

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the “Effective Date”).

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

Attention: Michael Lyle, General Counsel

120 Adelaide Street West, Suite 1600

Toronto, Ontario

M5H 1T1

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

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

Attention: ●

Draft & Privileged

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Draft & Privileged

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").
~~[NTD: Consider whether this Agreement should be backdated.]~~

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences; and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all subsequent arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants, and experts ~~and affiliates~~.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;

Draft & Privileged

- (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and
- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties;
- (e) "TCE" has the meaning defined in paragraph A of the Recitals;
- (f) ~~"Third Party" or "Third Parties" means any person or entity that is not, with respect to either Party, any corporation, partnership, joint venture or other legal entity that is a direct or indirect parent or subsidiary of such Party or that directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise, and, without limitation, a Party.~~ Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.

Draft & Privileged

6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.
7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party

prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.

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

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

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

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

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.
27. This Agreement may be signed in counterparts and by facsimile and all counterparts together shall constitute the Agreement.

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Draft & Privileged

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, May 05, 2011 3:54 PM
To: Robert Godhue
Subject: FW: OPA - TCE
Attachments: OPA Litigation hold letter 20418319_1.DOC

Robert,

Would you transfer the attached memo text (from and including "PLEASE READ THIS MEMORANDUM CAREFULLY") to OPA an OPA memo format – memo will be going out from Mike Lyle. Addressees: All members of the Executive Team (except Mike), Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram.

It should be saved into:

L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA (3-10016)\Contract Termination\Litigation Hold Memorandum

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

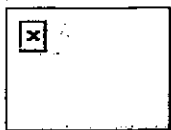
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: April 8, 2011 12:44 PM
To: Michael Lyle
Cc: Sebastiano, Rocco; Susan Kennedy; Deborah Langelaan
Subject: OPA - TCE

Mike,

Attached is a draft memorandum prepared in connection with the retention of documents by the OPA respecting the Oakville Generating Station matter. The memo references the obligation to retain documents and the importance of preserving documents and records in light of anticipated legal proceedings. The memo is drafted in a way that it can be copied to OPA letterhead and distributed by you internally within the OPA.

If you have any questions, please let me know.

Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



This e-mail message is privileged, confidential and subject to
copyright. Any unauthorized use or disclosure is prohibited.

Le contenu du présent courriel est privilégié, confidentiel et
soumis à des droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

Memorandum

Privileged & Confidential

To: Michael Lyle
General Counsel
Ontario Power Authority

Date: April 8, 2011

c: Rocco Sebastiano

From: Paul A. Ivanoff

Tel: (416) 862-4223

Subject: TransCanada Energy Ltd. Oakville Generating
Station, Southwest GTA CES Contract- Document
Retention & Preservation

Matter No: 1126205

Note: The following memorandum should be copied onto Ontario Power Authority law group letterhead before dissemination and should include a banner stating "Privileged and Confidential".

PLEASE READ THIS MEMORANDUM CAREFULLY

Please be advised that Ontario Power Authority ("OPA") reasonably anticipates the possibility of legal proceedings in relation to matters involving TransCanada Energy Ltd. and the Oakville Generating Station, Southwest GTA project (the "OGS Project").

As such, all documents and records (both electronic and paper) that relate to the anticipated or pending litigation must be retained until any such proceedings are finally concluded.

As a recipient of this memo, you are required to preserve all documents and records pertaining to the OGS Project, as more clearly described below.

Preservation of Records Relating to Litigation

To assist the OPA in meeting its documentary discovery obligations, in the event that OPA is named as a party in legal proceedings in matters relating to the OGS Project, it is important that you preserve all documents and records that relate in any way, directly or indirectly, to this matter.

A party to litigation is required to disclose the existence of every document relating to any matter in issue in the legal proceedings that is or has been in the party's possession, control or power, whether or not privilege is claimed in respect of a document.

As such, in order to ensure that the OPA meets its obligations and in order to assist the OPA in legal proceedings, documents and records that relate in any way, directly or indirectly, to the OGS Project should be clearly identified so as to avoid inadvertent destruction and should be kept in a secure location.

Documents Which Must Be Disclosed – “Relevance”

You should be aware that relevancy is a legal consideration and that it is not your job to determine what documents in your possession, control or power are in fact relevant. In that regard, you should not attempt when gathering documents to determine what documents you believe are relevant or covered by any form of privilege. At this time, it is important that all documents relating to the OGS Project be preserved.

“Documents” includes all Paper, Computer and Electronic Records and Information

“Documents” required to be disclosed are defined broadly and include paper records (such as letters and notes), any data and information in electronic form (such as emails and computerized account records), manuals, business records, sound recordings, videotapes, photographs, charts, graphs, maps, plans, surveys, and books of accounting. Note that this is not an exhaustive list – any record, data and information in any format must be preserved.

An important part of document preservation is to consider electronic records - including electronic versions of documents as well as documents which may only exist electronically and data which may only exist in computer files and records.

As well as preserving all paper documents at your desk and filing cabinets, steps must be taken to preserve all electronic and computerized documents and records. This includes information stored in servers, computers, laptops, palm pilots, blackberries, and cell phones.

IT Personnel

It is imperative that IT personnel preserve the OPA’s e-mail server, back-up tapes and the computer hard drives of all those employees who might reasonably be in possession of documents and records relating in any way directly or indirectly to the OGS Project or issues raised in anticipated or pending legal proceedings. Even if back-up tapes are not readily accessible and will not be reviewed at this juncture, they must be preserved so that in the event there is a need to review those back-up tapes, they will be available.

The General Issues

While all documents relating directly or indirectly to the OGS Project must be preserved, it may be helpful for you to know that, in broad terms, the following issues may be relevant in the anticipated or pending litigation:

1. the procurement and administration of the CES Contract between the OPA and TCE;

2. the OPA's planning analysis of the needs in Southwest GTA;
3. the communications between the OPA and the Government relating to the OGS;
4. the Minister of Energy's decision and announcement that the OGS will not proceed;

Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.

If you have any questions or concerns, please contact the OPA law group at (416) 969-6035.

Draft & Privileged

Christine Lafleur

From: Robert Godhue
Sent: Thursday, May 05, 2011 4:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE
Attachments: TCE Document Retention Memo.doc

From: Susan Kennedy
Sent: May 5, 2011 3:54 PM
To: Robert Godhue
Subject: FW: OPA - TCE

Robert,

Would you transfer the attached memo text (from and including "PLEASE READ THIS MEMORANDUM CAREFULLY") to OPA an OPA memo format – memo will be going out from Mike Lyle. Addressees: All members of the Executive Team (except Mike), Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram.

It should be saved into:

L:\Corporate Legal Group Files\3 - ELECTRICITY RESOURCES\SOUTHWEST GTA (3-10016)\Contract Termination\Litigation Hold Memorandum

Thanks,

Susan H. Kennedy
Director, Corporate/Commercial Law Group

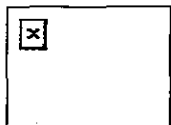
From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: April 8, 2011 12:44 PM
To: Michael Lyle
Cc: Sebastiano, Rocco; Susan Kennedy; Deborah Langelaan
Subject: OPA - TCE

Mike,

Attached is a draft memorandum prepared in connection with the retention of documents by the OPA respecting the Oakville Generating Station matter. The memo references the obligation to retain documents and the importance of preserving documents and records in light of anticipated legal proceedings. The memo is drafted in a way that it can be copied to OPA letterhead and distributed by you internally within the OPA.

If you have any questions, please let me know.

Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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May 30, 2012

MEMO TO: Colin Andersen, Kristin Jenkins, Andrew Pride, JoAnne Butler, Amir Shalaby, Kim Marshall, Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram

FROM: Michael Lyle

RE: TransCanada Energy Ltd. Oakville Generating Station, Southwest GTA CES
Contract-- Document Retention & Preservation

PLEASE READ THIS MEMORANDUM CAREFULLY

Please be advised that Ontario Power Authority ("OPA") reasonably anticipates the possibility of legal proceedings in relation to matters involving TransCanada Energy Ltd. and the Oakville Generating Station, Southwest GTA project (the "OGS Project").

