To: Susan Kennedy
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive ....

Susan;

As expected TCE was not happy with our response. They asked if there would be some opportunity for them to review the language in the Directive before it is formally issued to the OPA. I advised TCE I would run it up the chain of command.

Deb

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

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

My response to Michael Killeavy:

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

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

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

Before I advise TCE that we cannot share a copy of the draft Directive would you mind providing me with a reason why? I understand the confidential nature of the document but they will probably press me for an explanation.

Thanks,
Deb

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

-----Original Message-----
From: Michael Killeavy
Sent: January 20, 2011 8:04 PM
To: Deborah Langelaan
Cc: Susan Kennedy
Subject: K-W Directive ....

Deb,

Could you please let TCE know that we cannot share a copy of the draft directive with TCE.

Thanks,
Michael

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

Subject: Re: K-W Directive ....

Could we say it's none of their goddamn business?

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

----- Original Message -----
From: Susan Kennedy
Sent: Friday, January 21, 2011 08:51 AM
To: Deborah Langelaan
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive ....

My response to Michael Killeavy:

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

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

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Deborah Langelaan
Sent: January 21, 2011 8:47 AM
To: Susan Kennedy
Subject: FW: K-W Directive ....

Susan;

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 21, 2011 9:25 AM
To: Michael Killeavy
Subject: RE: K-W Directive ....

And it wouldn't be at all helpful -- negotiating a directive with MEI is waaaaaay outside the realm of something they would be able to get their heads around.

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: January 21, 2011 9:10 AM
To: Susan Kennedy
Subject: Re: K-W Directive ....

The request pissed me off yesterday .... it's as if we don't have enough negotiation to do ... I do not like multiparty negotiations.

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

----- Original Message -----
From: Susan Kennedy
Sent: Friday, January 21, 2011 09:08 AM
To: Michael Killeavy
Subject: RE: K-W Directive ....

I'm all for that ...

'Cause it isn't ...

Not that I'm sure we wouldn't appreciate the help ...

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: January 21, 2011 8:58 AM
To: Susan Kennedy

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Thanks,
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Sent: January 20, 2011 8:04 PM
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Cc: Susan Kennedy
Subject: K-W Directive ....

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Thanks,
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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Friday, January 21, 2011 9:09 AM
To: Michael Killeavy
Subject: RE: K-W Directive ....

I'm all for that ...

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

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416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

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Sent: Friday, January 21, 2011 08:51 AM
To: Deborah Langelaan
Cc: Michael Killeavy; Michael Lyle
Subject: RE: K-W Directive ....

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Thanks,
Michael

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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Christine Lafleur

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

My response to Michael Killeavy:

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

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-----Original Message-----
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Cc: Susan Kennedy
Subject: K-W Directive ....

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

Christine Lafleur

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

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

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

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

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

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

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

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

or

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

It was articulated as "nothing about costs".

To: Susan Kennedy
Subject: Directive - Status Update?

Susan,

How are we doing on the directive?

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

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

I am in the TCE meeting now.

Michael

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

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, January 20, 2011 5:13 PM
To: Michael Killeavy
Subject: Re: Directive - Status Update?

I think that would make sense.

----- Original Message -----
From: Michael Killeavy
Sent: Thursday, January 20, 2011 03:52 PM
To: Susan Kennedy
Subject: Re: Directive - Status Update?

Any thoughts on the indemnification for the GTs as a recoverable cost in any Implementation Agreement.

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

----- Original Message -----
From: Susan Kennedy
Sent: Thursday, January 20, 2011 03:47 PM
To: Michael Killeavy
Subject: RE: Directive - Status Update?

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

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

-----Original Message-----
From: Michael Killeavy
Sent: January 20, 2011 3:43 PM

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

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, January 20, 2011 5:12 PM
To: Michael Killeavy
Subject: Re: Revised draft KWC directive

I've got no ovjection.

From: Michael Killeavy
Sent: Thursday, January 20, 2011 04:41 PM
To: Susan Kennedy
Subject: Re: Revised draft KWC directive

May I share this with Osler?

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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Michael.killeavy@powerauthority.on.ca

From: Susan Kennedy
Sent: Thursday, January 20, 2011 04:40 PM
To: Michael Killeavy; Michael Lyle; JoAnne Butler; Deborah Langelaan
Subject: Revised draft KWC directive

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or

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

It was articulated as "nothing about costs".

Direction

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

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

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

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

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

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

I further direct that the 2008 Direction is hereby revoked.

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

Brad Duguid
Minister of Energy

LEGAL ADVICE – PRIVILEGED AND CONFIDENTIAL – NOT FOR CIRCULATION

January ■, 2011

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

Dear Mr. Andersen,

Re: Kitchener-Waterloo-Cambridge Area New Supply

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

<u>Background</u>

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

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

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

<u>Procurement of Kitchener-Waterloo-Cambridge Area New Supply</u>

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

Christine Lafleur

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

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

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Michael.killeavy@powerauthority.on.ca

Christine Lafleur

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

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

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

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

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I am in the TCE meeting now.

Michael

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Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, January 19, 2011 5:44 PM
To: 'rsebastiano@osler.com'
Cc: Michael Killeavy; Deborah Langelaan; 'esmith@osler.com'
Subject: Re: Ministry of Energy Request

No, I'm good, I was aware of that on YEC - I was sort of thinking that if there was a "legal" exemption, then one was in compliance because the relevant local provision was no longer applicable - however, I take the point that my logic is a bit headache inducing given the overall context.

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, January 19, 2011 10:44 AM
To: Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; Smith, Elliot <ESmith@osler.com>
Subject: Re: Ministry of Energy Request

The Government issued an exemption of all Planning Act approvals for YEC back in June or July of 2010 and thereby getting around attempts by King Township to pass by-laws (as Oakville did) to prevent getting site plan approvals. In the mid-90's, the Government passed a regulation exempting the PEC site from having to obtain any municipal approvals (including getting a building permit) from the City of Toronto. I can send you a copies of these documents if you need them.

Thanks, Rocco

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, January 19, 2011 10:34 AM
To: Sebastiano, Rocco
Cc: Michael Killeavy <Michael.Killeavy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot
Subject: RE: Ministry of Energy Request

Rocco,

Question, can you clarify something in your draft note:

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

What exceptions were made for these projects? I probably should be aware but am not and, if I relay this to the Ministry, they will be asking.

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

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

Susan,

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

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

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

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

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

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

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

---

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

Privileged and Confidential (Solicitor and Client Privilege)

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

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

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

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

Please let me know if I've missed anything.

Thanks,

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

Christine Lafleur

From: Michael Killeavy
Sent: Friday, March 18, 2011 3:10 PM
To: 'Smith, Elliot'; 'Sebastiano, Rocco'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; 'Gene.Meehan@NERA.com'; Anshul Mathur; 'Safouh Soufi'
Subject: TCE Matter - Analysis of TCE Purported Value Propositions ...
Attachments: TCE Value Proposition Analysis 18 Mar 2011.doc

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

Based on a meeting held yesterday, we have revised our position on one of the purported value propositions from TCE. The updated analysis table is attached, which reflects the revision. All changes are in MS-WORD track changes for ease of reference.

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)

ANALYSIS OF TCE PROPOSED SCHEDULE B TO THE IMPLEMENTATION AGREEMENT

#	Purported TCE Value Proposition	Analysis	Cost	Recommendation
1	*"... the Contract will provide that if TCE is unable to secure a permit or approval for the construction or operation of the Potential Project or any level of government otherwise prevents the construction or operation of the Potential Project then **TCE will be able to terminate the Contract and ... recover from the OPA its reasonable costs incurred with respect to the Facility and the Potential Project and TCE's anticipated financial value of the Original Contract** [Defined as a Number for the IA]. In addition to TCE's relief from Force Majeure, **TCE would also recover from the OPA its reasonable costs as a result of delays arising from Force Majeure** relating to permitting."* (emphasis added)	This provision significantly reduces the development risk for TCE since if it encounters any regulatory approval problem, it can exit the contract and receive reimbursement for its development costs and financial value of the contract. This risk profile is inconsistent with the SWGTA Contract and with all other OPA gas-fired generation contracts, with the exception of the Portlands Energy Centre. Recovery of force majeure-related costs is inconsistent with the common law position on force majeure and other OPA contracts.	This is difficult to value. It is presumably the present value of the foregone profits under the SWGTA Contract, which may range from $268M to $503M plus whatever costs TCE incurs in developing the peaking plant. This latter component depends on when the permitting road block occurs in the project development timeline.	The OPA rejects the broad extent TCE Value Proposition. The OPA is amenable to providing TCE with the similar sort of municipal permitting risk mitigation as York Energy Centre, where a regulation was enacted to exempt the development of the facility from municipal planning approvals under the *Planning Act*.

ANALYSIS OF TCE PROPOSED SCHEDULE B TO THE IMPLEMENTATION AGREEMENT

#	Purported TCE Value Proposition	Analysis	Cost	Recommendation
2	*"The Contract will provide that sunk costs associated the development of the Facility totaling* (sic) *[$37 million]* ***will be paid immediately to TCE at time of executing the Contract.*** *These sunk costs [have/have not] been reviewed by the OPA and further due diligence and review [will/will not] be required. "* (emphasis added)	The OPA is likely liable for these sunk costs if the matter were ever to be litigated. ***[NTD: Counsel to comment on this]*** The mechanism for direct and immediate payment has to be considered. Can we do this within the scope of the draft directive? The draft directive is silent on this right now.	We have been told that these costs would be approximately $33M, and would not exceed $35M. TCE now indicates that these are $37M. We have been given substantiating information from TCE on these sunk costs and we are reviewing this information now.	The OPA can agree to reimburse TCE for its sunk costs, provided they can be substantiated. The OPA is amenable to ~~having the costs reimbursed by incorporating them into the Net Revenue Requirement ("NRR") for the K-W peaking plant~~paying for the substantiated OGS sunk costs as a lump sum payment and not incorporating the amount into the NRR.
3	*"... the Contract will provide a mechanism whereby the OPA will directly pay for all costs associated with the electrical and natural gas interconnections in a manner that* ***will not subject TCE to carrying costs.*** *For the gas connection this will include all costs paid to the local gas distribution company ("LDC') that is associated with the connection to the Potential Project from the LDC including a contribution in aid to construction ("CIAC") and terminating at the demarcation between the Potential Project and the*	These costs are hard to quantify at this point in time. If we include them in the NRR, TCE will add an addition risk premium, which will be paid for by the ratepayer. Even if we include the cost in the NRR, if the estimate is overrun we will likely face a claim anyway, so we'd pay	TCE has estimated $100M for these costs. ***[NTD: check with PSP to see if the K-W peaking plant working group has any better information?]***	OPA should agree to pay these costs, but the OPA requires that TCE bear the risk of completion and so it requires that the costs be paid directly on a reimbursement basis to TCE. This is the mechanism for reimbursement on all other OPA contracts.

#	Purported TCE Value Proposition	Analysis	Cost	Recommendation
	LDC on the Potential Project site. For the electrical connection this will include all costs associated with the design engineering, construction and commissioning of the electrical facilities between the high voltage side of the Potential Project switchyard and the point of connection to the Hydro One transmission system including land and easements if applicable." (emphasis added)	for the risk premium and the overrun. The cheapest option for the ratepayer is to pay for these costs directly. The "no carrying cost" language suggests a direct payment by the OPA and not a pass-through cost. We need to confirm this with TCE. Can the OPA make such a direct cost?		
4	*"The Contract will provide that all gas delivery and management services costs will be excluded from the NRR and that such costs will be paid for by the OPA in a manner consistent with the Portlands ACES and Halton Hills CES Contracts."*	This transfers all gas risk to the OPA. OPA is not the best placed to manage this risk.	We estimate that this is worth about $2,000/MW-month based on NYR information.	OPA should reject this proposition since it is not the plant operator and therefore not the best placed to manage this risk.
5	*"... The portion of TCE's costs subject to escalation is approximately 50% as opposed to the current maximum of 20%. Accordingly the Contract will be modified to reflect this higher proportion subject to*	It's unclear that 50% of the NRR is related to the OPEX. This is quite a departure from all other OPA contracts,	Our modelling indicates that this is worth about another $100 million in terms of NPV over a 20-	OPA should reject this proposition since it is (a) inconsistent with our other contracts and (b) doesn't seem to reflect the proportion that OPEX

ANALYSIS OF TCE PROPOSED SCHEDULE B TO THE IMPLEMENTATION AGREEMENT

#	Purported TCE Value Proposition	Analysis	Cost	Recommendation
	escalation by incorporating a NRRIF of 50% ..."	which either do not permit indexing or cap it at 20% of the contract price or NRR. We see no justification for this this.	year term.	has in the NRR.
6	*"... the Contract will be premised on a 30 year term or premised on a 20 year term with a unilateral option for TCE to extend the term of the Contract, on the same terms, conditions and prices, for an additional 10 years."*	Extending the terms is a means of spreading the costs out over more years to reduce the $/MW-month value of NRR. It is also a means for TCE to earn more since there are more contract years of contract revenue.	***[NTD: Let's do some modelling to determine what value the extra 10 years has on a $/MW-month basis over the standard 20-year term. This is relatively easy to do for a range of NRRs from say $15,000/MW-month and $17,000/MW-month]***	OPA can agree to a longer than 20 year term, but we need to make certain that the return to TCE is consistent with what we've agreed to is the "financial value" of the OGS Contract. The OPA opening position is that we can accept a 25-year term to the K-W peaking contract.
7	*"... the Contract will be modified to reflect average ambient temperatures during each season ..."*	Plan output is inversely related to ambient temperature. The proposed changes in temperature seem odd, though. This will result in a much higher	***[NTD: Can SMS Energy help with this?]***	We might be able to achieve the result TCE is interested in by modifying the default provisions associated with the capacity check tests in the contract.

ANALYSIS OF TCE PROPOSED SCHEDULE B TO THE IMPLEMENTATION AGREEMENT

#	Purported TCE Value Proposition	Analysis	Cost	Recommendation
		capacity for the plant. TCE might be concerned about meeting capacity check test requirements.		
8	*"... the Contract will be modified to ensure the plant is only deemed on when power prices provide for full recovery of start charges within an hour ..."*	TCE is attempting to tie physical operation of the plant with the financial contract means of imputing start up and earning market revenues. We believe that Exhibit J in the NYR Contract mitigates the risk that TCE identifies.	Unknown	This may well be a matter of walking TCE through Exhibit J for NYR and demonstrating how the peaking facility will be imputed to earn revenues.

Christine Lafleur

From: Susan Kennedy
Sent: Monday, March 21, 2011 11:07 AM
To: Robert Godhue
Subject: FW: NRRs using TCE Model
Attachments: NRR Calcs Using TCE Model March 17 2011.pptx

Please print attachment. Tx

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Anshul Mathur
Sent: March 17, 2011 12:16 PM
To: JoAnne Butler
Cc: Michael Killeavy; Deborah Langelaan; Susan Kennedy
Subject: NRRs using TCE Model

*** Privileged and Confidential – Prepared in Contemplation of Litigation ***

Hi JoAnne,
See attached the NRR values using TCE Model (the presentation I distributed this morning). As requested, I have attached a slide for Opex sensitivity (slide 3).

If you have any questions, please let me know.

Thanks,
Anshul

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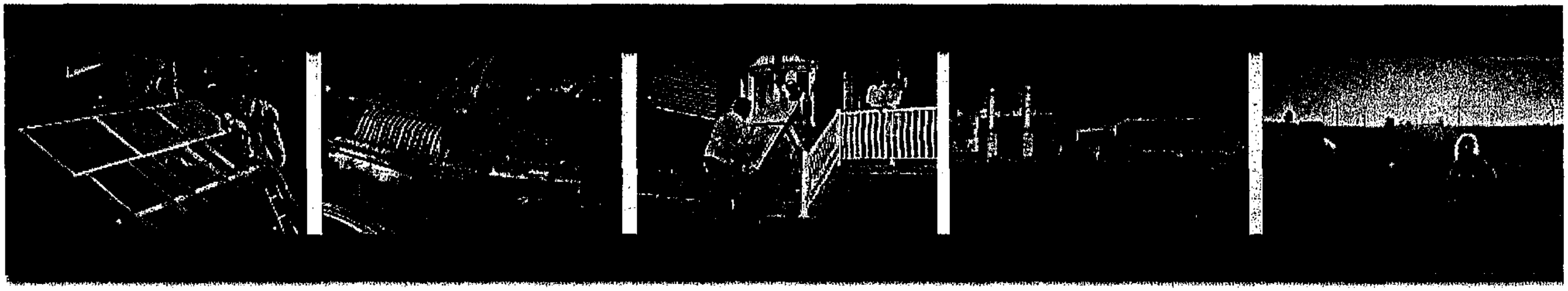

NRR Differentiators using TCE Model

Privileged and Confidential – Prepared in Contemplation of Litigation

March 17, 2011

Main NRR Differentiators (TCE vs. OPA)

Factor	Input Values	Range of Δ NRRs for each 'Factor' (keeping all other variables same)
OGS Value	TCE - $375M OPA - $200M	$4400 - $3345
Opex Costs	TCE - $29M OPA - $12M	$3042 - $2684
Capex	TCE - $540M OPA - $470M	$1300 - $964
Schedule Difference	TCE – Start 2015 OPA – Start 2014	$1943 - $995
Capacity Factor	TCE – 450MW OPA – 510MW	$2898 - $1736
Max possible difference between OPA & TCE NRR: **$11606** TCE Assumptions – 450MW, $375M, $29M, $540M, Start 2015 OPA Assumptions – 510MW, $200M, $12M, $470M, Start 2014		

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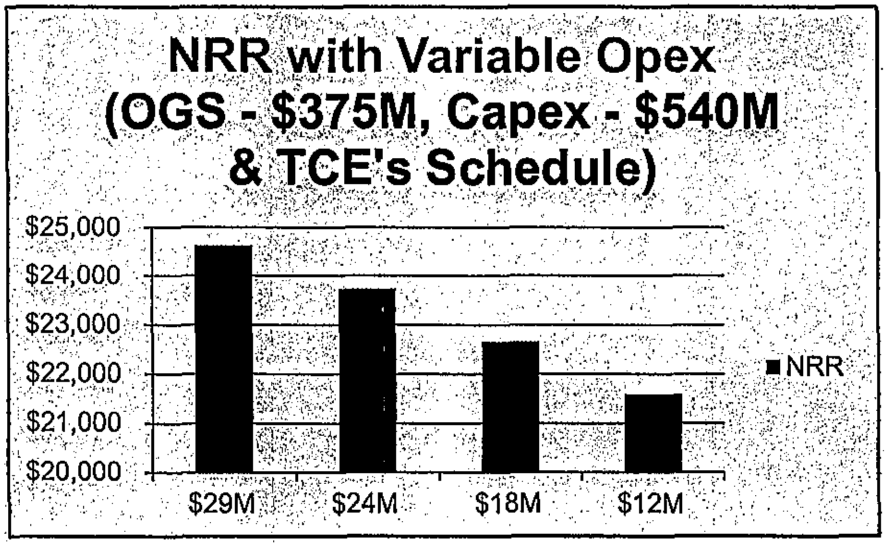
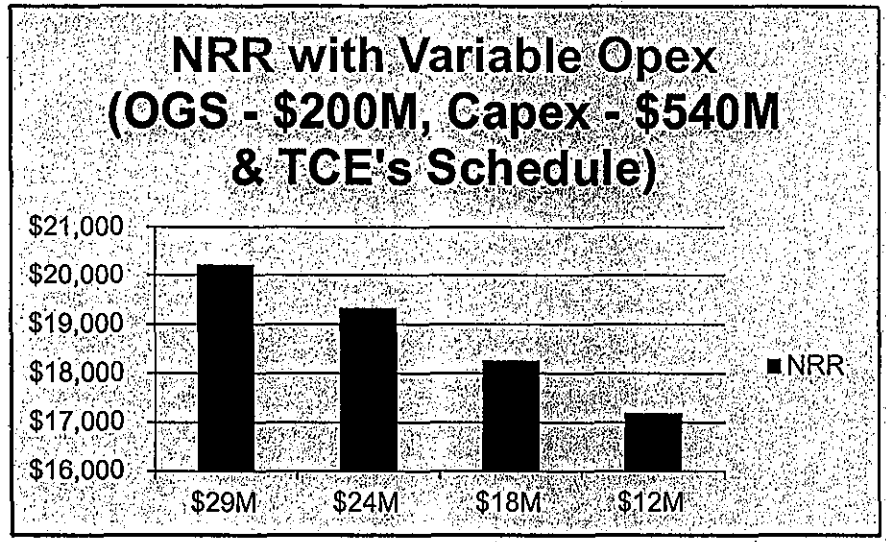
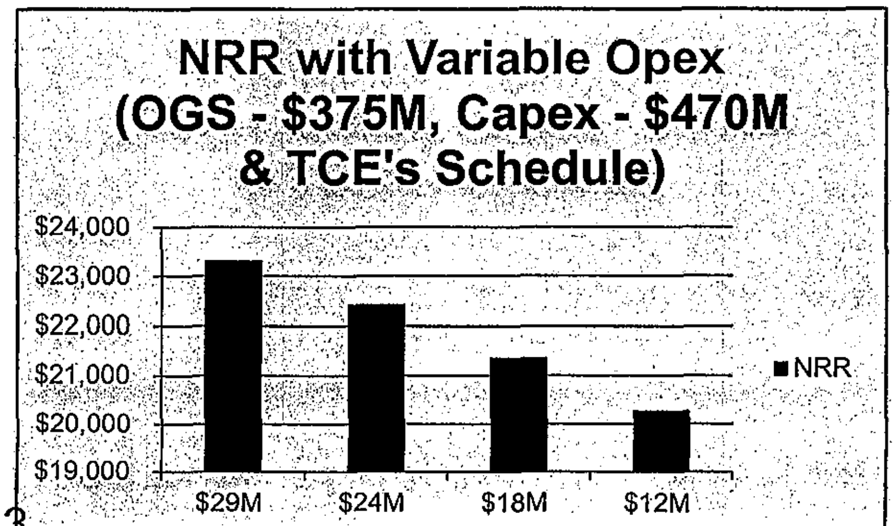
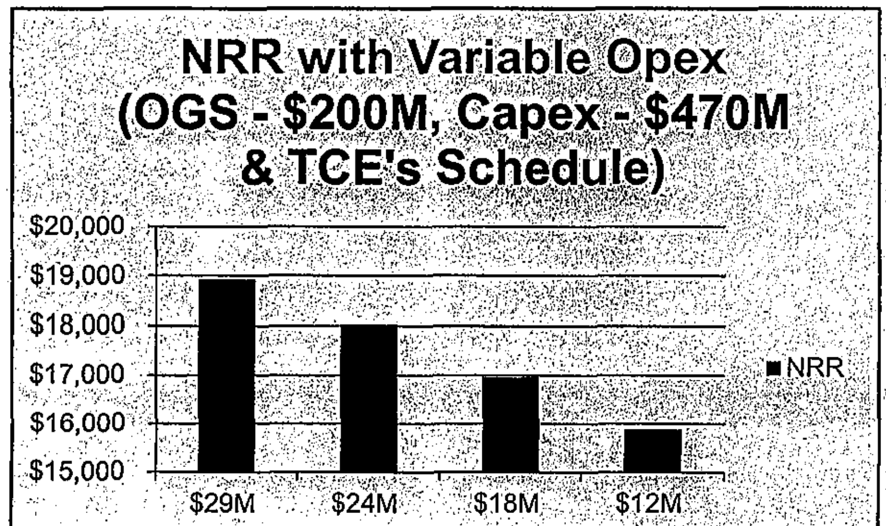
Sensitivity on Opex

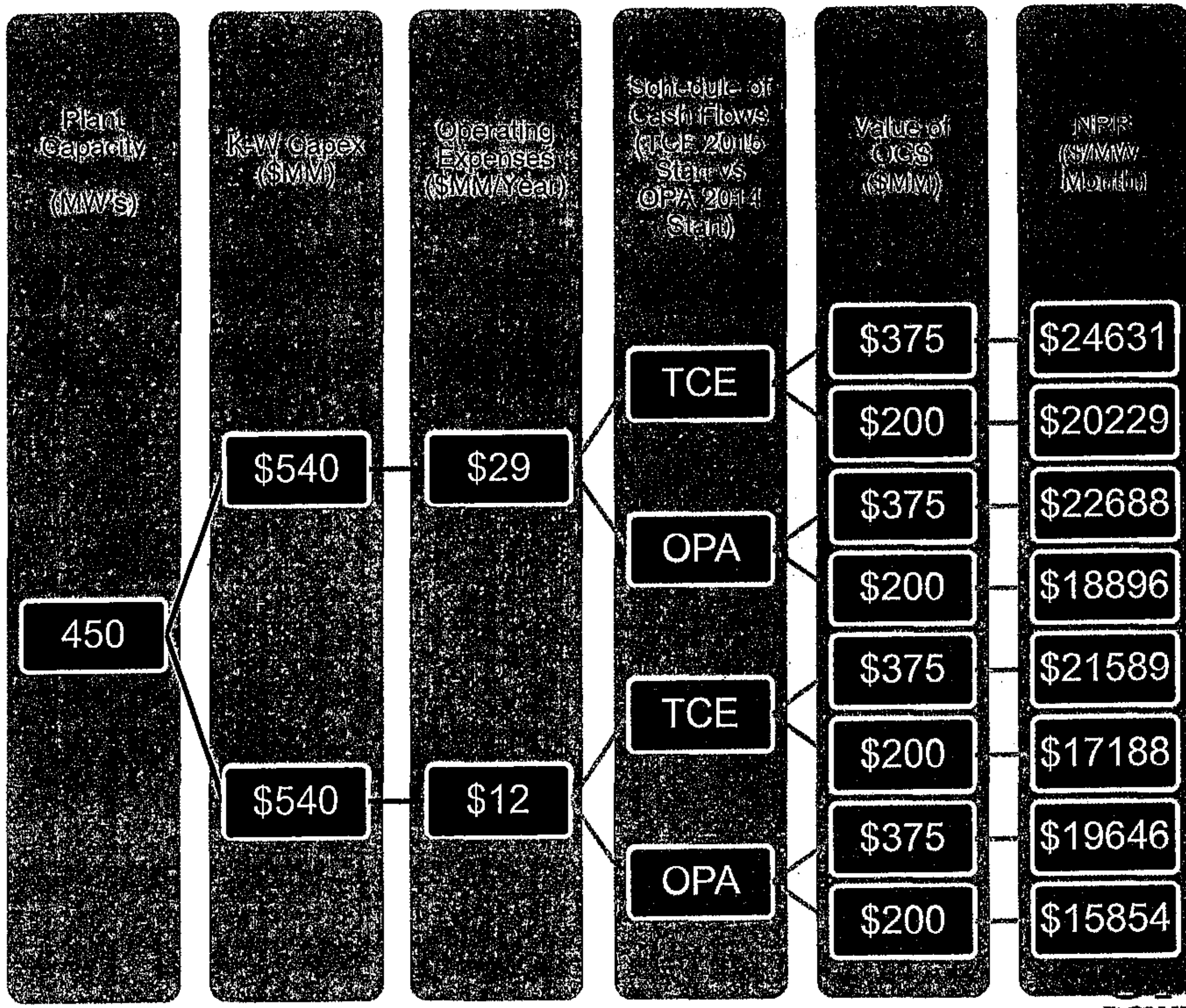




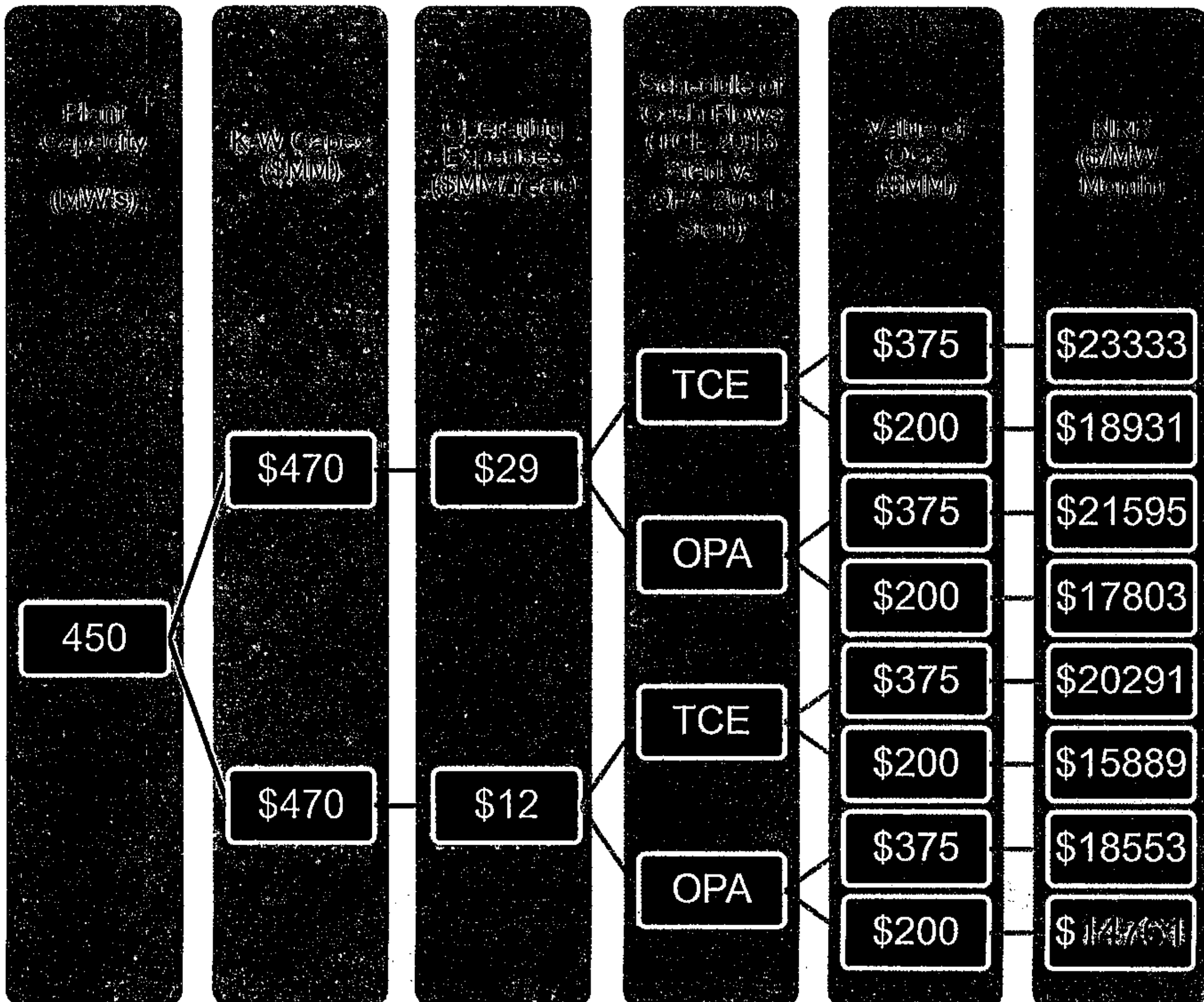




NRR Values – 450MW & $540M Capex

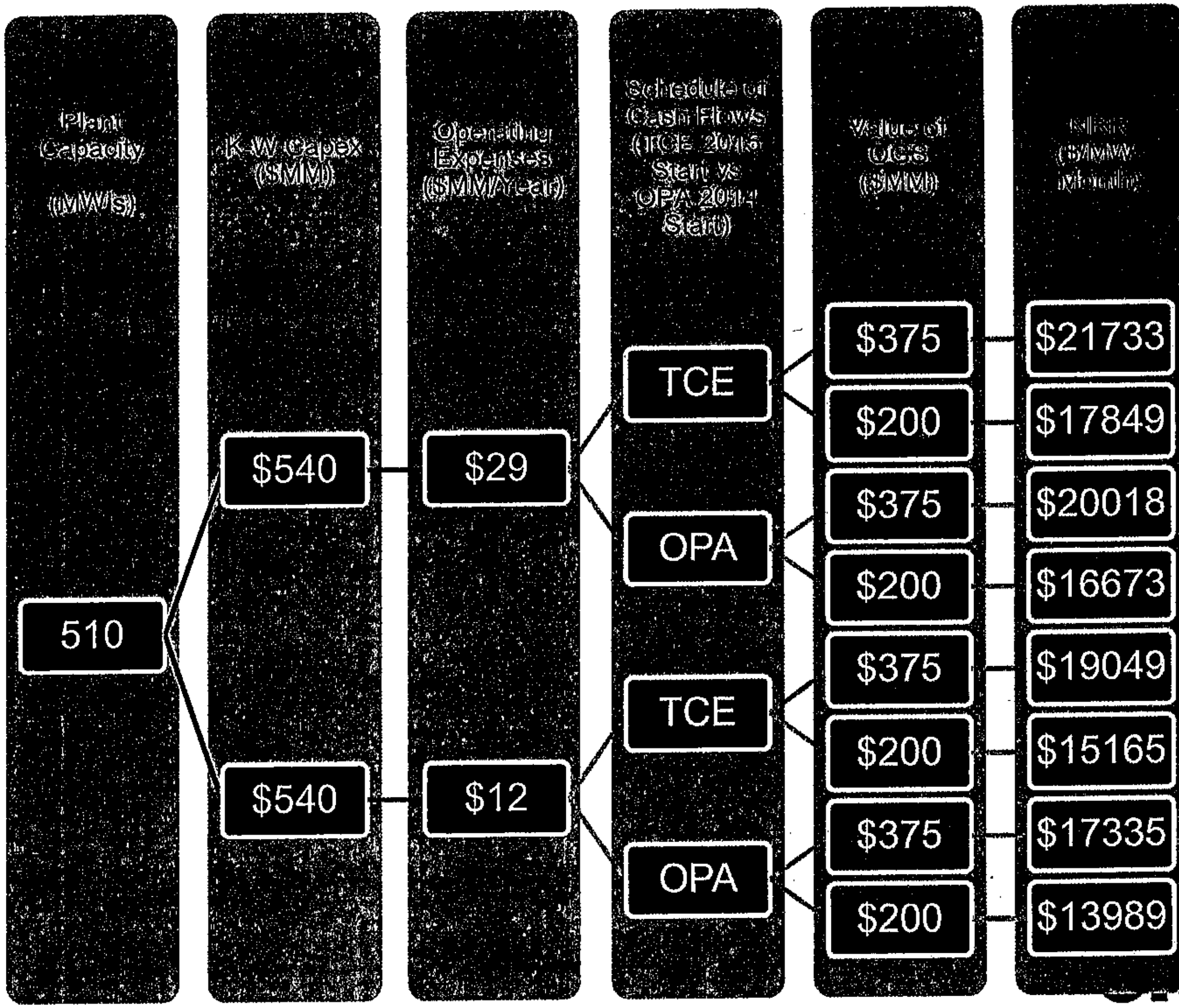


NRR Values – 450MW & $470M Capex



ONTARIO POWER AUTHORITY

NRR Values – 510MW & $540M Capex



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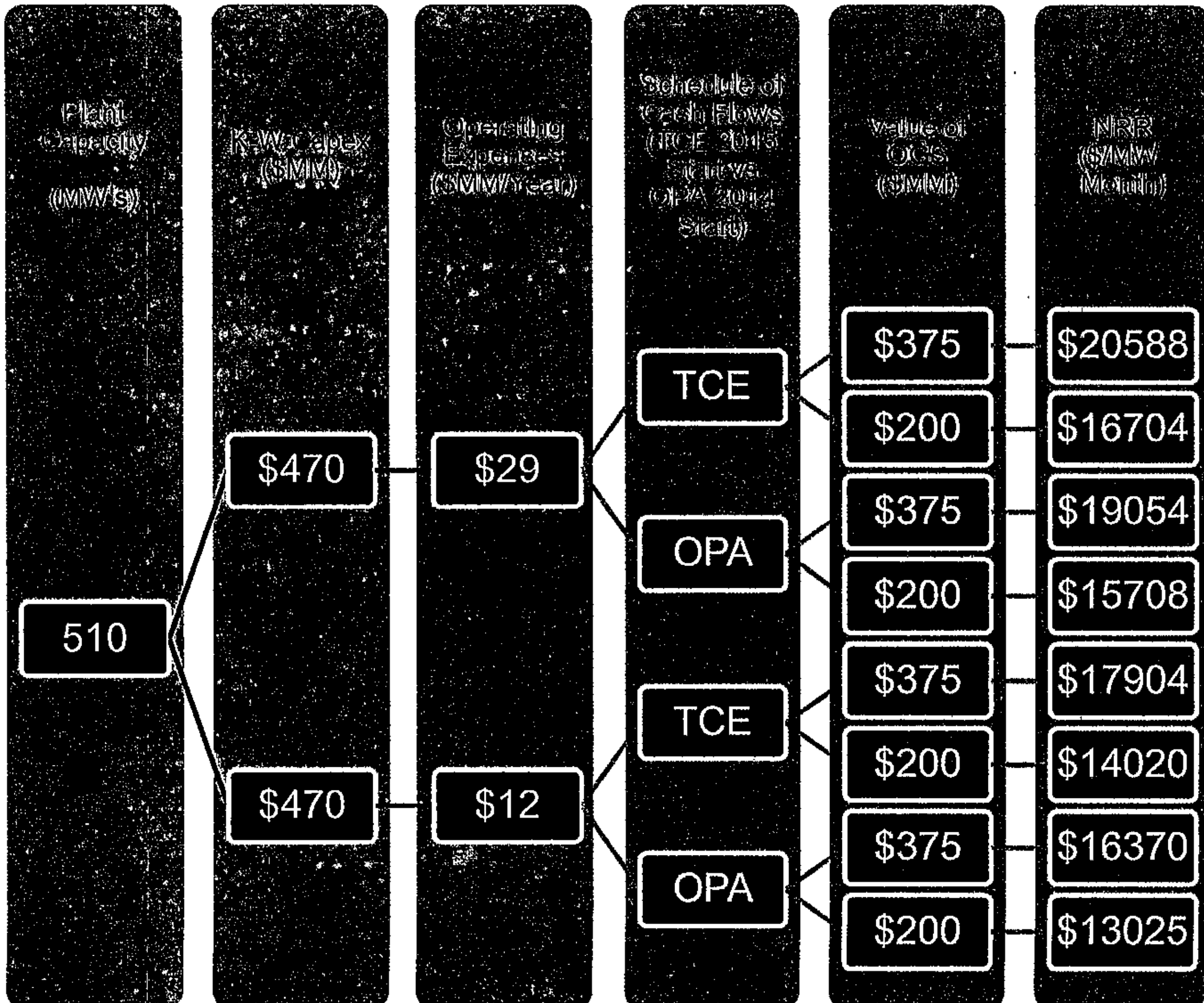
NRR Values – 510MW & $470M Capex



ONTARIO POWER AUTHORITY

Christine Lafleur

From: Susan Kennedy
Sent: Monday, March 21, 2011 1:37 PM
To: Robert Godhue
Subject: FW: Outstanding Issues

Would you do a draft of the below mentioned "designation letter".

Link to template:

L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA (3-10016)\Contract Termination\FIPPA Designations\TEMP_FIPPADesignation_Template.dotx

Link to relevant file:

L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA (3-10016)\Contract Termination\FIPPA Designations

The naming convention – see file – is pretty self-explanatory.

See highlight in yellow for document description. Once we finalize the document, we need to track Colin down to sign and then PDF and sent to Deborah who can forward to TCE.

I generally cc John Zych when it goes over and file the scan in the FIPPA Designations file and also in here:

L:\Freedom of Information and Protection of Privacy Act Requests\Designations Under Electricity Act\TransCanada_Southwest GTA (Oakville Generating Station)

Tx,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Deborah Langelaan
Sent: March 21, 2011 1:21 PM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: Outstanding Issues

Hi Susan;

We require another Designation Letter for TCE with respect to item #1 below. Please let me know if you require more information.

Thanks,
Deb

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

From: Geoff Murray [mailto:geoff_murray@transcanada.com]
Sent: March 17, 2011 5:12 PM
To: Deborah Langelaan

Cc: Terry Bennett; Brandon Anderson
Subject: Outstanding Issues

Deb:

Brandon and JoAnne just had a discussion and I believe there are a few things outstanding that we would like to close out to assist the OPA in preparing their counter-offer.