As such, all documents and records (both electronic and paper) that relate to the anticipated or pending litigation must be retained until any such proceedings are finally concluded.

As a recipient of this memo, you are required to preserve all documents and records pertaining to the OGS Project, as more clearly described below.

Preservation of Records Relating to Litigation

To assist the OPA in meeting its documentary discovery obligations, in the event that OPA is named as a party in legal proceedings in matters relating to the OGS Project, it is important that you preserve all documents and records that relate in any way, directly or indirectly, to this matter.

A party to litigation is required to disclose the existence of every document relating to any matter in issue in the legal proceedings that is or has been in the party's possession, control or power, whether or not privilege is claimed in respect of a document.

As such, in order to ensure that the OPA meets its obligations and in order to assist the OPA in legal proceedings, documents and records that relate in any way, directly or indirectly, to the OGS Project should be clearly identified so as to avoid inadvertent destruction and should be kept in a secure location.

Documents Which Must Be Disclosed – "Relevance"

You should be aware that relevancy is a legal consideration and that it is not your job to determine what documents in your possession, control or power are in fact relevant. In that

regard, you should not attempt when gathering documents to determine what documents you believe are relevant or covered by any form of privilege. At this time, it is important that all documents relating to the OGS Project be preserved.

"Documents" includes all Paper, Computer and Electronic Records and Information

"Documents" required to be disclosed are defined broadly and include paper records (such as letters and notes), any data and information in electronic form (such as emails and computerized account records), manuals, business records, sound recordings, videotapes, photographs, charts, graphs, maps, plans, surveys, and books of accounting. Note that this is not an exhaustive list – any record, data and information in any format must be preserved.

An important part of document preservation is to consider electronic records - including electronic versions of documents as well as documents which may only exist electronically and data which may only exist in computer files and records.

As well as preserving all paper documents at your desk and filing cabinets, steps must be taken to preserve all electronic and computerized documents and records. This includes information stored in servers, computers, laptops, palm pilots, blackberries, and cell phones.

IT Personnel

It is imperative that IT personnel preserve the OPA's e-mail server, back-up tapes and the computer hard drives of all those employees who might reasonably be in possession of documents and records relating in any way directly or indirectly to the OGS Project or issues raised in anticipated or pending legal proceedings. Even if back-up tapes are not readily accessible and will not be reviewed at this juncture, they must be preserved so that in the event there is a need to review those back-up tapes, they will be available.

The General Issues

While all documents relating directly or indirectly to the OGS Project must be preserved, it may be helpful for you to know that, in broad terms, the following issues may be relevant in the anticipated or pending litigation:

1. the procurement and administration of the CES Contract between the OPA and TCE;
2. the OPA's planning analysis of the needs in Southwest GTA;
3. the communications between the OPA and the Government relating to the OGS;
4. the Minister of Energy's decision and announcement that the OGS will not proceed;

Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.



If you have any questions or concerns, please contact the OPA law group at (416) 969-6035.

Christine Lafleur

From: Susan Kennedy
Sent: Thursday, May 05, 2011 4:35 PM
To: Michael Lyle
Subject: Draft Litigation Hold Memo for TCE Attached
Attachments: TCE Document Retention Memo.doc; OPA - TCE

Importance: High

Draft memo (from you) attached for your review and comment and Paul's original email attached for reference.

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



May 30, 2012

MEMO TO: Colin Andersen, Kristin Jenkins, Andrew Pride, JoAnne Butler, Amir Shalaby, Kim Marshall, Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram, Aaron Cheng, John Zych, Sarah Diebel

FROM: Michael Lyle

RE: TransCanada Energy Ltd. Oakville Generating Station, Southwest GTA CES
Contract– Document Retention & Preservation

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4. the Minister of Energy’s decision and announcement that the OGS will not proceed;



Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.

If you have any questions or concerns, please contact either:

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

Christine Lafleur

From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: Friday, April 08, 2011 12:44 PM
To: Michael Lyle
Cc: Sebastiano, Rocco; Susan Kennedy; Deborah Langelaan
Subject: OPA - TCE
Attachments: OPA Litigation hold letter 20418319_1.DOC

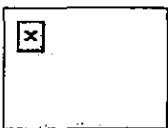
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If you have any questions, please let me know.

Regards,

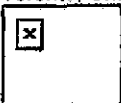
Paul



Paul Ivanoff
Partner

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



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de le divulguer sans autorisation.

Memorandum

Privileged & Confidential

To: Michael Lyle
General Counsel
Ontario Power Authority

Date: April 8, 2011

c: Rocco Sebastiano

From: Paul A. Ivanoff

Tel: (416) 862-4223

Subject: TransCanada Energy Ltd. Oakville Generating
Station, Southwest GTA CES Contract- Document
Retention & Preservation

Matter No: 1126205

Note: The following memorandum should be copied onto Ontario Power Authority law group letterhead before dissemination and should include a banner stating "Privileged and Confidential".

PLEASE READ THIS MEMORANDUM CAREFULLY

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Draft & Privileged

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Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.

If you have any questions or concerns, please contact the OPA law group at (416) 969-6035.

Draft & Privileged

Christine Lafleur

From: JoAnne Butler
Sent: Friday, May 06, 2011 8:58 AM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - 18 May 2011 BOD Update - REVISED ...

I am good with this and plan to send on with an ER package after lunch unless I hear any objections...thanks...

JCB

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

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

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

From: Michael Killeavy
Sent: Jueves, 05 de Mayo de 2011 03:35 p.m.
To: Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan
Subject: TCE Matter - 18 May 2011 BOD Update - REVISED ...
Importance: High

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

Attached please find a revised copy of the proposed Board update presentation. I incorporated some suggestions Deb had.

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

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

From: JoAnne Butler
Sent: May 5, 2011 12:33 PM
To: Michael Killeavy; Deborah Langelaan; Kristin Jenkins
Cc: Manuela Moellenkamp
Subject: Communications Material for TCPL Marketview Conference next week

As you know, I will be speaking at a TransCanada event next week. Here are my slides with speaking notes and some general backup comments below.

If anyone asks about the costs or where we are on OGS, I will say:

"TransCanada and the OPA are currently discussing the disposition of the SWGTA contract. Costs, if any, associated with the disposition of the SWGTA contract are undetermined at this time."

If possible, we'd prefer to avoid delivering the second sentence as it has the potential to lead to further questions about the quantum and nature of costs that it is referring to. It would be better to wrap up the question with "Right now, I'm not in a position to say anything further on that front."

If anyone asks about the KWCG project, I will say: (Kristin, I couldn't find that email with the background info....can you resend it to me? Thanks...)

"The government believes that gas-fired generation will continue to be a safe and secure part of Ontario's electricity system. Our updated Long-Term Energy Plan indicates that we do need a plant in this area. ~~While we have been looking at other options with TransCanada, no deal has been finalized~~"

We would advise the deletion of the last sentence as any reference to options being considered with TCE may contravene the CA that is in place.

In general, I can say:

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

We're ok with this.

Please advise me of any concerns that you might have with this material from a legal or communications standpoint. Thanks....

JCB

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

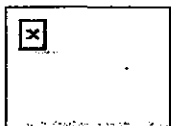
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1

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

Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Friday, May 06, 2011 10:31 AM
To: Michael Killeavy; Ivanoff, Paul; Sebastiano, Rocco; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: Communications Material for TCPL Marketview Conference next week

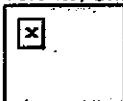
Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Thursday, May 05, 2011 12:41 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: FW: Communications Material for TCPL Marketview Conference next week

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

Do you have any comments on the proposed answers to the questions (below) and content of the slide presentation (attached)?