1. We would like to provide a summary of our capital cost estimate, in the same format as the presentation of January 25th, that has OBL, OGS Sunk Costs and associated escalation, risk, contingency and development allowances removed. In order to do that we will require a designation letter covering the one page capital cost summary. I believe an appropriate description would be "TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station", Rev 5 dated "Feb 17, 2011". Please advise if this is of interest to the OPA and let us know when you can have the designation letter delivered.

2. We understand you would like to receive a redacted version of the MPS LTSA. I am still working on a response to your earlier question regarding timing and will get back to you as soon as I know more. We may need a designation letter for this document.

3. We understand that the MPS New Scope is continuing to be an issue for the OPA. We are happy to provide further information from a TransCanada perspective in terms of building up that cost, should that be of interest to the OPA. Please advise if this is of interest and if you could give some guidance as to the OPA's concerns that would be helpful.

Let me know!
Geoff

Christine Lafleur

From:	Susan Kennedy
Sent:	Tuesday, March 22, 2011 2:20 PM
To:	Robert Godhue
Subject:	FW: TCE Matter - OPA Counter-Proposal - NRR Confirmation .....
Attachments:	OPA Counter-Proposal NRR Model 21 Mar 2011 COUNTER-PROPOSAL.xls

Please print email and attachment. Tx

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: March 21, 2011 3:47 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan; Anshul Mathur; Safouh Soufi; 'Gene.Meehan@NERA.com'
Subject: TCE Matter - OPA Counter-Proposal - NRR Confirmation .....

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

Elliot,

Could you please ask NERA to confirm the NRR we intend to go back to TCE with? The parameters are as follows:

1. 20-year contract term;
2. NNRIF=20%
3. Annual Inflation over the term of 2%;
4. Tax rate of 25%;
5. Contract Capacity of 500 MW;
6. Cost of Capital of 5.25%;
7. Annual GD&M of $14 million in $2011;
8. Fixed O&M of 8.8 million in $2009;
9. CAPEX of $425 million, with the spend profile in the attached spreadsheet along with the depreciation (Capital Cost Allowance) schedule in the attached spreadsheet;
10. Annual revenues are pegged at the NRR as a CSP;
11. Financial value of the OGS Contract of $50 million.

The attached model was used with these parameters to generate an NRR of $12,974/MW-month.

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)

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital	5.25%						1	2	3
	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%			
Yearly CAPEX Spend	$15,162,247	$22,040,145	$77,380,632	$93,100,315	$193,069,952	$61,746,709			
Book Value of Capital	$15,162,247	$37,202,392	$114,583,024	$207,683,340	$400,753,291	$462,500,000	$442,358,125	$403,828,732	$368,655,250
Non-Indexed NRR							$10,880	$10,880	$10,880
Indexed NRR							$2,720	$2,774	$2,830
Total NRR							$13,600	$13,655	$13,710
REVENUES = CSP							$81,600,986	$81,927,390	$82,260,322
OPEX							$9,910,229	$10,108,434	$10,310,603
GD&M							$15,154,050	$15,457,131	$15,766,274
EBITDA							$56,536,706	$56,361,825	$56,183,445
Depreciation (Capital Cost Allowance)							$20,141,875	$38,529,393	$35,173,483
Taxes Payable							$9,098,708	$4,458,108	$5,252,491
Total Cash Flow	($15,162,247)	($22,040,145)	($77,380,632)	($93,100,315)	($193,069,952)	($61,746,709)	$47,437,999	$51,903,717	$50,930,955

Final NRR	**$13,600**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$66,944,737
XIRR	6.51%

GoalSeek NRR for Adjusted K-W NPV based on Target OGS NPV and Adj. CAPEX

Baseline NRR Calculation

Adjusted CAPEX Spend:		**$462,500,000**	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in noı	$8,800,000	(2009 $)
GD&M	$14,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

4	5	6	7	8	9	10	11	12	13	14
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
$336,545,377	$307,232,275	$280,472,344	$256,043,203	$233,741,840	$213,382,926	$194,797,273	$177,830,430	$162,341,400	$148,201,464	$135,293,116
$10,880	$10,880	$10,880	$10,880	$10,880	$10,880	$10,880	$10,880	$10,880	$10,880	$10,880
$2,887	$2,944	$3,003	$3,063	$3,124	$3,187	$3,251	$3,316	$3,382	$3,450	$3,519
$13,767	$13,824	$13,883	$13,943	$14,005	$14,067	$14,131	$14,196	$14,262	$14,330	$14,399
$82,599,913	$82,946,295	$83,299,605	$83,659,981	$84,027,565	$84,402,501	$84,784,935	$85,175,018	$85,572,903	$85,978,745	$86,392,704
$10,516,815	$10,727,151	$10,941,694	$11,160,528	$11,383,738	$11,611,413	$11,843,641	$12,080,514	$12,322,124	$12,568,567	$12,819,938
$16,081,599	$16,403,231	$16,731,296	$17,065,922	$17,407,240	$17,755,385	$18,110,493	$18,472,703	$18,842,157	$19,219,000	$19,603,380
$56,001,499	$55,815,913	$55,626,615	$55,433,532	$55,236,587	$55,035,703	$54,830,801	$54,621,801	$54,408,621	$54,191,178	$53,969,386
$32,109,872	$29,313,102	$26,759,931	$24,429,141	$22,301,363	$20,358,914	$18,585,653	$16,966,842	$15,489,030	$14,139,936	$12,908,348
$5,972,907	$6,625,703	$7,216,671	$7,751,098	$8,233,806	$8,669,197	$9,061,287	$9,413,740	$9,729,898	$10,012,811	$10,265,260
$50,028,592	$49,190,210	$48,409,944	$47,682,434	$47,002,781	$46,366,506	$45,769,514	$45,208,061	$44,678,724	$44,178,367	$43,704,126

15	16	17	18	19	20
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34
$123,509,086	$112,751,445	$102,930,794	$93,965,522	$85,781,125	$78,309,589
$10,880	$10,880	$10,880	$10,880	$10,880	$10,880
$3,589	$3,661	$3,734	$3,809	$3,885	$3,963
$14,469	$14,541	$14,614	$14,689	$14,765	$14,843
$86,814,942	$87,245,625	$87,684,922	$88,133,005	$88,590,049	$89,056,234
$13,076,337	$13,337,864	$13,604,621	$13,876,714	$14,154,248	$14,437,333
$19,995,447	$20,395,356	$20,803,264	$21,219,329	$21,643,715	$22,076,590
$53,743,158	$53,512,405	$53,277,037	$53,036,962	$52,792,086	$52,542,312
$11,784,030	$10,757,641	$9,820,651	$8,965,272	$8,184,397	$7,471,536
$10,489,782	$10,688,691	$10,864,097	$11,017,923	$11,151,922	$11,267,694
$43,253,376	$42,823,714	$42,412,941	$42,019,040	$41,640,164	$41,274,618

Target Costing Allocation of Actual CAPEX

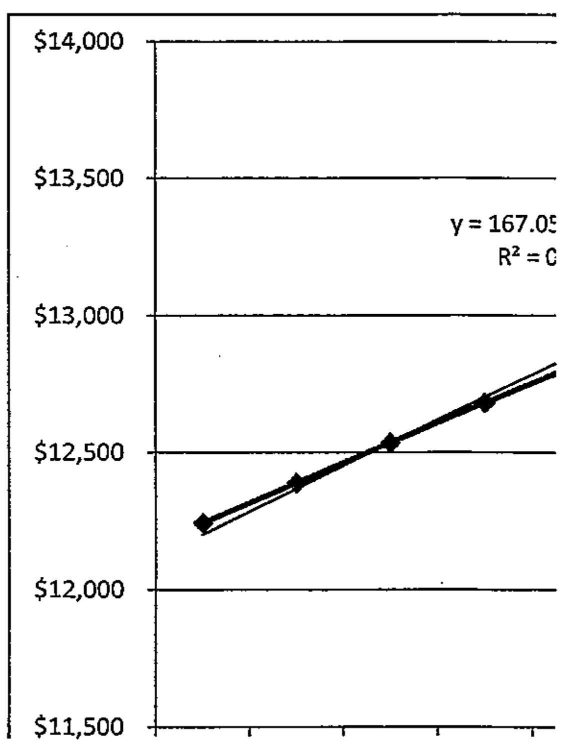
Target CAPEX =		$425,000,000	
CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$75,000,000	
OPA Share	**$37,500,000**	
TCE Share	$37,500,000	
Adjusted CAPEX =	**$462,500,000**	Target CAPEX + OPA Share

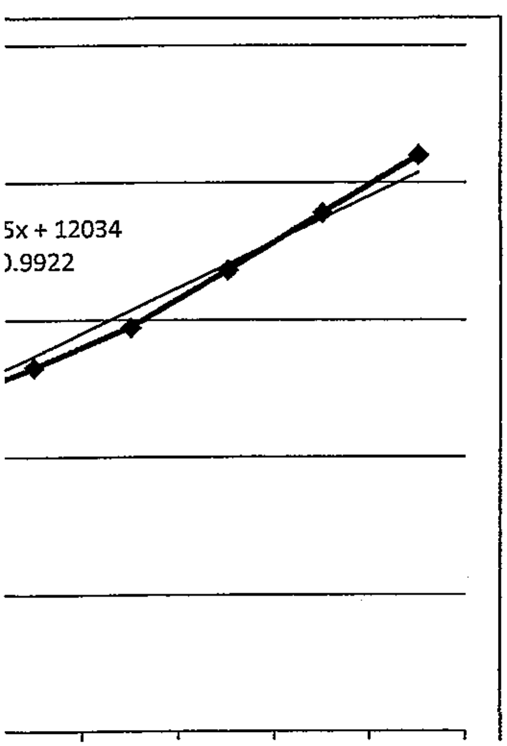
Initial NRR	$12,974
Final NRR	$13,600

Target CAPEX	$425,000,000	NRR =	$12,974

FINAL CAPEX		FINAL NRR
$300,000,000	$300	$12,243
$325,000,000	$325	$12,389
$350,000,000	$350	$12,535
$375,000,000	$375	$12,681
$400,000,000	$400	$12,828
$425,000,000	$425	$12,974
$450,000,000	$450	$13,183
$475,000,000	$475	$13,391
$500,000,000	$500	$13,600



$300	$325	$350	$375	$


5x + 12034
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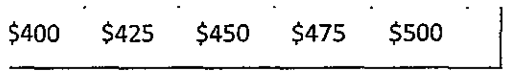
$400
$425
$450
$475
$500

Baseline NRR Calculation

CAPEX Spend:		$425,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539	million	

Capital Cost Allowance:			
			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		500 MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in noı	$8,800,000	(2009 $)
GD&M	$14,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 5.25%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$13,932,876	$20,253,106	$71,106,527	$85,551,641
Book Value of Capital	$13,932,876	$34,185,982	$105,292,509	$190,844,150
Non-Indexed NRR				
Indexed NRR				

Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($13,932,876)	($20,253,106)	($71,106,527)	($85,551,641)

NRR	**$12,974**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$66,223,624
XIRR	6.62%

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$177,415,631	$56,740,219				
$368,259,781	$425,000,000	$406,491,250	$371,085,862	$338,764,284	$309,257,914
		$10,379	$10,379	$10,379	$10,379
		$2,595	$2,647	$2,700	$2,754

		$12,974	$13,026	$13,079	$13,133
		$77,842,443	$78,153,813	$78,471,410	$78,795,359
		$9,910,229	$10,108,434	$10,310,603	$10,516,815
		$15,154,050	$15,457,131	$15,766,274	$16,081,599
		$52,778,163	$52,588,247	$52,394,533	$52,196,945
		$18,508,750	$35,405,388	$32,321,579	$29,506,369
		$8,567,353	$4,295,715	$5,018,239	$5,672,644
($177,415,631)	**($56,740,219)**	$44,210,810	$48,292,533	$47,376,295	$46,524,301

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$282,321,550	$257,731,343	$235,282,943	$214,789,799	$196,081,607	$179,002,899
$10,379	$10,379	$10,379	$10,379	$10,379	$10,379
$2,809	$2,865	$2,922	$2,981	$3,040	$3,101

$13,188	$13,244	$13,301	$13,360	$13,419	$13,480
$79,125,787	$79,462,824	$79,806,601	$80,157,254	$80,514,920	$80,879,739
$10,727,151	$10,941,694	$11,160,528	$11,383,738	$11,611,413	$11,843,641
$16,403,231	$16,731,296	$17,065,922	$17,407,240	$17,755,385	$18,110,493
$51,995,405	$51,789,834	$51,580,151	$51,366,275	$51,148,122	$50,925,605
$26,936,364	$24,590,207	$22,448,400	$20,493,144	$18,708,191	$17,078,708
$6,264,760	$6,799,907	$7,282,938	$7,718,283	$8,109,983	$8,461,724
$45,730,645	$44,989,927	$44,297,214	$43,647,993	$43,038,139	$42,463,881

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$163,411,747	$149,178,584	$136,185,129	$124,323,404	$113,494,836	$103,609,436
$10,379	$10,379	$10,379	$10,379	$10,379	$10,379
$3,163	$3,226	$3,291	$3,357	$3,424	$3,492

$13,542	$13,605	$13,670	$13,736	$13,803	$13,871
$81,251,855	$81,631,413	$82,018,562	$82,413,454	$82,816,244	$83,227,090
$12,080,514	$12,322,124	$12,568,567	$12,819,938	$13,076,337	$13,337,864
$18,472,703	$18,842,157	$19,219,000	$19,603,380	$19,995,447	$20,395,356
$50,698,638	$50,467,132	$50,230,995	$49,990,136	$49,744,460	$49,493,870
$15,591,153	$14,233,163	$12,993,455	$11,861,725	$10,828,569	$9,885,400
$8,776,871	$9,058,492	$9,309,385	$9,532,103	$9,728,973	$9,902,117
$41,921,767	$41,408,640	$40,921,610	$40,458,033	$40,015,487	$39,591,752

17	18	19	20
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34
$94,585,054	$86,346,696	$78,825,898	$71,960,163
$10,379	$10,379	$10,379	$10,379
$3,562	$3,633	$3,706	$3,780

$13,941	$14,012	$14,085	$14,159
$83,646,153	$84,073,597	$84,509,590	$84,954,302
$13,604,621	$13,876,714	$14,154,248	$14,437,333
$20,803,264	$21,219,329	$21,643,715	$22,076,590
$49,238,268	$48,977,554	$48,711,626	$48,440,380
$9,024,382	$8,238,358	$7,520,797	$6,865,736
$10,053,472	$10,184,799	$10,297,707	$10,393,661
$39,184,797	$38,792,755	$38,413,919	$38,046,719

Christine Lafleur

From: Deborah Langelaan
Sent: Wednesday, March 23, 2011 10:21 AM
To: 'Elliot Smith (esmith@osler.com)'; Michael Killeavy; Susan Kennedy
Cc: JoAnne Butler; 'Rocco Sebastiano (rsebastiano@osler.com)'
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 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca |

Christine Lafleur

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: Wednesday, March 23, 2011 10:22 AM
To: Michael Killeavy; ESmith@osler.com; Susan Kennedy
Cc: Deborah Langelaan; gene.meehan@nera.com; Anshul Mathur
Subject: RE: TCE Matter - OPA Counter-Proposal - Schedule A .....

Micheal:

There is nothing else as far as SMS is concerned.

Thanks,
Safouh

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 23, 2011 10:12 AM
To: ESmith@osler.com; Susan Kennedy
Cc: Deborah Langelaan; gene.meehan@nera.com; Anshul Mathur; safouh@smsenergy-engineering.com
Subject: TCE Matter - OPA Counter-Proposal - Schedule A .....

*** Privileged & Confidential - Prepared in Contemplation of Litigation ***

I spoke with George Pessione yesterday afternoon. He does not require dual-fire capability for the GT units. He does require a "must offer" covenant in the contract, though. Is there anything else that needs to be resolved to finalize Schedule A?

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

Christine Lafleur

From:	Susan Kennedy
Sent:	Thursday, March 24, 2011 9:46 AM
To:	Robert Godhue
Subject:	FW: TransCanada OPA Replacement Project Negotiations - MPS Canada, Inc. - LTSA
Attachments:	Earthquake Event MPS Canada 20110311.pdf

Sigh ...

Would you please knock another one of these off. Description for designation purposes is below. Attachment is interesting but irrelevant for designation.

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

From: Deborah Langelaan
Sent: March 24, 2011 9:39 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada OPA Replacement Project Negotiations - MPS Canada, Inc. - LTSA

Hi Susan;

We need another designation letter and the description is as follows:

"Long Term Service Agreement No. 7011 between TransCanada Energy Ltd. And MPS Canada, Inc. Dated July 7, 2009."

Please let me know if you require more information.

Thanks,
Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 23, 2011 3:17 PM
To: Deborah Langelaan
Cc: Terry Bennett; Geoff Murray
Subject: TransCanada OPA Replacement Project Negotiations - MPS Canada, Inc. - LTSA

Dear Deborah,

Further to my voicemail this afternoon, we have received a response from MPS Canada, Inc. regarding status of the LTSA. MPS believes they should be able to provide the document by Monday March 28, 2011.
The document would be provided in accordance with our previously defined protocol through your counsel. MPS has also requested the Ontario Power Authority designate the materials to be provided as confidential pursuant to Section 25.13(3) of the Electricity Act.

The title on the LTSA is "

Would you please consider provision of this designation to allow the MPS materials to be provided as expeditiously as possible. Please let me know if this description is sufficient for the purpose of the designation.

Also please find attached Notice of Force Majeure from MPS Canada, Inc. with respect to the recent earthquake and tsunami that struck Japan on March 11, 2011. We have no additional information regarding the potential impact on our equipment or activities of MPS at this point in time.

Please do not hesitate to call me should you have any questions regarding the above request, the LTSA or the FM notice.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Thursday, 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

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

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

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T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca |

Christine Lafleur

From: Michael Killeavy
Sent: Thursday, March 24, 2011 11:41 AM
To: 'Smith, Elliot'; Deborah Langelaan; Susan Kennedy
Cc: JoAnne Butler; 'Sebastiano, Rocco'
Subject: RE: OGS L/C

Agreed.

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

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

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Elliot

Elliot Smith
Associate

416.862.6435 DIRECT
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Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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

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Suite 1600 - 120 Adelaide St. W. | Toronto, ON M5H 1T1 |
T: 416.969.6052 | F: 416.967.1947 | deborah.langelaan@powerauthority.on.ca **|**

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, March 24, 2011 12:02 PM
To: Robert Godhue
Subject: FW: Agenda for this morning's conference call
Attachments: #20297127v4_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; Blackline - Draft Response to A. Pourbaix Letter with Project Proposal.pdf

Please print clean and bl. tx

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 24, 2011 11:58 AM
To: Deborah Langelaan; Michael Killeavy; gene.meehan@nera.com; Anshul Mathur; Susan Kennedy
Subject: RE: Agenda for this morning's conference call

All,
I have attached a revised draft of the letter to TCE along with a blackline to the version previously circulated. Please note that I only made a few conforming changes to the Schedule "A" provided, as I believe there are a number of points in that Schedule that we need to discuss. Also, Rocco is still in the process of reviewing this so I may have some further revisions to incorporate prior to finalization.

Elliot

Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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

From: Smith, Elliot
Sent: Tuesday, March 22, 2011 9:27 AM
To: 'Deborah Langelaan'; Michael Killeavy; gene.meehan@nera.com; Anshul Mathur
Subject: RE: Agenda for this morning's conference call

Also for this morning's call, I have attached a first draft of the proposed letter to TCE.

Elliot

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Tuesday, March 22, 2011 9:15 AM

To: Michael Killeavy; Smith, Elliot; gene.meehan@nera.com; Anshul Mathur
Subject: Agenda for this morning's conference call

Gentlemen;

Please find attached the agenda for today's conference call.

Deb

DRAFT: MARCH 24, 2011

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

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

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

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the replacement project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the replacement project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the project.

   If this did not occur and as a result the project were to be delayed by the delays TCE encountered in the issuance of such *Planning Act* approvals, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). The amount of the increase in the NRR would be based on the same factor used in Schedule "C" to amortize capital cost over the term. In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount of $50,000,000. TCE would be solely responsible for all other permits and approvals required for the project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The Replacement Contract would provide that verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station would be paid to TCE immediately upon its execution, provided that such amount shall not in any case exceed $37,000,000.