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

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Christine Lafleur

From: Michael Killeavy
Sent: Monday, May 09, 2011 12:51 PM
To: 'Ivanoff, Paul'; 'Sebastiano, Rocco'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...
Attachments: OPA Ltr to TCE 9 May 2011 - CA REVISIONS.docx

Importance: High

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

Colin Andersen reviewed the draft letter and had suggested a few minor changes, which are incorporated into the attached version. All changes are in blackline. Can you please review these changes and let me know if you are comfortable with them?

Thanks,
Michael

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May ~~xx~~4, 2011

Dear Alex:

We acknowledge receipt of your letter dated April 29, 2011 (the "April 29 Letter"). We have reviewed it in detail and we are very disappointed that it does not contain any materials revisions to your settlement proposal dated March 10, 2011 ("Original Settlement Proposal"), which we advised TCE was unacceptable to the OPA. The April 29 Letter serves only to confirm and amplify the Original Settlement Proposal. Indeed, your estimated capital expenditure ("CAPEX") for the "Potential Project" (as such term is defined in the Memorandum of Understanding dated December 21, 2010) is in excess of \$600 million, once gas and electrical interconnection costs are taken into account. We cannot reconcile this CAPEX with our own estimates for such a plant.

In an effort to better understand the April 29 Letter, we have the following questions which seek clarification on some of the matters raised in your letter:

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt from you of the revised Schedule B to the proposed Implementation Agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.
2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total \$42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?
3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).
4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011

financing model assumptions shared with JoAnne Butler, TCE indicated 20% was being used.

5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.

~~6. The target costing methodology proposed by the OPA in its April 21, 2011 proposal provides for both TCE and the OPA to share equally, i.e., 50% each, in CAPEX overruns and under runs, subject to an overall cap. Can you please clarify why you consider this mechanism to be "one-sided"? [Note: I suspect TCE's view of the one-sidedness of this mechanism is based on the cap, which is lower than their "best estimate" of the CAPEX for the Potential Project. In light of the perceived effect of the cap, consider whether to ask this question.]~~

- ~~7.6.~~ The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

While we work to better understand our differences in terms of financial parameters for any Potential Project, I have requested that our commercial team move this file to our legal counsel, who will be contacting your legal counsel to commence discussions on terms of reference for an arbitration of our dispute.

Sincerely,

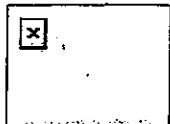
Colin Andersen

Christine Lafleur

From: Smith, Elliot [ESmith@osler.com]
Sent: Monday, May 09, 2011 1:33 PM
To: Michael Killeavy; Ivanoff, Paul; Sebastiano, Rocco; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: RE: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...

These changes look ok to us.

Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, May 09, 2011 12:51 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...
Importance: High

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Colin Andersen reviewed the draft letter and had suggested a few minor changes, which are incorporated into the attached version. All changes are in blackline. Can you please review these changes and let me know if you are comfortable with them?

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Michael

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Christine Lafleur

From: Michael Killeavy
Sent: Monday, May 09, 2011 5:13 PM
To: 'ESmith@osler.com'; 'PIvanoff@osler.com'; 'RSebastiano@osler.com'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: Re: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...

*** Privileged and Confidential - Prepared in Contemplation of Litigation ***

Thanks Elliot.

Deb's finalized the letter and it's with Colin for his signature. It's possible that it will be sent tomorrow. I will keep you posted. Once it's sent you can contact TCE counsel to discuss terms of reference for the arbitration.

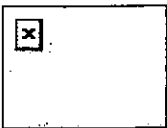
Michael

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From: Smith, Elliot [<mailto:ESmith@osler.com>]
Sent: Monday, May 09, 2011 01:33 PM
To: Michael Killeavy; Ivanoff, Paul <PIvanoff@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: RE: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...

These changes look ok to us.

Elliot



Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, May 09, 2011 12:51 PM
To: Ivanoff, Paul; Sebastiano, Rocco; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - OPA Response to TCE Ltr of 29 April 2011 ...
Importance: High

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

Colin Andersen reviewed the draft letter and had suggested a few minor changes, which are incorporated into the attached version. All changes are in blackline. Can you please review these changes and let me know if you are comfortable with them?

Thanks,
Michael

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

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Christine Lafleur

From: Michael Killeavy
Sent: Tuesday, May 10, 2011 10:02 AM
To: 'Sebastiano, Rocco'; 'Ivanoff, Paul'; 'Smith, Elliot'; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: FW: Letter from Colin Andersen
Attachments: Letter Pourbaix response to Apr 29 May 9 2011.pdf

Importance: High

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

The letter to Alex Pourbaix of TCE was sent. You may now contact TCE counsel to discuss the terms of reference for the arbitration.

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

From: Irene Mauricette **On Behalf Of** Colin Andersen
Sent: May 10, 2011 9:58 AM
To: 'Alex Pourbaix (alex_pourbaix@transcanada.com)'
Cc: Michael Killeavy
Subject: Letter from Colin Andersen

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Hi Alex - the enclosed letter from Colin Andersen is in response to yours of April 29, 2011 – original to follow by mail – thanks – Irene Mauricette on behalf of Colin Andersen.

Irene Mauricette
Executive Assistant to
The Chief Executive Officer

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

Direct: 416 969 6010
FAX: 416 969 6380
Email: irene.mauricette@powerauthority.on.ca
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PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

May 9, 2011

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

Dear Alex: *Alex*

We acknowledge receipt of your letter dated April 29, 2011 (the "April 29 Letter"). We have reviewed it in detail and we are very disappointed that it does not contain any material revisions to your settlement proposal dated March 10, 2011 ("Original Settlement Proposal"), which we advised TCE was unacceptable to the OPA. The April 29 Letter serves only to confirm and amplify the Original Settlement Proposal. Indeed, your estimated capital expenditure ("CAPEX") for the "Potential Project" (as such term is defined in the Memorandum of Understanding dated December 21, 2010) is in excess of \$600 million, once gas and electrical interconnection costs are taken into account. We cannot reconcile this CAPEX with our own estimates for such a plant.

In an effort to better understand the April 29 Letter, we have the following questions which seek clarification on some of the matters raised in your letter:

1. Can you please clarify the Annual Average Contract Capacity ("AACC") and the Season 3 Contract Capacity used in the TCE financial modeling for the Potential Project? We are in receipt from you of the revised Schedule B to the proposed Implementation Agreement, dated 24 February 2011, which indicates seasonal contract capacities of 510.0 MW, 481.5 MW, 455.9 MW and 475.0 MW. This yields an Annual Average Contract Capacity of 480.6 MW. The April 29 Letter states that an Annual Average Contract Capacity of 481 MW is higher than what can be achieved by the gas turbines, which is 450 MW. Furthermore, the April 29 Letter also states that the maximum Season 3 Contract Capacity that can be achieved is 427 MW.
2. Please clarify what is included in the 2009 and 2010 CAPEX amounts for the Potential Project detailed in TCE's 15 March 2011 financing model assumptions shared with JoAnne Butler. These amounts total \$42 million. We believe that these amounts may actually be OGS sunk costs. Is this correct?
3. Please clarify TCE's cost of capital used in its financial model for the Potential Project, including how the cost of capital is arrived at (i.e., the proportion and cost of both the debt and equity).

4. Please clarify the NRRIF used in your financial model for the Potential Project. The April 29 Letter refers to a 50% NRRIF, however, in the March 15, 2011 financing model assumptions shared with JoAnne Butler, TCE indicated 20% was being used.
5. Can you please specify your concerns about testing ramp rates for the Potential Project? Although this is not included in the Peaking Generation form of contract, the ramp rate is an important attribute of a peaking project and therefore, we consider it necessary to have a methodology in any contract for the Potential Project to confirm that the ramp rate requirement is satisfied throughout the term of the contract.
6. The April 29 Letter states that TCE has shared its cash flow model with the OPA. We believe that what this is referring to is the pro forma income statement for the Oakville Generation Station, not a cash flow model where modeling assumptions and calculations are disclosed. Can you please share the actual cash flow model with us?

While we work to better understand our differences in terms of financial parameters for any Potential Project, I have requested that our commercial team move this file to our legal counsel, who will be contacting your legal counsel to commence discussions on terms of reference for an arbitration of our dispute.

Sincerely,



Colin Andersen
Chief Executive Officer

Christine Lafleur

From: Michael Lyle
Sent: Tuesday, May 10, 2011 1:24 PM
To: Colin Andersen; JoAnne Butler; Amir Shalaby; Kristin Jenkins; Kim Marshall; Brett Baker; Michael Killeavy; Deborah Langelaan; John Zych; Susan Kennedy; Robert Godhue; Nimi Visram; Sarah Diebel; Aaron Cheng
Subject: TCE Potential Litigation
Attachments: TCE Document Retention Memo.doc

Please see the attached memo with respect to the potential litigation with TCE and the need to preserve records relating to that potential litigation. Please read this document carefully. We would be happy to answer any questions that you might have.

Michael Lyle
General Counsel and Vice President
Legal, Aboriginal & Regulatory Affairs
Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario, M5H 1T1
Direct: 416-969-6035
Fax: 416.969.6383
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May 30, 2012

MEMO TO: Colin Andersen, Kristin Jenkins, Andrew Pride, JoAnne Butler, Amir Shalaby, Kim Marshall, Brett Baker, Susan Kennedy, Shawn Cronkwright, Deborah Langelaan, Michael Killeavy, Robert Godhue, Nimi Visram, Aaron Cheng, John Zych, Sarah Diebel

FROM: Michael Lyle

RE: TransCanada Energy Ltd. Oakville Generating Station, Southwest GTA CES
Contract— Document Retention & Preservation

PLEASE READ THIS MEMORANDUM CAREFULLY

Please be advised that Ontario Power Authority ("OPA") reasonably anticipates the possibility of legal proceedings in relation to matters involving TransCanada Energy Ltd. and the Oakville Generating Station, Southwest GTA project (the "OGS Project").

As such, all documents and records (both electronic and paper) that relate to the anticipated or pending litigation must be retained until any such proceedings are finally concluded.

As a recipient of this memo, you are required to preserve all documents and records pertaining to the OGS Project, as more clearly described below.

Preservation of Records Relating to Litigation

To assist the OPA in meeting its documentary discovery obligations, in the event that OPA is named as a party in legal proceedings in matters relating to the OGS Project, it is important that you preserve all documents and records that relate in any way, directly or indirectly, to this matter.

A party to litigation is required to disclose the existence of every document relating to any matter in issue in the legal proceedings that is or has been in the party's possession, control or power, whether or not privilege is claimed in respect of a document.

As such, in order to ensure that the OPA meets its obligations and in order to assist the OPA in legal proceedings, documents and records that relate in any way, directly or indirectly, to the OGS Project should be clearly identified so as to avoid inadvertent destruction and should be kept in a secure location.

Documents Which Must Be Disclosed – “Relevance”

You should be aware that relevancy is a legal consideration and that it is not your job to determine what documents in your possession, control or power are in fact relevant. In that regard, you should not attempt when gathering documents to determine what documents you believe are relevant or covered by any form of privilege. At this time, it is important that all documents relating to the OGS Project be preserved.

“Documents” includes all Paper, Computer and Electronic Records and Information

“Documents” required to be disclosed are defined broadly and include paper records (such as letters and notes), any data and information in electronic form (such as emails and computerized account records), manuals, business records, sound recordings, videotapes, photographs, charts, graphs, maps, plans, surveys, and books of accounting. Note that this is not an exhaustive list – any record, data and information in any format must be preserved.

An important part of document preservation is to consider electronic records - including electronic versions of documents as well as documents which may only exist electronically and data which may only exist in computer files and records.

As well as preserving all paper documents at your desk and filing cabinets, steps must be taken to preserve all electronic and computerized documents and records. This includes information stored in servers, computers, laptops, palm pilots, blackberries, and cell phones.

IT Personnel

It is imperative that IT personnel preserve the OPA’s e-mail server, back-up tapes and the computer hard drives of all those employees who might reasonably be in possession of documents and records relating in any way directly or indirectly to the OGS Project or issues raised in anticipated or pending legal proceedings. Even if back-up tapes are not readily accessible and will not be reviewed at this juncture, they must be preserved so that in the event there is a need to review those back-up tapes, they will be available.

The General Issues

While all documents relating directly or indirectly to the OGS Project must be preserved, it may be helpful for you to know that, in broad terms, the following issues may be relevant in the anticipated or pending litigation:

1. the procurement and administration of the CES Contract between the OPA and TCE;
2. the OPA’s planning analysis of the needs in Southwest GTA;
3. the communications between the OPA and the Government relating to the OGS;
4. the Minister of Energy’s decision and announcement that the OGS will not proceed;



Please ensure that all documents relating to the OGS Project, including those documents relating to the general issues outlined above are appropriately segregated and preserved.

If you have any questions or concerns, please contact either:

Michael Lyle: at extension 6035, or

Susan Kennedy: extension 6054

Christine Lafleur

From: Aaron Cheng
Sent: Tuesday, May 10, 2011 2:41 PM
To: Susan Kennedy
Cc: Michael Lyle; Kim Marshall
Subject: RE: TCE Potential Litigation

We'll set up a quick meeting with you to go through the requirements. The SharePoint platform established f /ill
be used as a secure portal for the application.

Thanks,
Aaron

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

From: Michael Lyle
Sent: May-10-11 2:03 PM
To: Kim Marshall; Terry Gabriele; Elizabeth Squissato; Aaron Cheng
Subject: Re: TCE Potential Litigation

Yes as first point of contact.

From: Kim Marshall
Sent: Tuesday, May 10, 2011 01:53 PM
To: Terry Gabriele; Elizabeth Squissato; Aaron Cheng
Cc: Michael Lyle
Subject: FW: TCE Potential Litigation

Terry, Elizabeth and Aaron – fyi.

Aaron, not sure you have been looped into the IT requirements here but if not we need to speak with Susan quickly I think. By cc to mike – susan the right person? thx

Kimberly Marshall
Vice President, Business Strategies & Solutions
Ontario Power Authority
120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1

Phone: 416-969-6232
Cell: 416-545-7202
E-Mail: kim.marshall@powerauthority.on.ca
Fax: 416-967-1947
Visit our Website: www.powerauthority.on.ca

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From: Michael Lyle
Sent: Tuesday, May 10, 2011 1:24 PM
To: Colin Andersen; JoAnne Butler; Amin Shalaby; Kristin Jenkins; Kim Marshall; Brett Baker; Michael Killeavy; Deborah

Langelaan; John Zych; Susan Kennedy; Robert Godhue; Nimi Visram; Sarah Diebel; Aaron Cheng

Subject: TCE Potential Litigation

Please see the attached memo with respect to the potential litigation with TCE and the need to preserve records relating to that potential litigation. Please read this document carefully. We would be happy to answer any questions that you might have.

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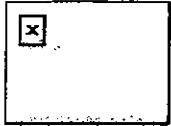
Christine Lafleur

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Tuesday, May 10, 2011 2:44 PM
To: Michael Killeavy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle; Sebastiano, Rocco; Susan Kennedy; Smith, Elliot
Subject: RE: Letter from Colin Andersen [Privileged and Confidential]

As an update, a call has been placed to TCE's counsel. He was out of the office at the time and a message has been left to return the call.

We'll let you know once we hear from him.