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

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

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

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

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than **[90]**% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than **[90]**% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. **[NTD: Appropriate threshold to be confirmed by SMS.]**

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

Exhibit J but would be willing to discuss any valid concerns TCE may have in this regard.

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

Yours very truly,

JoAnne Butler

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

SCHEDULE "A" – TECHNICAL REQUIREMENTS

Replacement Project

The replacement project shall:

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

(b) be a simple cycle configuration generating facility with fast start capability;

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

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO. **[NTD: Is this not covered by the obligation to comply with applicable laws and regulations?]**

Contract Capacity

The replacement project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the replacement project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;

(b) **[be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;]**

(c) have a Season 3 Contract Capacity of no less than 480 MW;

(d) have a Contract Capacity of no more than 550 MW in any Season; and

(e) have a Nameplate MVA Rating of no more than **[650]** MVA **[NTD: There are no short circuit issues due to connection at 230 kV, so this item can be omitted.]**

Electrical Connection

The replacement project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. **[Notwithstanding the foregoing, a replacement project may also connect to a Local Distribution System for the purpose of providing Islanding Capability and still be eligible.]**

The replacement project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[NTD: This assumes TCE builds the transmission line to Boxwood.]**

Operation Following a N-2 Contingency (Load Restoration)

For load restoration, the replacement project will comply with the load restoration criteria stipulated under Section 7 of the Ontario Resource and Transmission Assessment Criteria. The criteria are as follows:

- all load to be restored within 8 hours
- amount of load in excess of 150 MW must be restored within 4 hours
- amount of load in excess of 250 MW must be restored within 30 minutes.

Operational Flexibilities

1. **Fast Start Capability.** The replacement project must be such that each combustion turbine must be capable of fast start-up.

2. **Ramp Rate Requirement.** The replacement project must be such that each combustion turbine is capable of ramping at a rate of 8%/min or more of its Base Load. **[A Contract Ramp Rate will be agreed on by the parties to form part of the Replacement Contract. Ramp rate stipulated in the Replacement Contract will be subject to annual verification and shall form part of a capacity check test.]**

3. **Turnaround Time Requirement.** To be discussed.

4. **Black Start Capability.** The IESO advised that replacement project is not required to include black-start capability since the generators can be run-up (following a N-2 contingency of the Preston Tap) using the Preston auto-transformer to maintain a synchronous connection to the system.

5. **Emissions Requirements.** The replacement project shall be such that its emissions shall not exceed the following:

   (a) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; and

   (b) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract. **[NTD: What is the KWCG Emissions Measurement Methodology? What "Contract" is it set out in?]**

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

(d) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the replacement project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the replacement project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

(e) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the replacement project must comply with the NOx and CO limits set out above.

6. **Fuel Supply.** The replacement project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

7. **Equipment.** The replacement project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at **[250]** MW (measured at the Generator's output terminals) new and clean, at ISO conditions. TCE shall negotiate the purchase contract for the Generators with the Generator vendor. **[NTD: Is TCE negotiating a new contract with MPS?]**

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ 12,839 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	$ [30,000]/start-up (* please refer to the note below)
O&M Costs	$ [●]/ MWh (* please refer to the note below)
OR Cost	$ [●]/ MWh (* please refer to the note below)

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

* NOTE: These parameters will be determined following the OPA's review of the unredacted Long-Term Services Agreement between Mitsubishi Power System and TransCanada Energy Ltd. ("LTSA").

<u>SCHEDULE "C" – ADJUSTMENT METHODOLOGY</u>

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the replacement project will be $425,000,000 (the "Target Capex"). So long as the actual cost to design and build the replacement project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

(i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

(ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

(iii) The adjusted NRR shall be equal to 4626.968162 plus 1.93219×10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA. **[NTD: This test should provide some measure of comfort about TCE's spending without the need for close oversight and approvals by the OPA.]**

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

<u>Cost</u>	<u>Fixed Price</u>
Main Turbine Original Costs (excluding change orders)	$156,274,358
Main Turbine Additional Scope (excluding change orders)	$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the replacement project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

(f) **[NTD: Michael, in your memo you state that the included cost components for Actual Capex are to mirror those of Target Capex. Is this intended to limit recovery to certain elements of Capex?]**

Christine Lafleur

From:	Susan Kennedy
Sent:	Thursday, March 24, 2011 1:06 PM
To:	Robert Godhue
Subject:	FW: TCE Matter - OPA Counter-Proposal - Conversion of CAPEX into NRR Spreadsheet .....
Attachments:	OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL.xls

Yet another print job...

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Michael Killeavy
Sent: March 24, 2011 12:31 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan; Safouh Soufi; Gene.Meehan@NERA.com
Subject: TCE Matter - OPA Counter-Proposal - Conversion of CAPEX into NRR Spreadsheet .....

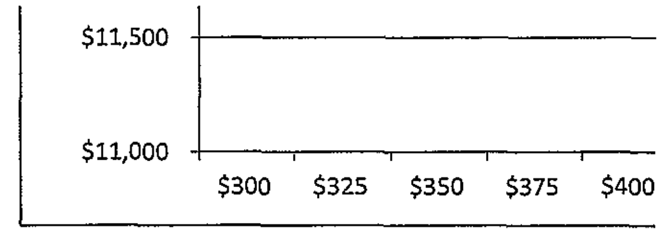
*** PRIVILEGED AND CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION ***

Attached is the spreadsheet I used to derive the equation for converting Adjusted CAPEX into NRR. Please refer to the second tab entitled "Target Cost Adj."

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)

$450,000,000	$450	$13,080
$475,000,000	$475	$13,322
$500,000,000	$500	$13,563



m = 1.93219E-05
b = 4626.968162

ADJUSTED CAPEX	FINAL NRR	FITTED LINE
$381,250,000	$11,993	$11,993
$390,000,000	$12,163	$12,163
$398,750,000	$12,332	$12,332
$407,500,000	$12,501	$12,501
$416,250,000	$12,670	$12,670
$425,000,000	$12,839	$12,839
$437,500,000	$13,080	$13,080
$450,000,000	$13,322	$13,322
$462,500,000	$13,563	$13,563

Target Costing Allocation of Actual CAPEX

Target CAPEX = $425,000,000

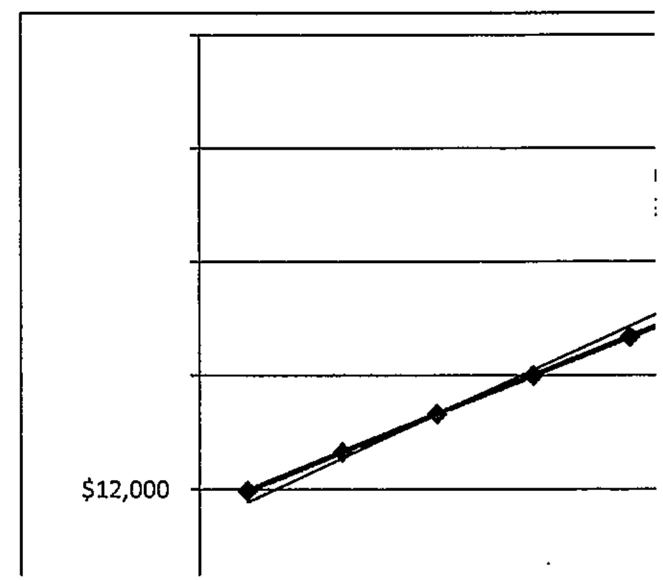
CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

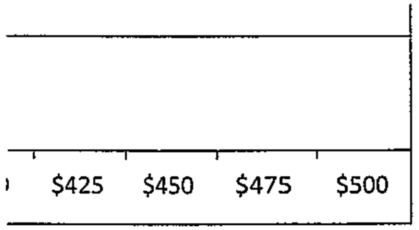
FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$75,000,000	
OPA Share	**$37,500,000**	
TCE Share	$37,500,000	
Adjusted CAPEX =	**$462,500,000**	Target CAPEX + OPA Share

Initial NRR	$12,839
Final NRR	$13,563

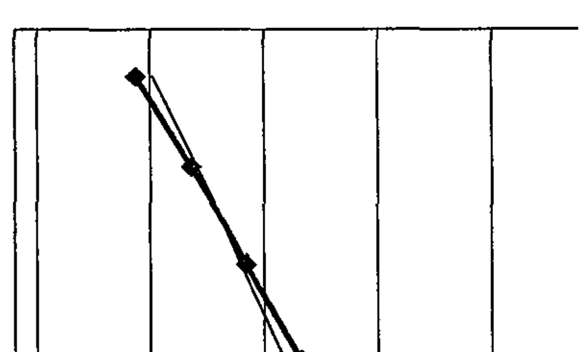
Target CAPEX $425,000,000 NRR = $12,839

FINAL CAPEX		FINAL NRR
$300,000,000	$300	$11,993
$325,000,000	$325	$12,163
$350,000,000	$350	$12,332
$375,000,000	$375	$12,501
$400,000,000	$400	$12,670
$425,000,000	$425	$12,839





$10,423.54



Baseline NRR Calculation

CAPEX Spend:		$425,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		500 MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$13,932,876	$20,253,106	$71,106,527	$85,551,641
Book Value of Capital	$13,932,876	$34,185,982	$105,292,509	$190,844,150
Non-Indexed NRR				
Indexed NRR				

Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($13,932,876)	($20,253,106)	($71,106,527)	($85,551,641)
NRR	**$12,839**			
Target OGS NPV	$50,000,000			
XNPV for K-W Peaking Plant	**$50,000,000**			
XNPV in 2012 plus spend	$35,910,883			
XIRR	8.13%			

Goal Seek NRR for Target K-W NPV Based on Target OGS NPV

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$177,415,631	$56,740,219				
$368,259,781	$425,000,000	$406,491,250	$371,085,862	$338,764,284	$309,257,914
		$10,271	$10,271	$10,271	$10,271
		$2,568	$2,619	$2,671	$2,725

		$12,839	$12,890	$12,943	$12,996
		$77,032,654	$77,340,785	$77,655,078	$77,975,657
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$60,014,439	$59,982,205	$59,949,327	$59,915,791
		$18,508,750	$35,405,388	$32,321,579	$29,506,369
		$10,376,422	$6,144,204	$6,906,937	$7,602,356
($177,415,631)	**($56,740,219)**	$49,638,017	$53,838,001	$53,042,390	$52,313,436

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$282,321,550	$257,731,343	$235,282,943	$214,789,799	$196,081,607	$179,002,899
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$2,779	$2,835	$2,892	$2,950	$3,009	$3,069

$13,050	$13,106	$13,163	$13,221	$13,280	$13,340
$78,302,648	$78,636,178	$78,976,379	$79,323,384	$79,677,330	$80,038,354
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$59,881,584	$59,846,694	$59,811,105	$59,774,805	$59,737,778	$59,700,012
$26,936,364	$24,590,207	$22,448,400	$20,493,144	$18,708,191	$17,078,708
$8,236,305	$8,814,122	$9,340,676	$9,820,415	$10,257,397	$10,655,326
$51,645,279	$51,032,572	$50,470,429	$49,954,390	$49,480,382	$49,044,686

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$163,411,747	$149,178,584	$136,185,129	$124,323,404	$113,494,836	$103,609,436
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$3,130	$3,193	$3,257	$3,322	$3,388	$3,456

$13,401	$13,464	$13,528	$13,593	$13,659	$13,727
$80,406,598	$80,782,208	$81,165,329	$81,556,114	$81,954,713	$82,361,285
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$59,661,489	$59,622,197	$59,582,118	$59,541,238	$59,499,540	$59,457,009
$15,591,153	$14,233,163	$12,993,455	$11,861,725	$10,828,569	$9,885,400
$11,017,584	$11,347,258	$11,647,166	$11,919,878	$12,167,743	$12,392,902
$48,643,905	$48,274,938	$47,934,952	$47,621,360	$47,331,797	$47,064,106

17	18	19	20	21	22
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$94,585,054	$86,346,696	$78,825,898	$71,960,163	$65,692,432	$59,970,622
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$3,525	$3,595	$3,667	$3,741	$3,816	$3,892

$13,796	$13,866	$13,938	$14,012	$14,087	$14,163
$82,775,988	$83,198,986	$83,630,443	$84,070,529	$84,519,418	$84,977,283
$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876
$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060
$59,413,626	$59,369,376	$59,324,241	$59,278,204	$59,231,245	$59,183,348
$9,024,382	$8,238,358	$7,520,797	$6,865,736	$6,267,730	$5,721,811
$12,597,311	$12,782,755	$12,950,861	$13,103,117	$13,240,879	$13,365,384
$46,816,315	$46,586,622	$46,373,380	$46,175,087	$45,990,367	$45,817,964

23	24	25
1-Jul-37	1-Jul-38	1-Jul-39
$54,747,180	$49,978,701	$45,625,556
$10,271	$10,271	$10,271
$3,970	$4,049	$4,130

$14,241	$14,320	$14,401
$85,444,307	$85,920,670	$86,406,561
$9,575,633	$9,767,146	$9,962,489
$16,734,181	$17,068,865	$17,410,242
$59,134,492	$59,084,660	$59,033,830
$5,223,441	$4,768,479	$4,353,145
$13,477,763	$13,579,045	$13,670,171
$45,656,730	$45,505,615	$45,363,659

Baseline NRR Calculation

Adjusted CAPEX Spend:		$462,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

			CCA Rate
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		100%	
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Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in nor	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$15,162,247	$22,040,145	$77,380,632	$93,100,315
Book Value of Capital	$15,162,247	$37,202,392	$114,583,024	$207,683,340
Non-Indexed NRR				
Indexed NRR				
Total NRR				

REVENUES = CSP

OPEX
GD&M
EBITDA

Depreciation (Capital Cost Allowance)

Taxes Payable

Total Cash Flow	($15,162,247)	($22,040,145)	($77,380,632)	($93,100,315)

Final NRR	**$13,563**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$33,877,891
XIRR	8.00%

GoalSeek NRR for Adjusted K-W NPV Based on Target OGS NPV and Adj. CAPEX

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$193,069,952	$61,746,709				
$400,753,291	$462,500,000	$442,358,125	$403,828,732	$368,655,250	$336,545,377
		$10,851	$10,851	$10,851	$10,851
		$2,713	$2,767	$2,822	$2,879
		$13,563	$13,618	$13,673	$13,729

		$81,380,082	$81,705,602	$82,037,633	$82,376,304
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$64,361,867	$64,347,023	$64,331,882	$64,316,438
		$20,141,875	$38,529,393	$35,173,483	$32,109,872
		$11,054,998	$6,454,407	$7,289,600	$8,051,641
($193,069,952)	**($61,746,709)**	$53,306,869	$57,892,615	$57,042,282	$56,264,797

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$307,232,275	$280,472,344	$256,043,203	$233,741,840	$213,382,926	$194,797,273
$10,851	$10,851	$10,851	$10,851	$10,851	$10,851
$2,936	$2,995	$3,055	$3,116	$3,178	$3,242
$13,787	$13,846	$13,906	$13,967	$14,029	$14,093

$82,721,749	$83,074,102	$83,433,503	$83,800,092	$84,174,012	$84,555,411
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$64,300,686	$64,284,618	$64,268,229	$64,251,512	$64,234,461	$64,217,069
$29,313,102	$26,759,931	$24,429,141	$22,301,363	$20,358,914	$18,585,653
$8,746,896	$9,381,172	$9,959,772	$10,487,537	$10,968,887	$11,407,854
$55,553,790	$54,903,446	$54,308,457	$53,763,975	$53,265,574	$52,809,215

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$177,830,430	$162,341,400	$148,201,464	$135,293,116	$123,509,086	$112,751,445
$10,851	$10,851	$10,851	$10,851	$10,851	$10,851
$3,307	$3,373	$3,440	$3,509	$3,579	$3,651
$14,157	$14,224	$14,291	$14,360	$14,430	$14,502

$84,944,438	$85,341,246	$85,745,989	$86,158,828	$86,579,923	$87,009,440
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$64,199,329	$64,181,235	$64,162,778	$64,143,952	$64,124,750	$64,105,164
$16,966,842	$15,489,030	$14,139,936	$12,908,348	$11,784,030	$10,757,641
$11,808,122	$12,173,051	$12,505,710	$12,808,901	$13,085,180	$13,336,881
$52,391,208	$52,008,184	$51,657,067	$51,335,051	$51,039,570	$50,768,283

17	18	19	20	21	22
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$102,930,794	$93,965,522	$85,781,125	$78,309,589	$71,488,824	$65,262,147
$10,851	$10,851	$10,851	$10,851	$10,851	$10,851
$3,724	$3,798	$3,874	$3,952	$4,031	$4,112
$14,575	$14,649	$14,725	$14,803	$14,882	$14,962

$87,447,548	$87,894,417	$88,350,224	$88,815,148	$89,289,369	$89,773,075
$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876
$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060
$64,085,186	$64,064,808	$64,044,023	$64,022,822	$64,001,197	$63,979,140
$9,820,651	$8,965,272	$8,184,397	$7,471,536	$6,820,765	$6,226,677
$13,566,134	$13,774,884	$13,964,906	$14,137,822	$14,295,108	$14,438,116
$50,519,052	$50,289,924	$50,079,116	$49,885,000	$49,706,089	$49,541,024

$90,266,456	$90,769,703	$91,283,016
$9,575,633	$9,767,146	$9,962,489
$16,734,181	$17,068,865	$17,410,242
$63,956,641	$63,933,693	$63,910,285
$5,684,333	$5,189,228	$4,737,246
$14,568,077	$14,686,116	$14,793,260
$49,388,564	$49,247,576	$49,117,025

23	24	25
1-Jul-37	1-Jul-38	1-Jul-39
$59,577,814	$54,388,586	$49,651,341
$10,851	$10,851	$10,851
$4,194	$4,278	$4,363
$15,044	$15,128	$15,214

Christine Lafleur

From: Michael Killeavy
Sent: Thursday, March 24, 2011 3:05 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: 'Gene.Meehan@NERA.com'; Deborah Langelaan; 'Safouh Soufi'
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...
Attachments: OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL v2.xls

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

Based on our discussion today, with a new target CAPEX of $375 million, I have arrived at an NRR of $11,873/MW-month.

The new NRR adjustment equation is:

NRR = 1.78219E-05 * Adjusted CAPEX + 5185.205289

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)

Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$38,621,540
XIRR	8.33%

Baseline NRR Calculation

CAPEX Spend:		**$375,000,000**	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

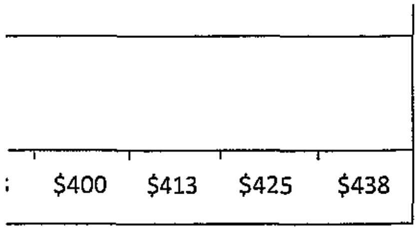
Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

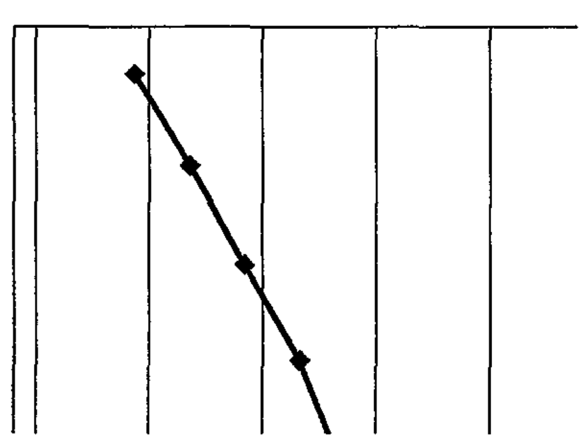
Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

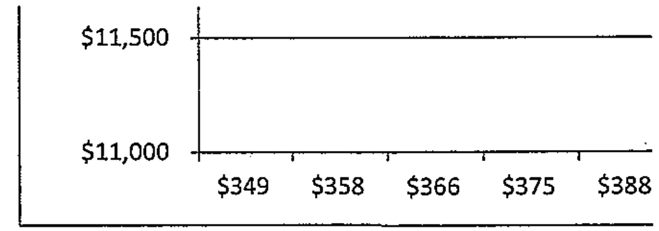
TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$12,293,714	$17,870,388	$62,741,053	$75,486,742
Book Value of Capital	$12,293,714	$30,164,102	$92,905,155	$168,391,897
Non-Indexed NRR				
Indexed NRR				
Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($12,293,714)	($17,870,388)	($62,741,053)	($75,486,742)
NRR	**$11,873**	[redacted]		


$400
$413
$425
$438



$450,000,000	$450	$13,080
$475,000,000	$475	$13,322
$500,000,000	$500	$13,563



m = 1.78219E-05
b = 5185.205289

ADJUSTED CAPEX		FINAL NRR	FITTED LINE
$348,750,000	$349	$11,365	$11,401
$357,500,000	$358	$11,535	$11,557
$366,250,000	$366	$11,704	$11,712
$375,000,000	$375	$11,873	$11,868
$387,500,000	$388	$12,114	$12,091
$400,000,000	$400	$12,356	$12,314
$412,500,000	$413	$12,597	$12,537
$425,000,000	$425	$12,839	$12,760
$437,500,000	$438	$12,839	$12,982

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

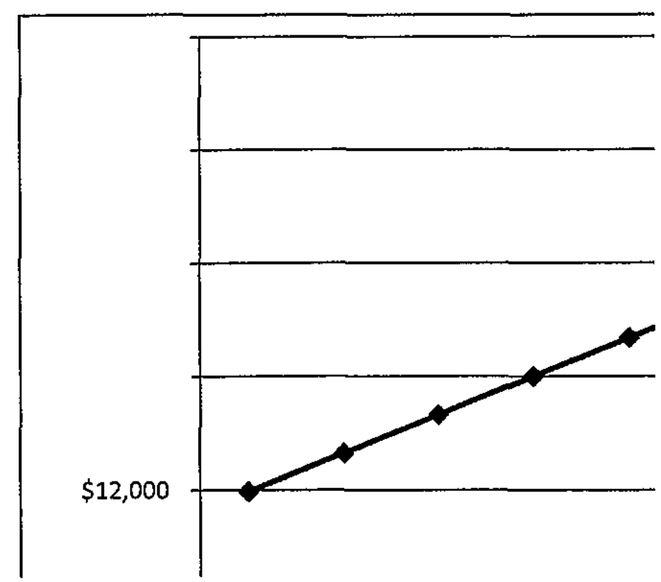
CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$125,000,000	
OPA Share	**$62,500,000**	
TCE Share	$62,500,000	
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share

Initial NRR	$11,873
Final NRR	$12,839

Target CAPEX $375,000,000 NRR = $11,873

FINAL CAPEX		FINAL NRR
$300,000,000	$300	$11,993
$325,000,000	$325	$12,163
$350,000,000	$350	$12,332
$375,000,000	$375	$12,501
$400,000,000	$400	$12,670
$425,000,000	$425	$12,839



XNPV for K-W Peaking Plant	**$41,188,707**
XNPV in 2012 plus spend	$25,343,624
XIRR	7.84%

Adjusted
K-W NPV Based on
Target OGS NPV and
Adj. CAPEX

Baseline NRR Calculation

Adjusted CAPEX Spend:		**$437,500,000**	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in noı	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$14,342,666	$20,848,785	$73,197,895	$88,067,866
Book Value of Capital	$14,342,666	$35,191,452	$108,389,347	$196,457,213
Non-Indexed NRR				
Indexed NRR				
Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($14,342,666)	($20,848,785)	($73,197,895)	($88,067,866)

Final NRR **$12,839**
Target OGS NPV $50,000,000

[redacted]

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$144,186,835	$131,628,162	$120,163,349	$109,697,121	$100,142,502	$91,420,090
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$2,895	$2,952	$3,011	$3,072	$3,133	$3,196
$12,393	$12,451	$12,510	$12,570	$12,631	$12,694
$74,356,145	$74,703,491	$75,057,783	$75,419,161	$75,787,767	$76,163,745
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$53,611,036	$53,543,479	$53,474,572	$53,404,286	$53,332,594	$53,259,469
$13,756,899	$12,558,673	$11,464,813	$10,466,228	$9,554,619	$8,722,412
$9,963,534	$10,246,201	$10,502,440	$10,734,514	$10,944,494	$11,134,264
$43,647,502	$43,297,278	$42,972,132	$42,669,771	$42,388,100	$42,125,204

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$249,107,250	$227,410,009	$207,602,597	$189,520,411	$173,013,183	$157,943,735
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$2,570	$2,622	$2,674	$2,728	$2,782	$2,838
$12,068	$12,120	$12,172	$12,226	$12,280	$12,336
$72,410,513	$72,718,946	$73,033,547	$73,354,441	$73,681,752	$74,015,610
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$53,989,450	$53,929,461	$53,868,273	$53,805,861	$53,742,201	$53,677,268
$23,767,380	$21,697,241	$19,807,412	$18,082,186	$16,507,228	$15,069,448
$7,555,517	$8,058,055	$8,515,215	$8,930,919	$9,308,743	$9,651,955
$46,433,932	$45,871,406	$45,353,058	$44,874,943	$44,433,458	$44,025,313

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$156,543,204	$50,064,899				
$324,935,101	$375,000,000	$358,668,750	$327,428,702	$298,909,662	$272,874,630
		$9,498	$9,498	$9,498	$9,498
		$2,375	$2,422	$2,470	$2,520
		$11,873	$11,920	$11,969	$12,018
		$71,236,084	$71,521,028	$71,811,672	$72,108,128
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$54,217,869	$54,162,449	$54,105,921	$54,048,262
		$16,331,250	$31,240,048	$28,519,040	$26,035,032
		$9,471,655	$5,730,600	$6,396,720	$7,003,308
($156,543,204)	**($50,064,899)**	$44,746,214	$48,431,849	$47,709,201	$47,044,954

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$182,633,738	$58,409,049				
$379,090,951	$437,500,000	$418,446,875	$382,000,152	$348,727,939	$318,353,735
		$10,271	$10,271	$10,271	$10,271
		$2,568	$2,619	$2,671	$2,725
		$12,839	$12,890	$12,943	$12,996
		$77,032,654	$77,340,785	$77,655,078	$77,975,657
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$60,014,439	$59,982,205	$59,949,327	$59,915,791
		$19,053,125	$36,446,723	$33,272,213	$30,374,203
		$10,240,329	$5,883,871	$6,669,278	$7,385,397
($182,633,738)	**($58,409,049)**	$49,774,111	$54,098,335	$53,280,049	$52,530,394

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$290,625,125	$265,311,677	$242,203,030	$221,107,146	$201,848,713	$184,267,690
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$2,779	$2,835	$2,892	$2,950	$3,009	$3,069
$13,050	$13,106	$13,163	$13,221	$13,280	$13,340
$78,302,648	$78,636,178	$78,976,379	$79,323,384	$79,677,330	$80,038,354
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$59,881,584	$59,846,694	$59,811,105	$59,774,805	$59,737,778	$59,700,012
$27,728,610	$25,313,448	$23,108,647	$21,095,884	$19,258,432	$17,581,023
$8,038,244	$8,633,311	$9,175,615	$9,669,730	$10,119,837	$10,529,747
$51,843,341	$51,213,382	$50,635,491	$50,105,075	$49,617,942	$49,170,264

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$168,217,975	$153,566,189	$140,190,574	$127,979,975	$116,832,919	$106,656,772
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$3,130	$3,193	$3,257	$3,322	$3,388	$3,456
$13,401	$13,464	$13,528	$13,593	$13,659	$13,727
$80,406,598	$80,782,208	$81,165,329	$81,556,114	$81,954,713	$82,361,285
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$59,661,489	$59,622,197	$59,582,118	$59,541,238	$59,499,540	$59,457,009
$16,049,716	$14,651,786	$13,375,615	$12,210,599	$11,147,056	$10,176,147
$10,902,943	$11,242,603	$11,551,626	$11,832,660	$12,088,121	$12,320,215
$48,758,546	$48,379,594	$48,030,492	$47,708,578	$47,411,419	$47,136,793

17	18	19	20	21	22
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$97,366,967	$88,886,304	$81,144,307	$74,076,638	$67,624,563	$61,734,463
$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
$3,525	$3,595	$3,667	$3,741	$3,816	$3,892
$13,796	$13,866	$13,938	$14,012	$14,087	$14,163
$82,775,988	$83,198,986	$83,630,443	$84,070,529	$84,519,418	$84,977,283
$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876
$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060
$59,413,626	$59,369,376	$59,324,241	$59,278,204	$59,231,245	$59,183,348
$9,289,805	$8,480,663	$7,741,997	$7,067,669	$6,452,075	$5,890,099
$12,530,955	$12,722,178	$12,895,561	$13,052,634	$13,194,793	$13,323,312
$46,882,671	$46,647,198	$46,428,680	$46,225,570	$46,036,453	$45,860,036

23	24	25
1-Jul-37	1-Jul-38	1-Jul-39
$56,357,392	$51,448,663	$46,967,484
$10,271	$10,271	$10,271
$3,970	$4,049	$4,130
$14,241	$14,320	$14,401
$85,444,307	$85,920,670	$86,406,561
$9,575,633	$9,767,146	$9,962,489
$16,734,181	$17,068,865	$17,410,242
$59,134,492	$59,084,660	$59,033,830
$5,377,072	$4,908,729	$4,481,179
$13,439,355	$13,543,983	$13,638,163
$45,695,137	$45,540,677	$45,395,667

Christine Lafleur

From:	Michael Killeavy
Sent:	Thursday, March 24, 2011 9:25 PM
To:	Smith, Elliot; Susan Kennedy
Cc:	Deborah Langelaan; gene.meehan@nera.com; safouh@smsenergy-engineering.com; Andrew.Pizzi@NERA.com
Subject:	TCE Matter - OPA Counter-Proposal - Corrected and Revised Financial Proposal ...
Attachments:	OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL v3.xls

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

Andrew Pizzi discovered a cut-and-paste error in the sensitivity analysis table used to derive NRR-Adj. CAPEX equation. I apologize for the confusion this error might have caused. Attached is the corrected spreadsheet.

With the revised target CAPEX of $375 million, the NRR of $11,873/MW-month remains unchanged despite the cut-and-paste error.

The NRR adjustment equation is, however, corrected to:

NRR = 1.93201E-05 * Adjusted CAPEX + 4627.668956

Andrew, could you please run the new target CAPEX through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

Thanks,
Michael

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Baseline NRR Calculation

CAPEX Spend:		**$375,000,000**	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital	7.50%						1	2	3
	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%			
Yearly CAPEX Spend	$12,293,714	$17,870,388	$62,741,053	$75,486,742	$156,543,204	$50,064,899			
Book Value of Capital	$12,293,714	$30,164,102	$92,905,155	$168,391,897	$324,935,101	$375,000,000	$358,668,750	$327,428,702	$298,909,662
Non-Indexed NRR							$9,498	$9,498	$9,498
Indexed NRR							$2,375	$2,422	$2,470
Total NRR							$11,873	$11,920	$11,969
REVENUES = CSP							$71,236,084	$71,521,028	$71,811,672
OPEX							$6,193,893	$6,317,771	$6,444,127
GD&M							$10,824,322	$11,040,808	$11,261,624
EBITDA							$54,217,869	$54,162,449	$54,105,921
Depreciation (Capital Cost Allowance)							$16,331,250	$31,240,048	$28,519,040
Taxes Payable							$9,471,655	$5,730,600	$6,396,720
Total Cash Flow	($12,293,714)	($17,870,388)	($62,741,053)	($75,486,742)	($156,543,204)	($50,064,899)	$44,746,214	$48,431,849	$47,709,201

NRR	**$11,873**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$38,621,540
XIRR	8.33%

Goal Seek NRR for Target K-W NPV Based on Target OGS NPV

4	5	6	7	8	9	10	11	12	13	14
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
$272,874,630	$249,107,250	$227,410,009	$207,602,597	$189,520,411	$173,013,183	$157,943,735	$144,186,835	$131,628,162	$120,163,349	$109,697,121
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$2,520	$2,570	$2,622	$2,674	$2,728	$2,782	$2,838	$2,895	$2,952	$3,011	$3,072
$12,018	$12,068	$12,120	$12,172	$12,226	$12,280	$12,336	$12,393	$12,451	$12,510	$12,570
$72,108,128	$72,410,513	$72,718,946	$73,033,547	$73,354,441	$73,681,752	$74,015,610	$74,356,145	$74,703,491	$75,057,783	$75,419,161
$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461
$11,486,857	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414
$54,048,262	$53,989,450	$53,929,461	$53,868,273	$53,805,861	$53,742,201	$53,677,268	$53,611,036	$53,543,479	$53,474,572	$53,404,286
$26,035,032	$23,767,380	$21,697,241	$19,807,412	$18,082,186	$16,507,228	$15,069,448	$13,756,899	$12,558,673	$11,464,813	$10,466,228
$7,003,308	$7,555,517	$8,058,055	$8,515,215	$8,930,919	$9,308,743	$9,651,955	$9,963,534	$10,246,201	$10,502,440	$10,734,514
$47,044,954	$46,433,932	$45,871,406	$45,353,058	$44,874,943	$44,433,458	$44,025,313	$43,647,502	$43,297,278	$42,972,132	$42,669,771

15	16	17	18	19	20	21	22	23	24	25
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36	1-Jul-37	1-Jul-38	1-Jul-39
$100,142,502	$91,420,090	$83,457,400	$76,188,261	$69,552,263	$63,494,261	$57,963,911	$52,915,254	$48,306,336	$44,098,854	$40,257,844
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$3,133	$3,196	$3,260	$3,325	$3,391	$3,459	$3,528	$3,599	$3,671	$3,744	$3,819
$12,631	$12,694	$12,758	$12,823	$12,890	$12,957	$13,027	$13,097	$13,169	$13,243	$13,317
$75,787,767	$76,163,745	$76,547,243	$76,938,410	$77,337,401	$77,744,372	$78,159,482	$78,582,894	$79,014,775	$79,455,293	$79,904,621
$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
$14,282,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
$53,332,594	$53,259,469	$53,184,881	$53,108,801	$53,031,200	$52,952,046	$52,871,310	$52,788,959	$52,704,960	$52,619,282	$52,531,891
$9,554,619	$8,722,412	$7,962,690	$7,269,140	$6,635,998	$6,058,002	$5,530,350	$5,048,657	$4,608,919	$4,207,482	$3,841,010
$10,944,494	$11,134,264	$11,305,548	$11,459,915	$11,598,801	$11,723,511	$11,835,240	$11,935,075	$12,024,010	$12,102,950	$12,172,720
$42,388,100	$42,125,204	$41,879,333	$41,648,886	$41,432,399	$41,228,535	$41,036,070	$40,853,883	$40,680,950	$40,516,332	$40,359,171

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$125,000,000	
OPA Share	**$62,500,000**	
TCE Share	$62,500,000	
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share
Initial NRR	$11,873	
Final NRR	$13,080	

	m =	1.93201E-05
	b =	4627.668956
ADJUSTED CAPEX	FINAL NRR	FITTED LINE
$348,750,000	$11,365	$11,366
$357,500,000	$11,535	$11,535
$366,250,000	$11,704	$11,704
$375,000,000	$11,873	$11,873
$387,500,000	$12,114	$12,114
$400,000,000	$12,356	$12,356
$412,500,000	$12,597	$12,597
$425,000,000	$12,839	$12,839
$437,500,000	$13,080	$13,080
$437,500,000	$13,080	

Baseline NRR Calculation

Adjusted CAPEX Spend:		$437,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		500 MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in nor	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$14,342,666	$20,848,785	$73,197,895	$88,067,866
Book Value of Capital	$14,342,666	$35,191,452	$108,389,347	$196,457,213
Non-Indexed NRR				
Indexed NRR				
Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($14,342,666)	($20,848,785)	($73,197,895)	($88,067,866)

Final NRR	**$13,080**	Goal Seek NRR for
Target OGS NPV	$50,000,000	

XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$35,233,219
XIRR	8.08%

[illegible]
K-W NPV Based on
[illegible]
[illegible]

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$182,633,738	$58,409,049				
$379,090,951	$437,500,000	$418,446,875	$382,000,152	$348,727,939	$318,353,735
		$10,464	$10,464	$10,464	$10,464
		$2,616	$2,668	$2,722	$2,776
		$13,080	$13,133	$13,186	$13,240
		$78,481,797	$78,795,724	$79,115,929	$79,442,539
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$61,463,582	$61,437,144	$61,410,179	$61,382,673
		$19,053,125	$36,446,723	$33,272,213	$30,374,203
		$10,602,614	$6,247,605	$7,034,491	$7,752,117
($182,633,738)	**($58,409,049)**	$50,860,967	$55,189,539	$54,375,687	$53,630,556

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$290,625,125	$265,311,677	$242,203,030	$221,107,146	$201,848,713	$184,267,690
$10,464	$10,464	$10,464	$10,464	$10,464	$10,464
$2,832	$2,888	$2,946	$3,005	$3,065	$3,126
$13,296	$13,353	$13,410	$13,469	$13,529	$13,591
$79,775,681	$80,115,486	$80,462,087	$80,815,620	$81,176,224	$81,544,040
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$61,354,618	$61,326,002	$61,296,813	$61,267,041	$61,236,673	$61,205,697
$27,728,610	$25,313,448	$23,108,647	$21,095,884	$19,258,432	$17,581,023
$8,406,502	$9,003,138	$9,547,042	$10,042,789	$10,494,560	$10,906,169
$52,948,116	$52,322,863	$51,749,772	$51,224,251	$50,742,113	$50,299,529

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$168,217,975	$153,566,189	$140,190,574	$127,979,975	$116,832,919	$106,656,772
$10,464	$10,464	$10,464	$10,464	$10,464	$10,464
$3,189	$3,253	$3,318	$3,384	$3,452	$3,521
$13,653	$13,717	$13,782	$13,848	$13,916	$13,985
$81,919,212	$82,301,887	$82,692,216	$83,090,352	$83,496,450	$83,910,670
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$61,174,103	$61,141,876	$61,109,005	$61,075,476	$61,041,277	$61,006,394
$16,049,716	$14,651,786	$13,375,615	$12,210,599	$11,147,056	$10,176,147
$11,281,097	$11,622,523	$11,933,347	$12,216,219	$12,473,555	$12,707,562
$49,893,006	$49,519,353	$49,175,657	$48,859,257	$48,567,722	$48,298,832

17	18	19	20	21	22
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$97,366,967	$88,886,304	$81,144,307	$74,076,638	$67,624,563	$61,734,463
$10,464	$10,464	$10,464	$10,464	$10,464	$10,464
$3,591	$3,663	$3,736	$3,811	$3,887	$3,965
$14,056	$14,127	$14,201	$14,275	$14,352	$14,429
$84,333,175	$84,764,130	$85,203,703	$85,652,069	$86,109,401	$86,575,881
$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876
$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060
$60,970,813	$60,934,520	$60,897,502	$60,859,743	$60,821,229	$60,781,945
$9,289,805	$8,480,663	$7,741,997	$7,067,669	$6,452,075	$5,890,099
$12,920,252	$13,113,464	$13,288,876	$13,448,019	$13,592,289	$13,722,961
$48,050,561	$47,821,056	$47,608,626	$47,411,725	$47,228,941	$47,058,984

23	24	25
1-Jul-37	1-Jul-38	1-Jul-39
$56,357,392	$51,448,663	$46,967,484
$10,464	$10,464	$10,464
$4,044	$4,125	$4,208
$14,509	$14,590	$14,672
$87,051,690	$87,537,015	$88,032,046
$9,575,633	$9,767,146	$9,962,489
$16,734,181	$17,068,865	$17,410,242
$60,741,875	$60,701,004	$60,659,315
$5,377,072	$4,908,729	$4,481,179
$13,841,201	$13,948,069	$14,044,534
$46,900,674	$46,752,935	$46,614,781

Christine Lafleur

From: Susan Kennedy
Sent: Friday, March 25, 2011 9:03 AM
To: Robert Godhue; Michael Lyle
Subject: Re: OPA Legal Procurement Report

From: Robert Godhue
Sent: Friday, March 25, 2011 08:46 AM
To: Michael Lyle; Susan Kennedy
Subject: FW: OPA Legal Procurement Report

From: Derek Leung
Sent: March 24, 2011 6:49 PM
To: Robert Godhue; Michael Killeavy
Cc: Rodna Kolarova; Gary Hall
Subject: Re: OPA Legal Procurement Report

our comments.