Regards,



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Tuesday, May 10, 2011 10:02 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Smith, Elliot; Susan Kennedy
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Michael Lyle
Subject: FW: Letter from Colin Andersen
Importance: High

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

The letter to Alex Pourbaix of TCE was sent. You may now contact TCE counsel to discuss the terms of reference for the arbitration.

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

From: Irene Mauricette **On Behalf Of** Colin Andersen
Sent: May 10, 2011 9:58 AM
To: 'Alex Pourbaix (alex_pourbaix@transcanada.com)'
Cc: Michael Killeavy
Subject: Letter from Colin Andersen

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Hi Alex - the enclosed letter from Colin Andersen is in response to yours of April 29, 2011 – original to follow by mail – thanks – Irene Mauricette on behalf of Colin Andersen.

Irene Mauricette
Executive Assistant to
The Chief Executive Officer

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

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

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Christine Lafleur

From: Michael Lyle
Sent: Tuesday, May 10, 2011 5:22 PM
To: OPA Executive; Brett Baker; Michael Killeavy; Deborah Langelaan
Cc: Susan Kennedy
Subject: TCE

Privileged

Just spoke to Paul Ivanoff from Oslers. He spoke to TCE litigation counsel about arbitration. As expected, they see arbitration terms of reference as having three key elements:

1. Crown, OPA and TCE are all parties to the arbitration.
2. Arbitration starts from premise that OPA is liable to pay TCE for its economic loss (despite contract and challenges that plant was facing).
3. There is no restriction on TCE bidding on other work.

Perhaps we could discuss this further at ETM tomorrow.

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

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Christine Lafleur

From: Calwell, Carolyn (MEI) [Carolyn.Calwell@ontario.ca]
Sent: Wednesday, May 11, 2011 4:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

Carolyn

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties'

intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.”

- the definition of “Third Party” has been simplified.
- the definition of “Party” has been revised so as to remove the word “affiliates”.

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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Toronto, Ontario, Canada M5X 1B8



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Christine Lafleur

From: Susan Kennedy
Sent: Wednesday, May 11, 2011 4:26 PM
To: 'pivanoff@osler.com'
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

From: Calwell, Carolyn (MEI) [<mailto:Carolyn.Calwell@ontario.ca>]
Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

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Carolyn

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

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Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

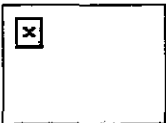
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- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

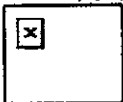
If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

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Christine Lafleur

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Wednesday, May 11, 2011 6:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement, OPA.DOC;
WSComparison_#20420450v5_LEGAL_1_ - v5 Common Interest Privilege Agreement,
OPA-#20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement, OPA.PDF

Susan,

I have revised the Cooperation and Common Interest Privilege Agreement to address the Crown's comment regarding injunctive relief. I note that Section 14 of the *Proceedings Against the Crown Act* contemplates that declaratory relief may be sought in lieu of an injunction. The text of that section is as follows:

No injunction or specific performance against Crown

14. (1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

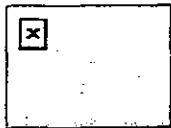
Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1990, c. P.27, s. 14.

With that in mind, I suggest that we propose to the Crown that we revise the "Injunctive Relief" section (i.e. Section 17) to provide for "Declaratory Relief" instead of "Injunctive Relief". They are not immune from a declaratory order. The attached version of the Agreement reflects the change.

Please contact me if you would like to discuss.

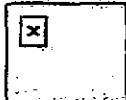
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, May 11, 2011 4:26 PM
To: Ivanoff, Paul
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

Carolyn

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

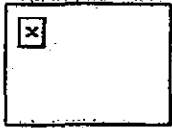
Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."
- the definition of "Third Party" has been simplified.
- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the “**Effective Date**”).

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

DECLARATORY RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

Privileged & Confidential

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

777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5

Attention: Halyna Perun, A/ Legal Director, Legal Services Branch
Ministries of Energy & Infrastructure

Tel. No.: (416) 325-6681

Fax No.: (416) 325-1781

E-mail: halyna.perun2@ontario.ca

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

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

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and
 - (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE DECLARATORY RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

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

777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5

Attention: Halyna Perun, A/ Legal Director, Legal Services Branch
Ministries of Energy & Infrastructure

Tel. No.: (416) 325-6681
Fax No.: (416) 325-1781
E-mail: halyna.perun2@ontario.ca

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

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

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Privileged & Confidential

Christine Lafleur

From: Susan Kennedy
Sent: Friday, May 13, 2011 2:56 PM
To: 'Calwell, Carolyn (MEI)'
Subject: FW: OPA - TCE [Privileged and Confidential]
Attachments: #20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement, OPA.DOC;
WSComparison_#20420450v5_LEGAL_1_ - v5 Common Interest Privilege Agreement,
OPA-#20420450v6_LEGAL_1_ - v6 Common Interest Privilege Agreement, OPA.PDF

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 11, 2011 6:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I have revised the Cooperation and Common Interest Privilege Agreement to address the Crown's comment regarding injunctive relief. I note that Section 14 of the *Proceedings Against the Crown Act* contemplates that declaratory relief may be sought in lieu of an injunction. The text of that section is as follows:

No injunction or specific performance against Crown

14. (1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

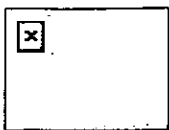
Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1990, c. P.27, s. 14.

With that in mind, I suggest that we propose to the Crown that we revise the "Injunctive Relief" section (i.e. Section 17) to provide for "Declaratory Relief" instead of "Injunctive Relief". They are not immune from a declaratory order. The attached version of the Agreement reflects the change.

Please contact me if you would like to discuss.

Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, May 11, 2011, 4:26 PM
To: Ivanoff, Paul
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

Carolyn

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langelaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

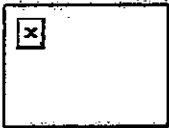
Susan,

Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."
- the definition of "Third Party" has been simplified.
- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined

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

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and

- (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.
- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims, wish to cooperate with each other in respect of the defence of the Claims, and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged

Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date, adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

DECLARATORY RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

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

777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5

Attention: Halyna Perun, A/ Legal Director, Legal Services Branch
Ministries of Energy & Infrastructure

Tel. No.: (416) 325-6681

Fax No.: (416) 325-1781

E-mail: halyna.perun2@ontario.ca

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

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

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

**COOPERATION AND
COMMON INTEREST PRIVILEGE AGREEMENT**

THIS AGREEMENT is effective as of the 1st day of April, 2011 (the "**Effective Date**").

BETWEEN:

**ONTARIO POWER AUTHORITY
("OPA")**

- and -

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

RECITALS:

- A. The OPA and TransCanada Energy Ltd. ("TCE") entered into the Southwest GTA Clean Energy Supply Contract dated as of October 9, 2009 (the "SWGTA Contract").
- B. The OPA and Ontario have concluded that, in connection with the threatened claims and potential litigation by TCE relating to the SWGTA Contract, legal and factual issues could arise with respect to which they have common interests and joint or compatible defences.
- C. The OPA and Ontario have undertaken, and will undertake, factual, legal and other research, and are of the opinion that it is in their best interest to exchange information, pool their individual work product and cooperate in a joint defence effort.
- D. Cooperation in such a joint defence effort will necessarily involve the exchange of confidential information as well as information which is otherwise privileged such as, amongst others, solicitor/client communication and/or communications made and materials obtained or prepared in contemplation of litigation.
- E. In light of their common interest, and the fact that litigation by TCE against the OPA and Ontario is anticipated, OPA and Ontario wish to proceed cooperatively in the preparation of joint or compatible defences, and by this Agreement seek to document their mutual intention and agreement that neither OPA nor Ontario shall suffer any waiver or loss of privilege as a result of disclosure to each other of their Privileged Information (as defined below) or as a result of their cooperation in the preparation of positions, responses and defences to the Claims (as defined below).