From: Robert Godhue
Sent: Thursday, March 24, 2011 06:13 PM
To: Michael Killeavy
Cc: Derek Leung; Rodna Kolarova; Gary Hall
Subject: RE: OPA Legal Procurement Report

Robert

From: Michael Killeavy
Sent: Thu 2011-03-24 17:57
To: Robert Godhue
Cc: Derek Leung; Rodna Kolarova; Gary Hall
Subject: Re: OPA Legal Procurement Report

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Michael.killeavy@powerauthority.on.ca

From: Robert Godhue
Sent: Thursday, March 24, 2011 05:45 PM
To: Michael Killeavy
Cc: Derek Leung; Rodna Kolarova; Gary Hall
Subject: RE: OPA Legal Procurement Report

[illegible] ne.
[illegible]ds,

From: Michael Killeavy
Sent: Thu 2011-03-24 17:41
To: Robert Godhue
Cc: Derek Leung
Subject: Fw: OPA Legal Procurement Report

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: Rodna Kolarova
Sent: Thursday, March 24, 2011 05:12 PM
To: Michael Killeavy
Cc: Derek Leung
Subject: OPA Legal Procurement Report

300133

		297 5

Add:

Project Code	Description	Amount
300164	Cancellation of Southwest GTA CES Contract Dec 10	70897.4

Rodna

Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
Tel: (416) 969-6220
rodna.kolarova@powerauthority.on.ca

Christine Lafleur

From: Deborah Langelaan
Sent: Friday, March 25, 2011 10:42 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada Potential Project - OGS Development Costs
Attachments: FIPPA protection for supplementary information

Susan;

TCE's counsel has determined that they require another designation letter to cover off the supplementary information provided regarding their sunk costs. Would you be so kind as to provide me with another letter? TCE's had kindly provided the description of the information in their e-mail below.

Thanks,
DEb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 25, 2011 10:01 AM
To: Deborah Langelaan
Subject: TransCanada Potential Project - OGS Development Costs

Dear Deborah,

On Wednesday we talked about whether there was a need to have supplementary materials provided to the OPA to respond to inquiries surrounding the OGS development costs designated as confidential pursuant to Section 25.13(3) of the Electricity Act. I don't know whether you have had an opportunity to discuss this with Susan, but it is our view that the current designation is specific to the two binders provided and a further designation will be required. My apologies, in that I should have expected this and considered a description originally which would have allowed supplementary supporting materials to be provided under the same designation.

Would you please consider a designation letter for materials to be provided which could be described as follows?

Supplementary information provided in support of the TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2067945 - February 24, 2011 and TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2116164 - February 24, 2011.

Please do not hesitate to call me should you have any questions.

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street

24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From: Deborah Langelaan
Sent: Wednesday, March 23, 2011 10:07 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FIPPA protection for supplementary information
Attachments: MISC_110224_FIPPADesignation_DevelopmentCostSummary.pdf

Susan;

I have attached the designation letter we provided to TCE with respect to the binders they provided to the OPA containing copies of their sunk costs associated with OGS. The Ministry of Finance is conducting an audit of the costs on the OPA's behalf and there have been, and will continue to be, requests for additional information to support the costs. In your opinion, does the original designation letter apply to the supplementary information that is being provided by TCE?

Deb

The message is ready to be sent with the following file or link attachments:

MISC_110224_FIPPADesignation_DevelopmentCostSummary

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

DRAFT: MARCH ~~22,~~24, 2011

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

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

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain this replacement project as compensation for the termination of the Contract. The contract for this project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation ~~Contract (the "NYR Contract"), with~~Request for Proposals, subject to the changes set out below and necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. ~~As information about the~~In consideration of the uncertainties in this proposed replacement project~~ matures~~, we would ~~adjust the financial parameters of~~include a mechanism in the Replacement Contract ~~in accordance with the methodology~~to adjust the NRR upon commercial operation, on the basis set out in Schedule "C" to this letter. If this proposal is acceptable to you, we will prepare the necessary documentation for your review.

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the replacement project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the replacement project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, ~~that~~ such *Planning Act* approvals do not impede the development of the project.

   ~~In the event of TCE encountering~~* ~~an event of Force Majeure~~*If this did not occur and as a result ~~of a delay~~the project were to be delayed by the delays TCE encountered in the issuance of such *Planning Act* approvals, such delay would be considered* an event of

Force Majeure*, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). The amount of the increase in the NRR would be based on the same factor used in Schedule "C" to amortize capital cost over the term. In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount of $~~[●]~~.50,000,000. TCE would be solely responsible for all other permits and approvals required for the project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The Replacement Contract would provide that verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generati~~o~~ng Station would be paid to TCE immediately upon its execution~~.~~, provided that such amount shall not in any case exceed $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would ~~include a mechanism for the NRR to be adjusted prior to commercial operation to incorporate~~provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the replacement project~~, plus an amount to reflect the reasonable cost to TCE in amortizing the recovery of these costs [over the term][NTD: Consider appropriate recovery period.] of the Replacement Contract. **[For the gas connection, this would include all costs paid to the local gas distribution company (the "LDC") that are associated with the connection of the project from the LDC, including a contribution in aid to construction, and terminating at the demarcation between the project and the LDC on the site of the project. For the electrical connection, this would include all costs associated with the design engineering, construction and commissioning of the electrical facilities between the high voltage side of the project switchyard and the point of* connection to the Hydro One *transmission system, including land and easements, if applicable.]**~~ would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

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

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

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

Draft & Privileged

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than [●90]% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than [●90]% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. **[NTD: Appropriate threshold to be confirmed by SMS.]**

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

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

Yours very truly,

JoAnne Butler

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

SCHEDULE "A" – TECHNICAL REQUIREMENTS

~~**[NTD: TCE's "Value Propositions" includes a note that Schedule "A" to the IA should set out the applicable emissions limits and measurement methodology. To confirm whether the OPA intends to carry these provisions over from the Contract.]**~~

Replacement Project

The replacement project shall:

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

(b) be a simple cycle configuration generating facility with fast start capability;

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

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO. **[NTD: Is this not covered by the obligation to comply with applicable laws and regulations?]**

Contract Capacity

The replacement project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the replacement project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;

(b) **[be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;]**

(c) have a Season 3 Contract Capacity of no less than 480 MW;

(d) have a Contract Capacity of no more than 550 MW in any Season; and

(e) have a Nameplate MVA Rating of no more than [650] MVA **[NTD: There are no short circuit issues due to connection at 230 kV, so this item can be omitted.]**

Electrical Connection

The replacement project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. **[Notwithstanding the foregoing, a replacement project may also connect to a Local Distribution System for the purpose of providing Islanding Capability and still be eligible.]**

The replacement project will have a connection point located with a direct* connection to the Hydro One *circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[NTD: This assumes TCE builds the transmission line to Boxwood.]**

Operation Following a N-2 Contingency (Load Restoration)

For load restoration, the replacement project will comply with the load restoration criteria stipulated under Section 7 of the Ontario Resource and Transmission Assessment Criteria. The criteria are as follows:

- all load to be restored within 8 hours
- amount of load in excess of 150 MW must be restored within 4 hours
- amount of load in excess of 250 MW must be restored within 30 minutes.

Operational Flexibilities

1. **Fast Start Capability.** The replacement project must be such that each combustion turbine must be capable of fast start-up.

2. **Ramp Rate Requirement.** The replacement project must be such that each combustion turbine is capable of ramping at a rate of 8%/min or more of its Base Load. **[A Contract Ramp Rate will be agreed on by the parties to form part of the Replacement Contract. Ramp rate stipulated in the Replacement Contract will be subject to annual verification and shall form part of a capacity check test.]**

3. **Turnaround Time Requirement.** To be discussed.

4. **Black Start Capability.** The IESO advised that replacement project is not required to include black-start capability since the generators can be run-up (following a N-2 contingency of the Preston Tap) using the Preston auto-transformer to maintain a synchronous connection to the system.

5. **Emissions Requirements.** The replacement project shall be such that its emissions shall not exceed the following:

   (a) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; and

   (b) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract. **[NTD: What is the KWCG Emissions Measurement Methodology? What "Contract" is it set out in?]**

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

(d) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the replacement project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the replacement project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

(e) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the replacement project must comply with the NOx and CO limits set out above.

6. **Fuel Supply.** The replacement project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

7. **Equipment.** The replacement project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at **[250]** MW (measured at the Generator's output terminals) new and clean, at ISO conditions. TCE shall negotiate the purchase contract for the Generators with the Generator vendor. **[NTD: Is TCE negotiating a new contract with MPS?]**

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ 12,839 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	$ [30,000]/start-up (* please refer to the note below)
O&M Costs	$ [●]/ MWh (* please refer to the note below)
OR Cost	$ [●]/ MWh (* please refer to the note below)

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

* NOTE: These parameters will be determined following the OPA's review of the unredacted Long-Term Services Agreement between Mitsubishi Power System and TransCanada Energy Ltd. ("LTSA").

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

~~**[NTD: E. Smith to draft adjustment methodology based on memo from M. Killeavy.]**~~

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the replacement project will be $425,000,000 (the "Target Capex"). So long as the actual cost to design and build the replacement project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

    (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

    OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

    (ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

    (iii) The adjusted NRR shall be equal to 4626.968162 plus 1.93219×10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA. **[NTD: This test should provide some measure of comfort about TCE's spending without the need for close oversight and approvals by the OPA.]**

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

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	$156,274,358
Main Turbine Additional Scope (excluding change orders)	$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the replacement project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

(f) **[NTD: Michael, in your memo you state that the included cost components for Actual Capex are to mirror those of Target Capex. Is this intended to limit recovery to certain elements of Capex?]**

Christine Lafleur

From:	Deborah Langelaan
Sent:	Friday, March 25, 2011 11:04 AM
To:	'Elliot Smith (esmith@osler.com)'; 'Rocco Sebastiano (rsebastiano@osler.com)'; Michael Killeavy; 'Safouh Soufi'; 'Gene Meehan (gene.meehan@nera.com)'
Cc:	Susan Kennedy
Subject:	FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments:	Capital Cost Estimate Boxwood Generating Station_Rev 5_February 17, 2011.pdf

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station", Rev.5 dated "Feb 17, 2011".

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

CAPITAL COST ESTIMATE

Boxwood Generating Station
2 x 0 x 0 M501GAC-Fast

Exclude Fuel Gas & HV Interconnections and OGS Sunk Cost

Rev.6
Mar 24, 2011

Item	Boxwood F/X at 1.05 Cdn$	%	540 MW @ ISO $ / kW
IBL			
Equipment			
Main Equipment			
CTG	$210,168,881	39%	
Others	$10,163,353	2%	
S/T	$220,332,234	41%	
BOP Equipment	$14,185,781	3%	
Equipment S/T	**$234,518,014**	**44%**	
Execution			
Engineering	$18,315,554	3%	
Construction	$106,333,140	20%	
Execution S/T	**$124,648,694**	**23%**	
Other IBL			
CTG Change Order	$4,098,732	1%	
EPC Change Order	$7,078,387	1%	
Landscaping	$2,000,000	0.4%	
Other IBL S/T	**$13,177,119**	**2%**	
IBL Total	$372,343,827	69%	$690 /kW
OBL			
Fuel Gas	$0	0%	
Electrical	$1,850,000	0.3%	
Other Utilities	$700,000	0.1%	
Storm Water Pond	$4,394,750	1%	
OBL Total	$6,944,750	1%	$13 /kW
OWNER'S COST			
Development Cost	$4,900,000	1%	
PM & CM	$13,807,794	3%	
O&M Mobilization	$4,797,287	1%	
Net Start-Up Energy	$9,234,172	2%	
Capital Maint.	$17,230,028	3%	
Site Purchase	$31,679,274	6%	
Insurance & Misc.	$5,807,887	1%	
Community Benefits	$20,000,000	4%	
Owner's Total	$107,456,440	20%	$199 /kW
TAXES			
Taxes, Duties & Fees	$4,304,725	1%	
Taxes Total	$4,304,725	1%	$8 /kW
PROJECT UNCERTAINTIES			
Escalation	$10,864,723	2%	
Risk & Contingency	$19,867,287	4%	
Development Allow.	$16,869,938	3%	
Project Margins Total	$47,601,948	9%	$88 /kW
Project Total	$538,651,691	100%	$998 /kW
OGS Sunk Cost	**Excld.**		
[illegible]	[illegible]	[illegible]	[illegible]

Christine Lafleur

From: Susan Kennedy
Sent: Friday, March 25, 2011 11:43 AM
To: Robert Godhue
Subject: Fw: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: Capital Cost Estimate Boxwood Generating Station_Rev 5_February 17, 2011.pdf

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From: Deborah Langelaan
Sent: Friday, March 25, 2011 11:03 AM
To: Elliot Smith (esmith@osler.com) <esmith@osler.com>; Rocco Sebastiano (rsebastiano@osler.com) <rsebastiano@osler.com>; Michael Killeavy; 'Safouh Soufi' <safouh@smsenergy-engineering.com>; Gene Meehan (gene.meehan@nera.com) <gene.meehan@nera.com>
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

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2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

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Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

CAPITAL COST ESTIMATE

Boxwood Generating Station
2 x 0 x 0 M501GAC-Fast

Exclude Fuel Gas & HV Interconnections and OGS Sunk Cost

Rev.6
Mar 24, 2011

Item	Boxwood F/X at 1.05 Cdn$	%	540 MW @ ISO $ / kW
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Equipment			
Main Equipment			
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Others	$10,163,353	2%	
S/T	$220,332,234	41%	
BOP Equipment	$14,185,781	3%	
Equipment S/T	**$234,518,014**	44%	
Execution			
Engineering	$18,315,554	3%	
Construction	$106,333,140	20%	
Execution S/T	**$124,648,694**	23%	
Other IBL			
CTG Change Order	$4,098,732	1%	
EPC Change Order	$7,078,387	1%	
Landscaping	$2,000,000	0.4%	
Other IBL S/T	**$13,177,119**	2%	
IBL Total	**$372,343,827**	**59%**	**$690/kW**
OBL			
Fuel Gas	$0	0%	
Electrical	$1,850,000	0.3%	
Other Utilities	$700,000	0.1%	
Storm Water Pond	$4,394,750	1%	
OBL Total	**$6,944,750**	**1%**	**$13/kW**
OWNER'S COST			
Development Cost	$4,900,000	1%	
PM & CM	$13,807,794	3%	
O&M Mobilization	$4,797,287	1%	
Net Start-Up Energy	$9,234,172	2%	
Capital Maint.	$17,230,028	3%	
Site Purchase	$31,679,274	6%	
Insurance & Misc.	$5,807,887	1%	
Community Benefits	$20,000,000	4%	
Owner's Total	**$107,456,440**	**20%**	**$199/kW**
TAXES			
Taxes, Duties & Fees	$4,304,725	1%	
Taxes Total	**$4,304,725**	**1%**	**$8/kW**
PROJECT UNCERTAINTIES			
Escalation	$10,864,723	2%	
Risk & Contingency	$19,867,287	4%	
Development Allow.	$16,869,938	3%	
Project Margins Total	**$47,601,948**	**9%**	**$88/kW**
Project Total	**$538,651,691**	**100%**	**$998/kW**
OGS Sunk Cost	**Excld.**	-	
Project Grand Total	[illegible]	[illegible]	[illegible]

Christine Lafleur

From:	Susan Kennedy
Sent:	Friday, March 25, 2011 11:46 AM
To:	Robert Godhue
Subject:	Fw: TransCanada Potential Project - OGS Development Costs
Attachments:	FIPPA protection for supplementary information

From: Deborah Langelaan
Sent: Friday, March 25, 2011 10:41 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada Potential Project - OGS Development Costs

Susan;

TCE's counsel has determined that they require another designation letter to cover off the supplementary information provided regarding their sunk costs. Would you be so kind as to provide me with another letter? TCE's had kindly provided the description of the information in their e-mail below.

Thanks,
DEb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 25, 2011 10:01 AM
To: Deborah Langelaan
Subject: TransCanada Potential Project - OGS Development Costs

Dear Deborah,

On Wednesday we talked about whether there was a need to have supplementary materials provided to the OPA to respond to inquiries surrounding the OGS development costs designated as confidential pursuant to Section 25.13(3) of the Electricity Act. I don't know whether you have had an opportunity to discuss this with Susan, but it is our view that the current designation is specific to the two binders provided and a further designation will be required. My apologies, in that I should have expected this and considered a description originally which would have allowed supplementary supporting materials to be provided under the same designation.

Would you please consider a designation letter for materials to be provided which could be described as follows?

Supplementary information provided in support of the TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2067945 - February 24, 2011 and TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2116164 - February 24, 2011.

Please do not hesitate to call me should you have any questions.

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From:	Deborah Langelaan
Sent:	Wednesday, March 23, 2011 10:07 AM
To:	Susan Kennedy
Cc:	Michael Killeavy
Subject:	FIPPA protection for supplementary information
Attachments:	MISC_110224_FIPPADesignation_DevelopmentCostSummary.pdf

Susan;

I have attached the designation letter we provided to TCE with respect to the binders they provided to the OPA containing copies of their sunk costs associated with OGS. The Ministry of Finance is conducting an audit of the costs on the OPA's behalf and there have been, and will continue to be, requests for additional information to support the costs. In your opinion, does the original designation letter apply to the supplementary information that is being provided by TCE?

Deb

The message is ready to be sent with the following file or link attachments:

MISC_110224_FIPPADesignation_DevelopmentCostSummary

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

ONTARIO
POWER AUTHORITY

ONTARIO POWER AUTHORITY
Designation Pursuant To Section 25.13(3) of the *Electricity Act, 1998*

Article I. Authority for Designation

Section 1.01 Section 25.13(3) of the *Electricity Act, 1998* provides that a record that is designated by the Ontario Power Authority as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Article II. Effect of Designation

Section 2.01 Section 17(1)(a) of the *Freedom of Information and Protection of Privacy Act* provides that a head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to, prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Section 2.02 The undersigned is the designated head of the Ontario Power Authority pursuant to Regulation made under the *Freedom of Information and Protection of Privacy Act* (R.R.O. 1990, Regulation 460).

Article III. Designation

The following records are hereby designated pursuant to section 25.13(3) of the *Electricity Act, 1998*:

1. TransCanada Oakville Generating Station Development Cost Summary – Development Phase/Volume 1/Project 2067945/February 24, 2011

2. TransCanada Oakville Generating Station Development Cost Summary – Implementation Phase/Volume 2/Project 2116164 /February 24, 2011

DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

Christine Lafleur

From: Susan Kennedy
Sent: Friday, March 25, 2011 12:21 PM
To: Robert Godhue
Subject: RE: TransCanada Potential Project - OGS Development Costs

Looks fine to sign ...

Tx

-----Original Message-----
From: Robert Godhue
Sent: Fri 3/25/2011 12:00 PM
To: Susan Kennedy
Subject: RE: TransCanada Potential Project - OGS Development Costs

From: Susan Kennedy
Sent: March 25, 2011 11:46 AM
To: Robert Godhue
Subject: Fw: TransCanada Potential Project - OGS Development Costs

From: Deborah Langelaan
Sent: Friday, March 25, 2011 10:41 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada Potential Project - OGS Development Costs

Susan;

TCE's counsel has determined that they require another designation letter to cover off the supplementary information provided regarding their sunk costs. Would you be so kind as to provide me with another letter? TCE's had kindly provided the description of the information in their e-mail below.

Thanks,

DEb

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

T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca
<blocked::mailto:|deborah.langelaan@powerauthority.on.ca> |

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 25, 2011 10:01 AM
To: Deborah Langelaan
Subject: TransCanada Potential Project - OGS Development Costs

Dear Deborah,

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Please do not hesitate to call me should you have any questions.

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
24th Floor, South Tower

Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Friday, March 25, 2011 12:21 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Would this be included in the proposed NRR of $11,873, or would we be adding this on top? We may also want to consider whether to increase the $50MM termination applicable for extended permitting FM, since building the sunk costs into the NRR means they don't receive anything unless they achieve COD.

Elliot

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 12:17 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - OGS Sunk Costs ...

*** Privileged and Confidential - Prepared in Contemplation of Litigation ***

It has been decided by high-placed folks that we cannot pay the OGS Sunk Costs separately. They need to be rolled into the NRR.

Please make this change to the draft letter. I think we just revert back to the language in the initial draft.

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

****

Christine Lafleur

From: Michael Killeavy
Sent: Friday, March 25, 2011 12:29 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

It will be an additional amount. Could we say that they would get the financial value of the OGS plus OGS Sunk Costs.

In the modelling I will need to add $37M to the NRR back-solving calculation.

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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Cc: Deborah Langelaan
Subject: TCE Matter - OGS Sunk Costs ...

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Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Michael Killeavy
Sent: Friday, March 25, 2011 12:41 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

I'll cut lunch short and try to get the modelling done before our afternoon meeting - the sensitivity analysis takes a bit of time.

Michael Killeavy, LL.B., MBA, P.Eng.
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Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Friday, March 25, 2011 12:43 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Thanks. All we really need is the "m" value since we would take the Sunk Costs x "m" and add this to the proposed NRR. We know this amount will be approximately $37,000,000 (and is proposed to be capped at $37MM) so as long as the approximation works around this value we should be ok.

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 12:41 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

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Michael.killeavy@powerauthority.on.ca

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Sent: Friday, March 25, 2011 12:21 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
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Sent: Friday, March 25, 2011 12:17 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - OGS Sunk Costs ...

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Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From: Michael Killeavy
Sent: Friday, March 25, 2011 12:47 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

It's alright - I'm pretty efficient with it now. You are correct - it just shifts the curve up at the same slope - it's like an addition CAPEX input.

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

----- Original Message -----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Friday, March 25, 2011 12:42 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Thanks. All we really need is the "m" value since we would take the Sunk Costs x "m" and add this to the proposed NRR. We know this amount will be approximately $37,000,000 (and is proposed to be capped at $37MM) so as long as the approximation works around this value we should be ok.

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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 12:41 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

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Michael Killeavy, LL.B., MBA, P.Eng.
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Sent: Friday, March 25, 2011 12:21 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

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Elliot

-----Original Message-----
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Sent: Friday, March 25, 2011 12:17 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - OGS Sunk Costs ...

*** Privileged and Confidential - Prepared in Contemplation of Litigation ***

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Thank you,

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Michael.killeavy@powerauthority.on.ca

****

Christine Lafleur

From: Susan Kennedy
Sent: Friday, March 25, 2011 1:48 PM
To: Michael Killeavy; Deborah Langelaan
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Just an fyi - won't be at todayks mmeting.

From: Michael Killeavy
Sent: Friday, March 25, 2011 01:47 PM
To: Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: Gene.Meehan@NERA.com <Gene.Meehan@NERA.com>; Deborah Langelaan; Safouh Soufi <safouh@smsenergy-engineering.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

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

It was decided earlier today that cannot pay for the alleged OGS sunk costs separately. These costs need to be included into the NRR. I modelled this by adding the alleged OGS Sunk Costs ($37 M) to the OGS NPV Target ($50M) and then solved for NRR for the aggregate amount.

The NRR increases to $12,887/MW-month.

The intercept of the NRR adjustment equation (b) is , however, corrected to:

NRR = 1.93142E-05 * Adjusted CAPEX + 5644.131697

Basically, the new NRR-Adj. CAPEX line is shifted upwards to reflect the increase. Andrew, could you please run the change through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

Thanks,
Michael

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

Christine Lafleur

From: Michael Killeavy
Sent: Friday, March 25, 2011 3:26 PM
To: Susan Kennedy; Deborah Langelaan
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Susan,

We finalized all of the details to the schedules and main text of the letter. I plan on circulating clean and blacklined versions 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

From: Susan Kennedy
Sent: Friday, March 25, 2011 01:48 PM
To: Michael Killeavy; Deborah Langelaan
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

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From: Michael Killeavy
Sent: Friday, March 25, 2011 01:47 PM
To: Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: Gene.Meehan@NERA.com <Gene.Meehan@NERA.com>; Deborah Langelaan; Safouh Soufi <safouh@smsenergy-engineering.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

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416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

Christine Lafleur

From:	Michael Killeavy
Sent:	Friday, March 25, 2011 9:15 PM
To:	JoAnne Butler; Susan Kennedy
Cc:	Deborah Langelaan
Subject:	TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....
Attachments:	#20297127v6_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; OPA Counter-Proposal NRR Model 25 Mar 2011 COUNTER-PROPOSAL v4.xls; Draft Schedule C - Adjustment Methodology 20325513_1.DOC
Importance:	High

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

3. The resulting NRR is $12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be $10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at $50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as $200 million and still be defensible, but that puts the NRR up around $15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the low NRR. We thought that if they did grudging accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will

not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS $50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

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

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

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

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

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

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 019 314 2 multiplied by the amount by which such costs are less than $37,000,000.

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

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

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

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

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

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

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

Yours very truly,

JoAnne Butler

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

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

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

(b) be a simple cycle configuration generating facility;

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

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

II. Contract Capacity

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

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

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

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

III. Electrical Connection

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

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

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

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

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

2. **Emissions Requirements.**

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

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

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

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

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

   (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

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

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

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ 12,887 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	$30,000/start-up
O&M Costs	$0.89 / MWh
OR Cost	$0.50 / MWh

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

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital

% CAPEX Allocation to year
Yearly CAPEX Spend
Book Value of Capital
Non-Indexed NRR
Indexed NRR
Total NRR
REVENUES = CSP

OPEX
GD&M
EBITDA

Depreciation (Capital Cost Allowan

Taxes Payable

Total Cash Flow

%0

NRR
Target OGS NPV + Sunk Costs
XNPV for K-W Peaking Plant

XNPV in 2012 plus spend

XIRR

7.50%						1	2	3
1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
3%	5%	17%	20%	42%	13%			
12,293,714	$17,870,388	$62,741,053	$75,486,742	$156,543,204	$50,064,899			
12,293,714	$30,164,102	$92,905,155	$168,391,897	$324,935,101	$375,000,000	$358,668,750	$327,428,702	$298,909,662
						$10,310	$10,310	$10,310
						$2,577	$2,629	$2,682
						$12,887	$12,938	$12,991
						$77,321,260	$77,630,545	$77,946,016
						$6,193,893	$6,317,771	$6,444,127
						$10,824,322	$11,040,808	$11,261,624
						$60,303,045	$60,271,966	$60,240,265
						$16,331,250	$31,240,048	$28,519,040
						$10,992,949	$7,257,979	$7,930,306
$12,293,714)	($17,870,388)	($62,741,053)	($75,486,742)	($156,543,204)	($50,064,899)	$49,310,096	$53,013,987	$52,309,959

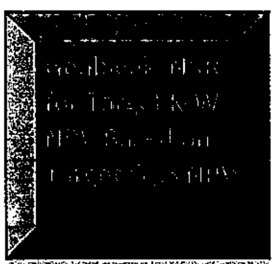
$12,887

$87,000,000

$87,000,000

$80,149,497

9.48%



4	5	6	7	8	9	10	11	12	13	14
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
$272,874,630	$249,107,250	$227,410,009	$207,602,597	$189,520,411	$173,013,183	$157,943,735	$144,186,835	$131,628,162	$120,163,349	$109,697,121
$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310
$2,735	$2,790	$2,846	$2,903	$2,961	$3,020	$3,080	$3,142	$3,205	$3,269	$3,334
$13,045	$13,099	$13,155	$13,212	$13,270	$13,329	$13,390	$13,451	$13,514	$13,578	$13,644
$78,267,796	$78,596,012	$78,930,792	$79,272,268	$79,620,573	$79,975,844	$80,338,221	$80,707,845	$81,084,862	$81,469,419	$81,861,667
$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461
$11,486,857	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414
$60,207,930	$60,174,949	$60,141,308	$60,106,994	$60,071,993	$60,036,293	$59,999,879	$59,962,736	$59,924,851	$59,886,208	$59,846,792
$26,035,032	$23,767,380	$21,697,241	$19,807,412	$18,082,186	$16,507,228	$15,069,448	$13,756,899	$12,558,673	$11,464,813	$10,466,228
$8,543,225	$9,101,892	$9,611,017	$10,074,895	$10,497,452	$10,882,266	$11,232,608	$11,551,459	$11,841,544	$12,105,349	$12,345,141
$51,664,706	$51,073,057	$50,530,291	$50,032,098	$49,574,542	$49,154,027	$48,767,271	$48,411,277	$48,083,306	$47,780,859	$47,501,651

15	16	17	18	19	20	21	22	23	24	25
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36	1-Jul-37	1-Jul-38	1-Jul-39
$100,142,502	$91,420,090	$83,457,400	$76,188,261	$69,552,263	$63,494,261	$57,963,911	$52,915,254	$48,306,336	$44,098,854	$40,257,844
$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310	$10,310
$3,401	$3,469	$3,538	$3,609	$3,681	$3,755	$3,830	$3,906	$3,985	$4,064	$4,146
$13,710	$13,778	$13,848	$13,918	$13,991	$14,064	$14,139	$14,216	$14,294	$14,374	$14,455
$82,261,760	$82,669,855	$83,086,112	$83,510,694	$83,943,768	$84,385,503	$84,836,073	$85,295,655	$85,764,427	$86,242,576	$86,730,287
$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
$14,282,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
$59,806,587	$59,765,579	$59,723,750	$59,681,085	$59,637,567	$59,593,178	$59,547,901	$59,501,719	$59,454,613	$59,406,565	$59,357,556
$9,554,619	$8,722,412	$7,962,690	$7,269,140	$6,635,998	$6,058,002	$5,530,350	$5,048,657	$4,608,919	$4,207,482	$3,841,010
$12,562,992	$12,760,792	$12,940,265	$13,102,986	$13,250,392	$13,383,794	$13,504,388	$13,613,266	$13,711,424	$13,799,771	$13,879,137
$47,243,595	$47,004,787	$46,783,485	$46,578,099	$46,387,174	$46,209,384	$46,043,513	$45,888,453	$45,743,190	$45,606,794	$45,478,420

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

CAPEX Sharing:

		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	**$500,000,000**			
Overrun (Underrun) =	$125,000,000			
OPA Share	**$62,500,000**			
TCE Share	$62,500,000			
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share		
Initial NRR	$12,887		11873	$1,014
Final NRR	**$14,094**			

	m =	1.93142E-05	
	b =	5644.131697	
ADJUSTED CAPEX	FINAL NRR		FITTED LINE
$348,750,000	$12,380		$12,380
$357,500,000	$12,549		$12,549
$366,250,000	$12,718		$12,718
$375,000,000	$12,887		$12,887
$387,500,000	$13,128		$13,128
$400,000,000	$13,370		$13,370
$412,500,000	$13,611		$13,611
$425,000,000	$13,853		$13,853

$437,500,000	$14,094	$14,094

Baseline NRR Calculation

Adjusted CAPEX Spend:		$437,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

		CCA Rate
CapEx to Class 1	33%	4%
CapEx to Class 17	38%	8%
CapEx to Class 48	29%	15%
	100%	

Inflation Factor	(IFy)	2%
NRR Index Factor	(NRRIF)	20%
Statutory Tax Rate		25%
Plant Capacity	(AACC)	**500** MW

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in non	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital 7.50%

	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12
% CAPEX Allocation to year	3%	5%	17%	20%
Yearly CAPEX Spend	$14,342,666	$20,848,785	$73,197,895	$88,067,866
Book Value of Capital	$14,342,666	$35,191,452	$108,389,347	$196,457,213
Non-Indexed NRR				
Indexed NRR				
Total NRR				
REVENUES = CSP				
OPEX				
GD&M				
EBITDA				
Depreciation (Capital Cost Allowance)				
Taxes Payable				
Total Cash Flow	($14,342,666)	($20,848,785)	($73,197,895)	($88,067,866)

Final NRR	**$14,094**	GoalSeek NRR for
Target OGS NPV + Sunk Costs	$87,000,000	

XNPV for K-W Peaking Plant	**$87,000,000**
XNPV in 2012 plus spend	$76,761,176
XIRR	9.09%

K-W NPV Based on
[illegible] NPV and
[illegible] CAPEX

		1	2	3	4
1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17	1-Jul-18
42%	13%				
$182,633,738	$58,409,049				
$379,090,951	$437,500,000	$418,446,875	$382,000,152	$348,727,939	$318,353,735
		$11,276	$11,276	$11,276	$11,276
		$2,819	$2,875	$2,933	$2,991
		$14,094	$14,151	$14,208	$14,267
		$84,566,973	$84,905,241	$85,250,274	$85,602,208
		$6,193,893	$6,317,771	$6,444,127	$6,573,009
		$10,824,322	$11,040,808	$11,261,624	$11,486,857
		$67,548,758	$67,546,661	$67,544,523	$67,542,342
		$19,053,125	$36,446,723	$33,272,213	$30,374,203
		$12,123,908	$7,774,985	$8,568,077	$9,292,035
($182,633,738)	($58,409,049)	$55,424,850	$59,771,677	$58,976,446	$58,250,307

5	6	7	8	9	10
1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24
$290,625,125	$265,311,677	$242,203,030	$221,107,146	$201,848,713	$184,267,690
$11,276	$11,276	$11,276	$11,276	$11,276	$11,276
$3,051	$3,112	$3,175	$3,238	$3,303	$3,369
$14,327	$14,388	$14,450	$14,514	$14,578	$14,644
$85,961,180	$86,327,332	$86,700,808	$87,081,752	$87,470,316	$87,866,650
$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276
$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066
$67,540,117	$67,537,848	$67,535,533	$67,533,173	$67,530,764	$67,528,308
$27,728,610	$25,313,448	$23,108,647	$21,095,884	$19,258,432	$17,581,023
$9,952,877	$10,556,100	$11,106,722	$11,609,322	$12,068,083	$12,486,821
$57,587,241	$56,981,748	$56,428,812	$55,923,850	$55,462,681	$55,041,487

11	12	13	14	15	16
1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28	1-Jul-29	1-Jul-30
$168,217,975	$153,566,189	$140,190,574	$127,979,975	$116,832,919	$106,656,772
$11,276	$11,276	$11,276	$11,276	$11,276	$11,276
$3,436	$3,505	$3,575	$3,647	$3,719	$3,794
$14,712	$14,781	$14,851	$14,922	$14,995	$15,069
$88,270,912	$88,683,258	$89,103,852	$89,532,858	$89,970,443	$90,416,780
$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112
$67,525,803	$67,523,247	$67,520,641	$67,517,982	$67,515,270	$67,512,504
$16,049,716	$14,651,786	$13,375,615	$12,210,599	$11,147,056	$10,176,147
$12,869,022	$13,217,865	$13,536,256	$13,826,846	$14,092,054	$14,334,089
$54,656,781	$54,305,382	$53,984,384	$53,691,136	$53,423,216	$53,178,415

17	18	19	20	21	22
1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36
$97,366,967	$88,886,304	$81,144,307	$74,076,638	$67,624,563	$61,734,463
$11,276	$11,276	$11,276	$11,276	$11,276	$11,276
$3,870	$3,947	$4,026	$4,107	$4,189	$4,273
$15,145	$15,223	$15,302	$15,382	$15,464	$15,548
$90,872,044	$91,336,414	$91,810,070	$92,293,200	$92,785,993	$93,288,641
$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876
$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060
$67,509,682	$67,506,804	$67,503,869	$67,500,875	$67,497,821	$67,494,706
$9,289,805	$8,480,663	$7,741,997	$7,067,669	$6,452,075	$5,890,099
$14,554,969	$14,756,535	$14,940,468	$15,108,301	$15,261,436	$15,401,152
$52,954,713	$52,750,269	$52,563,401	$52,392,573	$52,236,384	$52,093,554

23	24	25
1-Jul-37	1-Jul-38	1-Jul-39
$56,357,392	$51,448,663	$46,967,484
$11,276	$11,276	$11,276
$4,358	$4,445	$4,534
$15,634	$15,721	$15,810
$93,801,342	$94,324,298	$94,857,712
$9,575,633	$9,767,146	$9,962,489
$16,734,181	$17,068,865	$17,410,242
$67,491,528	$67,488,287	$67,484,981
$5,377,072	$4,908,729	$4,481,179
$15,528,614	$15,644,890	$15,750,951
$51,962,914	$51,843,397	$51,734,031

Christine Lafleur

From: JoAnne Butler
Sent: Friday, March 25, 2011 10:19 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Ok...just had a quick read through...sounds like a great team effort...I will look at it more closely on Sunday but probably wait to talk to y'all on Monday....

JCB

----- Original Message -----
From: Michael Killeavy
Sent: Friday, March 25, 2011 09:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

3. The resulting NRR is $12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be $10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at $50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as $200 million and still be defensible, but that puts the NRR up around $15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the

low NRR. We thought that if they did grudging accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS $50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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Christine Lafleur

From:	Michael Killeavy
Sent:	Sunday, March 27, 2011 2:59 PM
To:	Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc:	Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject:	TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....
Attachments:	OPA Counter-Proposal NRR Model 26 Mar 2011 COUNTER-PROPOSAL v5.xls
Importance:	High

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

I reviewed how I had incorporated the OGS Sunk Costs into the NRR and I am proposing an alternative approach. I had incorporated them into the OGS NPV and then solved for NRR, which means TCE earns a return on these sunk costs. As an alternative, I am proposing that these sunk costs be amortized over the term of the agreement at TCE's after-tax cost of borrowing (average yield-to-maturity of its long-term debt) and then allocating the amortized amount over the MW of contract capacity on a monthly basis as a sunk cost adder to the NRR. In doing so, TCE only is compensated for the cost of borrowing to fund The adder is $406/MW-month and this results in a total NRR of $12,278/MW-month. The equation to convert Adjusted CAPEX into NRR is now:

NRR = 1.93200E-05 * Adjusted CAPEX + 5033.277778

I would be interested in comments from anyone on this approach. It changes the NRR by about $600 per MW-month (from $12,887/MW-month to $12,278/MW-month) , which is significant if the analysis is correct. I am proposing to use the after-tax cost of borrowing to amortize the sunk costs over the term because TCE can deduct the interest payments and gain a tax shield effect.