AGREEMENT

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

DEFINITIONS

1. In the foregoing Recitals and in this Agreement, the following terms have the meanings set forth in this Section:
 - (a) **"Claims"** means any and all claims made or filed by TCE relating to, arising out of, or in connection with the SWGTA Contract, and any and all arbitration, mediation, or litigation that arises out of any and all such claims.
 - (b) **"Effective Date"** means the effective date as defined above.
 - (c) **"Parties"** means the OPA and Ontario and, for the purpose of giving effect to this Agreement, includes their legal counsel, agents, consultants and experts.
 - (d) **"Privileged Information"** means information and communications, whether written or electronically recorded, in respect of the preparation of positions, responses and defences to the Claims which are or would be otherwise in law privileged and protected from disclosure or production to Third Parties made between OPA (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on OPA's behalf) and Ontario (or its employees, legal counsel, agents, consultants, experts or any other person or entity acting on Ontario's behalf), including but not limited to:
 - (i) information and communications contained in documents, memoranda, correspondence, drafts, notes, reports, factual summaries, transcripts;
 - (ii) communications between counsel, or counsel and clients including their employees, consultants, board members or advisors;
 - (iii) any joint or several interview of prospective witnesses, and summaries or reports thereof;
 - (iv) any analyses, document binders, files, compilations or databases;
 - (v) the sharing or exchange via any media, including but not limited to electronic media;
 - (vi) theories, impressions, analyses, legal research, or legal opinions;
 - (vii) communications to and from experts, and documentation relating to or setting out expert commentary and opinion; and
 - (viii) any other material, communications and information which would otherwise be protected from disclosure to Third Parties.

- (e) "TCE" has the meaning defined in paragraph A of the Recitals.
- (f) "Third Party" or "Third Parties" means any person or entity that is not a Party. Third Party includes TCE, their employees, agents, counsel, subcontractors, consultants, experts, or any other person or entity acting on TCE's behalf.

COMMON INTEREST OF THE PARTIES

2. The Parties have a common, joint, and mutual interest in the defence of the Claims; wish to cooperate with each other in respect of the defence of the Claims; and due to the anticipated litigation with TCE, wish to share between them Privileged Information without risk of prejudice to or of waiver in whole or in part of their respective privileges and rights to hold such Privileged Information protected from disclosure.
3. The Parties are under no obligation to share Privileged Information. However, from time to time, either Party (the "Disclosing Party") in its sole discretion may choose to share Privileged Information with the other Party (the "Receiving Party").
4. To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date.
5. The execution of this Agreement, the cooperation between the Parties in respect of the defences to the Claims and the exchange of Privileged Information under this Agreement, where the materials would otherwise be protected by law against disclosure by solicitor-client (attorney client) privilege, litigation privilege, work product doctrine, without prejudice privilege, or any other applicable rule of privilege or confidentiality:
 - (i) are not intended to, do not and shall not constitute a waiver in whole or in part in favour of any Third Party by either Party of any applicable privilege or other rule of protection from disclosure; and
 - (ii) will not be asserted at any time by either Party as a waiver of any such privilege or other rule of protection from disclosure.
6. Disclosure of Privileged Information by the Receiving Party to Third Parties without the prior written consent of counsel for the Disclosing Party is expressly prohibited, unless the disclosure is ordered by a court of competent jurisdiction or is otherwise required by law. If disclosure of any Privileged Information is sought from a Receiving Party in any arbitration, litigation or other legal proceedings, the Receiving Party [from whom disclosure is sought] shall take all steps necessary to preserve and invoke, to the fullest extent possible, all applicable privileges, immunities and protections against disclosure, and shall immediately provide written notice of such legal proceedings to the Disclosing Party. The Receiving Party shall not voluntarily surrender or disclose the Privileged Information without first providing the Disclosing Party a reasonable opportunity to protect its interests before the applicable court or arbitral tribunal.

7. All of the Privileged Information shall be preserved as confidential and privileged both prior to resolution of all outstanding Claims and thereafter, and shall not be used for any purpose other than the stated sole purpose of cooperation in the defence of the Claims.
8. Neither Party shall disclose to a Third Party the existence of this Agreement, nor its terms, unless both Parties consent in writing or unless compelled by order of a court or arbitral tribunal.
9. The Parties acknowledge and agree that their common interest in the defence of the Claims and their intention that no waiver of privilege shall result from their exchange of Privileged Information between them shall in no way be affected or deemed to be negated in whole or in part by the existence now or in the future of any adversity between the Parties relating to or arising out of the SWGTA Contract, whether in connection with the Claims or otherwise, and that any such adversity shall not affect this Agreement.

COOPERATION

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

WITHDRAWAL

11. It is the intent of the Parties that this Agreement shall remain in effect until final resolution of the Claims, either by litigation in a final, non-appealable judgment or arbitral award or by a final negotiated settlement, whichever is later.
12. Notwithstanding the foregoing, any Party may withdraw from this Agreement by giving twenty (20) days advance written notice to the other Party, which 20 days is calculated beginning on the day after the notice is received by a Party. For greater certainty, withdrawal from this Agreement by a Party is not effective until the expiration of the 20 days' notice period required by this provision.
13. Any withdrawal from this Agreement shall be prospective in effect only and the withdrawing Party and any Privileged Information made available by or to the other Party prior to that Party's withdrawal shall continue to be governed by the terms of this Agreement whether or not the Parties are, in any respect in relation to the SWGTA Contract, adverse in interest.
14. On or before the effective date of a withdrawal from this Agreement, the withdrawing Party shall return to the Disclosing Party all Privileged Information received from the Disclosing Party. In the case of copies, with the consent of the Disclosing Party, the Receiving Party may destroy such copies in a secure manner, and confirm in writing to the Disclosing Party that it has done so.

WAIVER OF CONFLICT OF INTEREST

15. The Parties agree that this Agreement and the sharing of Privileged Information between them shall not be used as a basis for a motion to disqualify a Party's counsel (including for certainty the Party's counsel's law firm and any partner or associate thereof) after a Party has withdrawn from this Agreement for any reason, including without limitation, due to any conflict of interest which arises or becomes known to the withdrawing Party after the Effective Date; adversity between the Parties or any other reason whatsoever based on this Agreement or the cooperation and disclosure of Privileged Information hereunder.
16. The Parties confirm that there is no and shall not be deemed to be any solicitor-client relationship between counsel for the OPA and Ontario, nor any solicitor-client relationship between counsel for Ontario and the OPA, as a result of any communications, sharing of Privileged Information, cooperation or any other action taken in furtherance of the Parties' common interests or under and in reliance upon this Agreement.

INJUNCTIVE/DECLARATORY RELIEF

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

NOTICE

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

To: Ontario Power Authority

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

Attention: Michael Lyle, General Counsel

Tel. No.: (416) 969-6035

Fax No.: (416) 967-1947

E-Mail: michael.lyle@powerauthority.on.ca

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

777 Bay Street, 4th Floor, Suite 425
Toronto, ON M5G 2E5

Attention: Halyna Perun, A/ Legal Director, Legal Services Branch
Ministries of Energy & Infrastructure

Tel. No.: (416) 325-6681
Fax No.: (416) 325-1781
E-mail: halyna.perun2@ontario.ca

GENERAL PROVISIONS

19. This Agreement shall be construed in accordance with the laws of the Province of Ontario and the Parties to this Agreement irrevocably attorn to the jurisdiction of Ontario with respect to any and all matters arising under this Agreement.
20. If any of the provisions of this Agreement or portions thereof should be determined to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time while this Agreement is in force shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.
22. Nothing contained in or done further to this Agreement shall be deemed either expressly or by implication to create a duty of loyalty between any counsel and anyone other than the client of that counsel.
23. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.
24. No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment, or modification is in writing and duly executed by both Parties hereto.
25. The headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained herein.
26. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

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

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

ONTARIO POWER AUTHORITY

By: _____

Name: _____

Title: _____

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

By: _____

Name: _____

Title: _____

Christine Lafleur

From: Michael Killeavy
Sent: Thursday, May 19, 2011 8:17 AM
To: 'Sebastiano, Rocco'; 'Plvanoff@osler.com'; 'Smith, Elliot'; Susan Kennedy
Cc: Deborah Langelaan; Ronak Mozayyan
Subject: FW: Response to Your May 9, 2011 Letter
Attachments: Let.OPA Colin Anderson_May 18.pdf

Importance: High

Attached is TCE response to our letter of 9 May 2011.