Thank you,
Michael

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Michael.killeavy@powerauthority.on.ca

rget Costing Allocation of Actual CAPEX

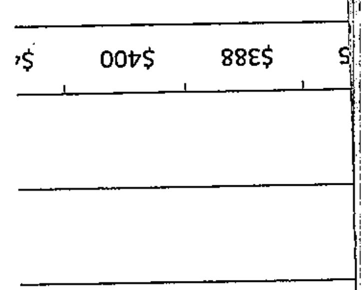
rget CAPEX = $375,000,000

APEX Sharing:		Overrun	Underrun
	OPA	50%	50%
	TCE	50%	50%

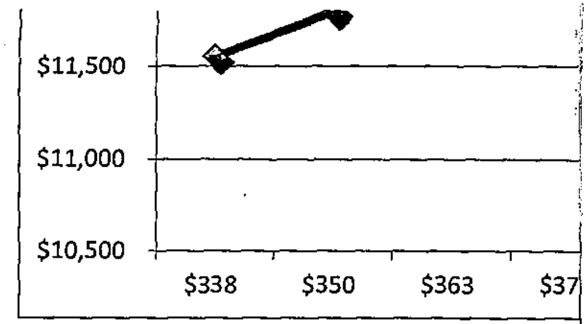
INAL CAPEX =	**$500,000,000**	
verrun (Underrun) =	$125,000,000	
PA Share	**$62,500,000**	
CE Share	$62,500,000	
djusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share
nitial NRR	$11,873	
inal NRR	**$13,486**	

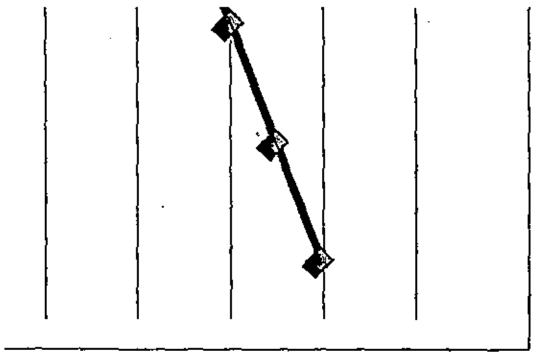
m = 1.93200E-05
b = 5033.277778

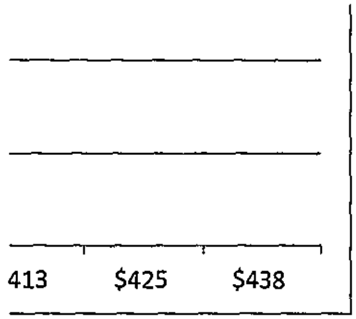
ADJUSTED CAPEX		FINAL NRR	FITTED LINE
$337,500,000	$338	$11,554	$11,554
$350,000,000	$350	$11,795	$11,795
$362,500,000	$363	$12,037	$12,037
$375,000,000	$375	$12,278	$12,278
$387,500,000	$388	$12,520	$12,520
$400,000,000	$400	$12,761	$12,761
$412,500,000	$413	$13,003	$13,003
$425,000,000	$425	$13,244	$13,244



$437,500,000	$438	$13,486	$13,486






413
$425
$438

Baseline NRR Calculation

CAPEX Spend:		$375,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

			CCA Rate
CapEx to Class 1		33%	4%
CapEx to Class 17		38%	8%
CapEx to Class 48		29%	15%
		100%	
Inflation Factor	(IFy)		2%
NRR Index Factor	(NRRIF)		20%
Statutory Tax Rate			25%
Plant Capacity	(AACC)		500 MW

Equate ANR to INR => CSP is only revenue

Total Plan Revenues = CSP = NRRy*AACC

Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC

PNNRb = Project NRR

Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA

EBITDA = Plant Revenues - Operating Costs ($29 million/year)

Calculate CCA by allocating CAPEX to appropriate pools

Determine tax payable = (EBITDA - CCA)*(statutory tax rate)

Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital	7.50%						
	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Jul-1
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%	
Yearly CAPEX Spend	$12,293,714	$17,870,388	$62,741,053	$75,486,742	$156,543,204	$50,064,899	
Book Value of Capital	$12,293,714	$30,164,102	$92,905,155	$168,391,897	$324,935,101	$375,000,000	$358,668,750
Non-Indexed NRR							$9,498
Indexed NRR							$2,375
Total NRR							$11,873
REVENUES = CSP							$71,236,084
OPEX							$6,193,893
GD&M							$10,824,322
EBITDA							$54,217,869
Depreciation (Capital Cost Allowance)							$16,331,250
Taxes Payable							$9,471,655
Total Cash Flow	($12,293,714)	($17,870,388)	($62,741,053)	($75,486,742)	($156,543,204)	($50,064,899)	$44,746,214

NRR	**$11,873**
Total NRR (with OGS Sunk Cost)	**$12,278**
Target OGS NPV + Sunk Costs	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$38,621,540
XIRR	8.33%

GoalSeek NRR for Target K-W NPV Based on Target OGS NPV

4	5	6	7	8	9	10	11	12	13	14
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
$272,874,630	$249,107,250	$227,410,009	$207,602,597	$189,520,411	$173,013,183	$157,943,735	$144,186,835	$131,628,162	$120,163,349	$109,697,121
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$2,520	$2,570	$2,622	$2,674	$2,728	$2,782	$2,838	$2,895	$2,952	$3,011	$3,072
$12,018	$12,068	$12,120	$12,172	$12,226	$12,280	$12,336	$12,393	$12,451	$12,510	$12,570
$72,108,128	$72,410,513	$72,718,946	$73,033,547	$73,354,441	$73,681,752	$74,015,610	$74,356,145	$74,703,491	$75,057,783	$75,419,161
$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461
$11,486,857	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414
$54,048,262	$53,989,450	$53,929,461	$53,868,273	$53,805,861	$53,742,201	$53,677,268	$53,611,036	$53,543,479	$53,474,572	$53,404,286
$26,035,032	$23,767,380	$21,697,241	$19,807,412	$18,082,186	$16,507,228	$15,069,448	$13,756,899	$12,558,673	$11,464,813	$10,466,228
$7,003,308	$7,555,517	$8,058,055	$8,515,215	$8,930,919	$9,308,743	$9,651,955	$9,963,534	$10,246,201	$10,502,440	$10,734,514
$47,044,954	$46,433,932	$45,871,406	$45,353,058	$44,874,943	$44,433,458	$44,025,313	$43,647,502	$43,297,278	$42,972,132	$42,669,771

15	16	17	18	19	20	21	22	23	24	25
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36	1-Jul-37	1-Jul-38	1-Jul-39
$100,142,502	$91,420,090	$83,457,400	$76,188,261	$69,552,263	$63,494,261	$57,963,911	$52,915,254	$48,306,336	$44,098,854	$40,257,844
$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
$3,133	$3,196	$3,260	$3,325	$3,391	$3,459	$3,528	$3,599	$3,671	$3,744	$3,819
$12,631	$12,694	$12,758	$12,823	$12,890	$12,957	$13,027	$13,097	$13,169	$13,243	$13,317
$75,787,767	$76,163,745	$76,547,243	$76,938,410	$77,337,401	$77,744,372	$78,159,482	$78,582,894	$79,014,775	$79,455,293	$79,904,621
$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
$14,282,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
$53,332,594	$53,259,469	$53,184,881	$53,108,801	$53,031,200	$52,952,046	$52,871,310	$52,788,959	$52,704,960	$52,619,282	$52,531,891
$9,554,619	$8,722,412	$7,962,690	$7,269,140	$6,635,998	$6,058,002	$5,530,350	$5,048,657	$4,608,919	$4,207,482	$3,841,010
$10,944,494	$11,134,264	$11,305,548	$11,459,915	$11,598,801	$11,723,511	$11,835,240	$11,935,075	$12,024,010	$12,102,950	$12,172,720
$42,388,100	$42,125,204	$41,879,333	$41,648,886	$41,432,399	$41,228,535	$41,036,070	$40,853,883	$40,680,950	$40,516,332	$40,359,171

Baseline NRR Calculation

Adjusted CAPEX Spend:		$437,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		
Capital Cost Allowance:				
			CCA Rate	
CapEx to Class 1		33%	4%	
CapEx to Class 17		38%	8%	
CapEx to Class 48		29%	15%	
		100%		
Inflation Factor	(IFy)		2%	
NRR Index Factor	(NRRIF)		20%	
Statutory Tax Rate			25%	
Plant Capacity	(AACC)		**500** MW	

Equate ANR to INR => CSP is only revenue
Total Plan Revenues = CSP = NRRy*AACC
Total Plant Revenue = [(PNNRb)*(NRRIF)(Ify)]*AACC+[(PNNRb)*(1-NRRIF)]*AACC
PNNRb = Project NRR

Assume $29 million/year in non	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

First cash flow is august 1, 2009
All others are July 1, 20XX
Use XNPV

TCE Cost of Capital	7.50%						1	2	3
	1-Aug-09	1-Jul-10	1-Jul-11	1-Jul-12	1-Jul-13	1-Jul-14	1-Jul-15	1-Jul-16	1-Jul-17
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%			
Yearly CAPEX Spend	$14,342,666	$20,848,785	$73,197,895	$88,067,866	$182,633,738	$58,409,049			
Book Value of Capital	$14,342,666	$35,191,452	$108,389,347	$196,457,213	$379,090,951	$437,500,000	$418,446,875	$382,000,152	$348,727,939
Non-Indexed NRR							$10,464	$10,464	$10,464
Indexed NRR							$2,616	$2,668	$2,722
Total NRR							$13,080	$13,133	$13,186
REVENUES = CSP							$78,481,797	$78,795,724	$79,115,929
OPEX							$6,193,893	$6,317,771	$6,444,127
GD&M							$10,824,322	$11,040,808	$11,261,624
EBITDA							$61,463,582	$61,437,144	$61,410,179
Depreciation (Capital Cost Allowance)							$19,053,125	$36,446,723	$33,272,213
Taxes Payable							$10,602,614	$6,247,605	$7,034,491
Total Cash Flow	($14,342,666)	($20,848,785)	($73,197,895)	($88,067,866)	($182,633,738)	($58,409,049)	$50,860,967	$55,189,539	$54,375,687

Final NRR	$13,080
Final NRR (with OGS Sunk Cost)	**$13,486**
Target OGS NPV + Sunk Costs	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$35,233,219
XIRR	8.08%

Goalseek NRR for Adjusted K-W NPV Based on Target OGS NPV and [illegible]

4	5	6	7	8	9	10	11	12	13	14
1-Jul-18	1-Jul-19	1-Jul-20	1-Jul-21	1-Jul-22	1-Jul-23	1-Jul-24	1-Jul-25	1-Jul-26	1-Jul-27	1-Jul-28
$318,353,735	$290,625,125	$265,311,677	$242,203,030	$221,107,146	$201,848,713	$184,267,690	$168,217,975	$153,566,189	$140,190,574	$127,979,975
$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464
$2,776	$2,832	$2,888	$2,946	$3,005	$3,065	$3,126	$3,189	$3,253	$3,318	$3,384
$13,240	$13,296	$13,353	$13,410	$13,469	$13,529	$13,591	$13,653	$13,717	$13,782	$13,848
$79,442,539	$79,775,681	$80,115,486	$80,462,087	$80,815,620	$81,176,224	$81,544,040	$81,919,212	$82,301,887	$82,692,216	$83,090,352
$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461
$11,486,857	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414
$61,382,673	$61,354,618	$61,326,002	$61,296,813	$61,267,041	$61,236,673	$61,205,697	$61,174,103	$61,141,876	$61,109,005	$61,075,476
$30,374,203	$27,728,610	$25,313,448	$23,108,647	$21,095,884	$19,258,432	$17,581,023	$16,049,716	$14,651,786	$13,375,615	$12,210,599
$7,752,117	$8,406,502	$9,003,138	$9,547,042	$10,042,789	$10,494,560	$10,906,169	$11,281,097	$11,622,523	$11,933,347	$12,216,219
$53,630,556	$52,948,116	$52,322,863	$51,749,772	$51,224,251	$50,742,113	$50,299,529	$49,893,006	$49,519,353	$49,175,657	$48,859,257

15	16	17	18	19	20	21	22	23	24	25
1-Jul-29	1-Jul-30	1-Jul-31	1-Jul-32	1-Jul-33	1-Jul-34	1-Jul-35	1-Jul-36	1-Jul-37	1-Jul-38	1-Jul-39
$116,832,919	$106,656,772	$97,366,967	$88,886,304	$81,144,307	$74,076,638	$67,624,563	$61,734,463	$56,357,392	$51,448,663	$46,967,484
$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464	$10,464
$3,452	$3,521	$3,591	$3,663	$3,736	$3,811	$3,887	$3,965	$4,044	$4,125	$4,208
$13,916	$13,985	$14,056	$14,127	$14,201	$14,275	$14,352	$14,429	$14,509	$14,590	$14,672
$83,496,450	$83,910,670	$84,333,175	$84,764,130	$85,203,703	$85,652,069	$86,109,401	$86,575,881	$87,051,690	$87,537,015	$88,032,046
$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
$14,282,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
$61,041,277	$61,006,394	$60,970,813	$60,934,520	$60,897,502	$60,859,743	$60,821,229	$60,781,945	$60,741,875	$60,701,004	$60,659,315
$11,147,056	$10,176,147	$9,289,805	$8,480,663	$7,741,997	$7,067,669	$6,452,075	$5,890,099	$5,377,072	$4,908,729	$4,481,179
$12,473,555	$12,707,562	$12,920,252	$13,113,464	$13,288,876	$13,448,019	$13,592,289	$13,722,961	$13,841,201	$13,948,069	$14,044,534
$48,567,722	$48,298,832	$48,050,561	$47,821,056	$47,608,626	$47,411,725	$47,228,941	$47,058,984	$46,900,674	$46,752,935	$46,614,781

OGS Sunk Cost Analysis

OGS Sunk Costs	$37,000,000	
TCE Borrowing Cost	5.68%	Based on Average YTM of LT Debt
After-tax Cost of Borrowing	4.26%	
Contract Term	25	years
Amortization of OGS Sunk Costs	$2,433,974	/year
NRR Sunk Cost Adder	$406	allocation per MW-month

Christine Lafleur

From: JoAnne Butler
Sent: Sunday, March 27, 2011 8:34 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

I have gone over this again and would like to review it with you before I talk to TCE. I know that we have a meeting booked for 9:30 AM but I will be at the Ministry. Could we re-schedule this until 10:00 AM and I will try to hurry back. After our meeting, I plan to call Terry Bennett at TCE with a heads up and then we can take it from there.

JCB

-----Original Message-----
From: Michael Killeavy
Sent: Fri 25/03/2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

3. The resulting NRR is $12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be $10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at $50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as $200 million and still be defensible, but that puts the NRR up around $15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the low NRR. We thought that if they did grudging accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS $50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

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

Christine Lafleur

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: Sunday, March 27, 2011 11:32 PM
To: Michael Killeavy; 'Smith, Elliot'; Susan Kennedy; 'Sebastiano, Rocco'
Cc: Deborah Langelaan; JoAnne Butler; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: RE: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....

Hello Michael:

Few comments for your consideration:

1. The model is using a 4-year schedule to build K-W with COD in July 2015. TCE is using 3.5-year schedule with COD in January 2015. I believe TCE schedule is conservative enough and if used in the model, the PV of CSP payment will go up by over $20M. That is a significant amount in OPA's favour, so to speak.
2. I believe the proforma schedule should start in July 2011 and 2011$ is used as basis. August 2009 starting point, used by TCE, is not appropriate in my opinion. Terry Bennett indicated in his last email to JoAnne that TCE is looking into the appropriateness of August 2009. Of course, for July 2011 to work we would escalate OGS NPV to 2011$. My understanding is that the OPA is incurring interest charges on OGS sunk costs and so they are inherently in 2011$. If the schedule is started in July 2011 and COD is made in January 2014 (achievable assuming no major objection to the project) the NPV of the Potential Project will be significantly improved. This is something we should keep in mind if TCE asks for COD in Jan 2015 but actually achieved it in Jan 2014. The OPA would have left lots of money at the table unless we have a provision in the contract to adjust NRR to (2014$). This should take away any economic interest TCE may have in stretching COD for the purpose of the contract with OPA.
3. The model escalates 100% of GD&M charges. Since GD&M forms part of NRR then only the NRRIF portion of such expense should be indexed. At 20% NRRIF, the PV of GD&M will go down by about $10M. This is another significant charge that works in OPA's favour.
4. Our model shows that when IDC is included in the modelling, as TCE will undoubtedly do in its model, it provides a tax relief such that the NPV of the Potential Project is boosted by about $10M at 6.50% interest rate.
5. I reviewed the adder and noticed that the cash flows are all based on $11,873 NRR. In other words are not reflective of the revised NRR ($12,278 w/t OGS sunk cost adder). If they were we would see the incremental NRR (12,278-11,873=$405) being subject to indexing at NRRIF. Unless I misunderstood something this suggests that the sunk costs would earn an additional premium over and above YTM (I have to think this little further in the morning).

Thanks,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 27, 2011 1:59 PM
To: Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....
Importance: High

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

I reviewed how I had incorporated the OGS Sunk Costs into the NRR and I am proposing an alternative approach. I had incorporated them into the OGS NPV and then solved for NRR, which means TCE earns a return on these sunk costs. As an alternative, I am proposing that these sunk costs be amortized over the term of the agreement at TCE's after-tax cost of borrowing (average yield-to-maturity of its long-term debt) and then allocating the amortized amount over the MW of contract capacity on a monthly basis as a sunk cost adder to the NRR. In doing so, TCE only is compensated for the cost of borrowing to fund The adder is $406/MW-month and this results in a total NRR of $12,278/MW-month. The equation to convert Adjusted CAPEX into NRR is now:

NRR = 1.93200E-05 * Adjusted CAPEX + 5033.277778

I would be interested in comments from anyone on this approach. It changes the NRR by about $600 per MW-month (from $12,887/MW-month to $12,278/MW-month) , which is significant if the analysis is correct. I am proposing to use the after-tax cost of borrowing to amortize the sunk costs over the term because TCE can deduct the interest payments and gain a tax shield effect.

Thank you,
Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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416-969-6288 (office)
416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

Christine Lafleur

From:	Michael Killeavy
Sent:	Monday, March 28, 2011 4:36 AM
To:	'safouh@smsenergy-engineering.com'; 'ESmith@osler.com'; Susan Kennedy; 'RSebastiano@osler.com'
Cc:	Deborah Langelaan; JoAnne Butler; 'gene.meehan@nera.com'; 'andrew.pizzi@nera.com'
Subject:	Re: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....

The sunk cost is just an adder to the NRR to cover the time-value cost. I didn't factor it into the NPV calculation - that's what I'd done originally.

I kept the CAPEX spend profile the same as TCE. There'll be less to argue about.

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Michael.killeavy@powerauthority.on.ca

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Sunday, March 27, 2011 11:31 PM
To: Michael Killeavy; 'Smith, Elliot' <ESmith@osler.com>; Susan Kennedy; 'Sebastiano, Rocco' <RSebastiano@osler.com>
Cc: Deborah Langelaan; JoAnne Butler; gene.meehan@nera.com <gene.meehan@nera.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
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Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Wednesday, March 30, 2011 1:08 PM
To: Safouh Soufi; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: RE: NRR Comparison - Confidential

Safouh,
Does the "TCE Offer – 20 Year" column take into account the NRRIF being at 50% instead of 20%? In terms of "normalizing" NRRs so they are on the same basis, it would probably make sense to add this back in. This must be worth something in the order of $1200/MW-month.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Tuesday, March 29, 2011 9:35 PM
To: Smith, Elliot; 'Susan Kennedy'
Cc: 'Michael Killeavy'; 'Deborah Langelaan'; 'JoAnne Butler'
Subject: NRR Comparison - Confidential

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

Susan and Elliot:

Earlier today Micheal Killeavy has asked me to send the attached file to the OPA through you. If you have any questions please feel free to contact me at any time.

JoAnne: the attached is more up-to-date than the one you have and have moved 20-year charts next to each other for easier comparison.

Thanks,
Safouh

Christine Lafleur

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: Wednesday, March 30, 2011 1:36 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: RE: NRR Comparison - Confidential

Elliot:

The chart is based on 2015 NRR which is (assumed by OPA & TCE to be) the first year of operation for Cambridge. Therefore, NRRIF doesn't come into play.

However, if we were comparing NPV's or anticipated out-of-market costs for the projects in question then NRRIF will weight in and I expect it to have a significant impact on the results. Of course, the results, WILL NOT be expressed in NRR terms but in $/MW. Also, it is important to keep in mind that SWGTA can no longer be used in that comparison due to the fact that it has a lower heat rate and higher capacity factor. But we will put it in the chart with a qualifier.

I have asked Orlando Lameda to do what we call the "Ratepayer View" of the projects which is the out-of-market cost based on OPA evaluation model. We will add the results as a separate graph to the spreadsheet I circulated yesterday. I would expect SWGTA and NYR to come below $1Million/MW. The others will be much higher.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
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Safouh

****

****

Christine Lafleur

From:	Bonny Wong
Sent:	Thursday, March 31, 2011 5:11 PM
To:	Michael Killeavy; Deborah Langelaan; Susan Kennedy
Cc:	Terry Gabriele
Subject:	Fw: Final TOR
Attachments:	FINAL Terms of Reference_2011_OPA Special Audit of Sunk Costs Payable to TransCanada Energy Ltd Mar 31.doc

Hi Michael, Deborah, Susan,

I attach the terms of reference for the special audit of sunk costs payable to TCE for your information. Please let me know if you have any questions on this subject matter.

Regards,
Bonny Wong

From: King, Richard (FIN) [mailto:Richard.King@ontario.ca]
Sent: Thursday, March 31, 2011 04:46 PM
To: Bonny Wong
Cc: Speevak, Ted (FIN) <Ted.Speevak@ontario.ca>
Subject: Final TOR

Bonny Attached is the final TOR for the Special Audit of Sunk Costs Payable to TransCanada Energy Ltd. Could you please circulate to all the required individuals.

Let me know if you need me to send a hardcopy.

Thanks
Richard
Richard King, CGA
Manager, Risk & Assurance Services (A)
Finance & Revenue Audit Service Team
Ontario Internal Audit Division
Ministry of Finance
Tel: 416-325-8488
Fax: 416-325-5096
richard.king@ontario.ca

PRIVILEGED & CONFIDENTIAL
HIGH SENSITIVITY

Ontario Power Authority

Terms of Reference

Special Audit of Sunk Costs Payable to TransCanada Energy Ltd.

March, 2011

Ontario Internal Audit Division

Ministry of Finance

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Ontario Power Authority

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Prepared in Contemplation of Litigation