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

From: JoAnne Butler
Sent: May 18, 2011 5:24 PM
To: Michael Killeavy
Subject: FW: Response to Your May 9, 2011 Letter
Importance: High

Another one...let's discuss tomorrow....

JCB

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

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

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

From: Irene Mauricette
Sent: Miércoles, 18 de Mayo de 2011 03:55 p.m.
To: JoAnne Butler; Michael Lyle
Cc: Brett Baker; Manuela Moellenkamp; Nimi Visram
Subject: FW: Response to Your May 9, 2011 Letter
Importance: High

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

FYI – and suggested response to CA please – thanks – Irene

From: Linda Lee [mailto:linda_lee@transcanada.com]

Sent: May 18, 2011 3:08 PM

To: Colin Andersen

Subject: Response to Your May 9, 2011 Letter

Mr. Anderson,

Attached is a letter from Alex Pourbaix in response to your letter of May 9, 2011. The original will be sent by regular mail.

Thank you.

Sincerely,

Linda Lee

Linda Lee
Executive Assistant
TransCanada
450 - 1 Street, SW
Calgary, AB T2P 5H1
Ph: (403) 920-2106
Fx: (403) 920-2410

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TransCanada
In business to deliver

May 18, 2011

TransCanada Corporation
450 - 1 Street, SW
Calgary, AB T2P 5H1

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

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

tel 403.920.2122
fax 403.920.2410
email alex_pourbaix@transcanada.com
web www.transcanada.com

Alex Pourbaix,
President, Energy & Oil Pipelines

Dear Colin:

Thank you for your letter of May 9, 2011 (the "Letter"). I am happy to provide you with the clarifications you are seeking, although these points were all contained in our original proposal sent to your team back in February and March.

You state in the opening paragraph of the Letter that you cannot reconcile the TransCanada capital costs (CAPEX) of the Cambridge facility to your own estimates. TransCanada has not only shared its detailed capital cost estimates with the OPA, but has explained the estimate in detail in two separate meetings with your full team. The OPA has consistently refused to share its capital estimates with TransCanada. Reconciliation of our differences will first require that the OPA table their capital cost build-up so the parties can identify the differences.

I would also reiterate our proposal gives the OPA the benefit of any capital cost reductions from our estimate. It is important to point out that our initial estimate has been made without knowing the exact location of the project, the demands of the local community in terms of a benefit package or the interconnect costs. TransCanada provided estimates for these based on our years of experience in developing power projects across North America. However, to the extent that the final estimated costs come in at less than our initial estimate, these costs will result in a decrease in the NRR under the terms of our proposal. I would also note that the bulk of these costs are either fixed (such as the cost of the gas turbines), will be fixed prior to signing of the CES contract (land cost, community benefit, construction cost), or are outside of our control (interconnect costs).

In response to your specific requests for clarification, I offer the following:

Item 1

The seasonal contract capacities contained in our February 24, 2011 revised Schedule B of the Implementation Agreement ("IA") were based on the OPA's acceptance of Value Proposition #7 which adjusted the ambient temperature used for the capacity check test. With that change, the seasonal capacities are as specified in your letter, which yields the Annual Average Contract Capacity of 480.6 MW.

Power Authority
Attn: Mr. Colin Anderson
May 18, 2011
Page 2

If Value Proposition #7 is not accepted and the capacity check test ambient temperatures remain as they are in the Northern York Region Peaking Generation Contract, the seasonal and annual capacities must be adjusted to the amounts stated in my April 29, 2011 letter.

Item 2

We are assuming that your question relates to Terry Bennett's email to JoAnne Butler dated March 15th, 2011 which was intended to ensure that the OPA's model and TransCanada's model were both providing similar answers given a similar set of inputs. If you are referencing this email, the capital spending amounts shown in 2009 and 2010 are not OGS Sunk Costs; they are the cash outlays incurred during that time paid to date associated with purchasing the gas turbines.

Item 3

As per our letter of April 29th, 2011 the minimum acceptable after-tax unlevered economic return (IRR) for the Potential Project is 9%.

Item 4

Our April 29th letter makes reference to NRRIF of 50% in an effort to direct the OPA back to our proposal which included a number of value propositions for inclusion in the contract associated with the Potential Project (Schedule B2 provided on February 24th, 2011). As explained in Schedule B2 this more accurately aligns the contract with the actual fixed costs associated with the Potential Project.

On the assumption that you are referring to the March 15th, 2011 email from Terry Bennett to JoAnne Butler I again stress that this email was sent in an effort to ensure our respective models were "calibrated". I direct your attention to the second paragraph of Terry's email that states "These assumptions do not include any of the Value Propositions outlined in the IA."

Item 5

Our teams have been attempting to reach commercial closure on a replacement project premised on a peaking facility to be located in Cambridge and contractually based on previous CES Contracts, specifically the Northern York Region Peaking Generation Contract. The introduction of new contract terms, never before seen in any CES Contract and not fully articulated in terms of testing protocol, measurement, timing and consequence, is not conducive to achieving such commercial close. This clause was not in the SW-GTA contract, may not be aligned with the equipment supply contract and could introduce new risks to the contract that we have not considered. If this item is an important attribute of a peaking project, why was it not previously contained in the Northern York Peaking Generation Contract?

Item 6

The spreadsheet sent to the OPA in December, 2010 was not an income statement but a statement of cash flows.


Power Authority
Attn: Mr. Colin Anderson
May 18, 2011
Page 3

I would like to highlight that in my letter of April 29, I requested information from the OPA related to its expectations on value and other items. The Letter did not respond to any of these requests. TransCanada has been very clear and explicit in tabling its expectations and has provided a fair and balanced proposal to meet those expectations. To date, the OPA has not been willing to share its expectations on value, and has tabled two proposals – the first yielding an IRR of approximately 4% and the second yielding an IRR of approximately 5.5%. Neither of these proposals are acceptable to TransCanada, even as stand-alone projects without reference to the financial damages owed due to the cancellation of the SW-GTA contract.

I remain confident, despite the short time line we have to work with, that if we can agree on an acceptable value for the replacement project our respective teams can work out the mechanics of achieving that result. Therefore, it is critical that the OPA to provide a clear and unequivocal statement on its expectations of the value that it is prepared to offer.

I look forward to your prompt response to this urgent matter.

Regards,

A handwritten signature in black ink, appearing to be 'Alex Pourbaix', written in a cursive style.

Alex Pourbaix
President, Energy & Oil Pipelines

Christine Lafleur

From: Michael Killeavy
Sent: Friday, May 20, 2011 12:23 PM
To: 'RSebastiano@osler.com'; 'Plvanoff@osler.com'; 'ESmith@osler.com'; Susan Kennedy
Cc: JoAnne Butler; Michael Lyle
Subject: Fw: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

This is an interesting development. Perhaps we could teleconference later today?

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: Friday, May 20, 2011 12:18 PM
To: Deborah Langelaan
Cc: Michael Killeavy; JoAnne Butler; Michael Barrack <MBarrack@tgf.ca>; John Finnigan <JFinnigan@tgf.ca>; Geoff Murray <geoff_murray@transcanada.com>; Terry Bennett <terry_bennett@transcanada.com>; John Cashin <john_cashin@transcanada.com>; Jody Johnson <jody_johnson@transcanada.com>; Doug McLean <doug_mclean@transcanada.com>
Subject: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

With Prejudice

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TransCanada will execute the amended MPS agreement as described above as it provides both TransCanada and the OPA with maximum flexibility in the future, both in terms of mitigation efforts and any potential future projects. We trust that the OPA concurs with this decision.

Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

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Christine Lafleur

From: Deborah Langelaan
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To: 'rsebastiano@osler.com'; 'pivanoff@osler.com'; 'safouh@smsenergy-engineering.com'; Susan Kennedy; Michael Lyle
Cc: Michael Killeavy
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FYI

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Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street
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Christine Lafleur

From: Susan Kennedy
Sent: Friday, May 20, 2011 6:46 PM
To: Michael Lyle; 'pivanoff@osler.com'
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below. I guess I interpret her message as either, "we'd never take each other to court, so why bother with some form of judicial relief". By the same token, I'd suggest there is no reason not to include, as you never know what may happen.

Paul, Mike will likely follow up with you on Tuesday. I was wondering if declaratory relief could prove useful to establish privilege should be maintained even if there was a release of information. So, by way of example, Ministry accidentally forwards OPA privileged document to TCE, would declaratory relief assist in successfully maintaining privilege of document (ie keeping document inadmissible). That would be a reason we (or if the reverse happened, they) might seek relief despite our "special" relationship.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Friday, May 20, 2011 04:28 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I wanted to follow up on the message that I left yesterday. In light of the relationship between the Ministry and the OPA, I have trouble justifying or explaining an allowance for declaratory relief between the parties. That PACA allows for that remedy doesn't warrant including it here. I would prefer the paragraph to come out. Nevertheless, as indicated, I would be happy to discuss further if you wish.

Carolyn

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 13, 2011 2:56 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 11, 2011 6:13 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

I have revised the Cooperation and Common Interest Privilege Agreement to address the Crown's comment regarding injunctive relief. I note that Section 14 of the *Proceedings Against the Crown Act* contemplates that declaratory relief may be sought in lieu of an injunction. The text of that section is as follows:

No injunction or specific performance against Crown

14. (1) Where in a proceeding against the Crown any relief is sought that might, in a proceeding between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties.

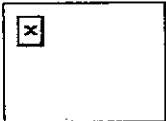
Limitation on injunctions and orders against Crown servants

(2) The court shall not in any proceeding grant an injunction or make an order against a servant of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in a proceeding against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties. R.S.O. 1990, c. P.27, s. 14.

With that in mind, I suggest that we propose to the Crown that we revise the "Injunctive Relief" section (i.e. Section 17) to provide for "Declaratory Relief" instead of "Injunctive Relief". They are not immune from a declaratory order. The attached version of the Agreement reflects the change.

Please contact me if you would like to discuss.

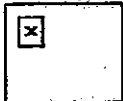
Regards,
Paul



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: Wednesday, May 11, 2011 4:26 PM
To: Ivanoff, Paul
Subject: Fw: OPA - TCE [Privileged and Confidential]

See below re first comment.

I'll follow-up on the signing authority (Minister versus Deputy Minister) end of things.

From: Calwell, Carolyn (MEI) [mailto:Carolyn.Calwell@ontario.ca]
Sent: Wednesday, May 11, 2011 04:18 PM
To: Susan Kennedy
Subject: RE: OPA - TCE [Privileged and Confidential]

Susan,

Thank you for sending the revised document. The changes look fine. The only remaining issue from my perspective is the provision for injunctive relief, which is contrary to section 14 of the *Proceedings Against the Crown Act*. With the removal of paragraph 17 in the Agreement, I will recommend that the Minister execute the agreement.

As a practical matter (and I have not yet ascertained anyone's preference in this regard), it may be easier to get the Deputy to sign. Would you have any objections if we proceeded in that way? The Deputy's authority to sign agreements is set out in the *Ministry of Energy and Infrastructure Act*.

Carolyn

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

From: Susan Kennedy [mailto:Susan.Kennedy@powerauthority.on.ca]
Sent: May 5, 2011 3:45 PM
To: Calwell, Carolyn (MEI)
Subject: FW: OPA - TCE [Privileged and Confidential]

Carolyn,

See attached. Let me know if it works for you (I have forwarded the contact info over to Oslers, so it will get picked up in next/final version).

Susan H. Kennedy
Director, Corporate/Commercial Law Group

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: May 3, 2011 8:25 AM
To: Susan Kennedy
Cc: Michael Lyle; JoAnne Butler; Michael Killeavy; Deborah Langejaan; Sebastiano, Rocco
Subject: OPA - TCE [Privileged and Confidential]

Susan,

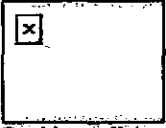
Attached is a revised draft Cooperation and Common Interest Privilege Agreement between the OPA and Her Majesty the Queen in right of Ontario as represented by the Minister of Energy along with a blackline highlighting the revisions. The main changes are as follows:

- April 1st has been inserted as the Effective Date. Note that paragraph #4 provides that: "To the extent that exchanges of Privileged Information have been made prior to entering into this Agreement, it is the Parties' intention that all such exchanges be subject to the terms of this Agreement as if they had occurred after the Effective Date."

- the definition of "Third Party" has been simplified.
- the definition of "Party" has been revised so as to remove the word "affiliates".

Note that for paragraph #18, we will need to add the contact information for Ontario. Let me know once you hear back from counsel on that front.

If you would like to discuss further, please give me a call.



Paul Ivanoff
Partner

416.862.4223 DIRECT
416.862.6666 FACSIMILE
pivanoff@osler.com

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



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de le divulguer sans autorisation.

Christine Lafleur

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: Friday, May 20, 2011 7:40 PM
To: Deborah Langelaan
Cc: Michael Killeavy; rsebastiano@osler.com; pivanoff@osler.com; Susan Kennedy; Michael Lyle
Subject: RE: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

Reissue to include Susan Kennedy and Micheal Lyle who inadvertently were not copied on original email.

Privileged & Confidential

Thank you - Deborah.

For your information I received from Paul Ivanoff of Osler earlier today a copy of the long awaited LTSA. I am assuming the purpose of its submission is so that TransCanada is not seen delinquent on any promises it made to the OPA during the "negotiation" process and it is done Without Prejudice. If this is the case then I suggest that we don't review the LTSA at this time.

Otherwise, please let us know what action SMS is required to take with respect to the LTSA.

Have a great long weekend everyone,

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: May 20, 2011 4:33 PM
To: rsebastiano@osler.com; pivanoff@osler.com; safouh@smsenergy-engineering.com; Susan Kennedy; Michael Lyle
Cc: Michael Killeavy
Subject: Fw: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

FYI

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Director, Eastern Canada, Power Development

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Subject: Re: TransCanada Oakville GS - Notice of Amended Equipment Supply Contract #6519 between TransCanada Energy Ltd. and MPS Canada, Inc.

Deb and I will meet with JoAnne next week and decide on next steps.

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

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Dear Deborah,

Further to my e-mail of January 31, 2011 wherein we informed you of our decision to release MPS Canada, Inc. ("MPS") from suspension, we are nearing completion of the negotiation of the amended Equipment Supply Agreement No. 6519 ("ESA") with MPS. The amended ESA incorporates modifications to the original agreement in accordance with the firm price proposal provided by MPS on February 28, 2011 (and communicated to the OPA on the same date) for conversion of the ESA to fast start and simple cycle configuration, with the exception that the additional scope (the closed cooling system and stacks) previously a fixed price, has now been incorporated as an exclusive supply option in favour of MPS that will be triggered as a change order at a future date. The option is only triggered if the MPS gas turbines are installed by TransCanada in a simple cycle configuration under a contract between TransCanada and the OPA to replace the SW GTA Clean Energy Supply Contract. In addition, MPS has a first right of offer to provide the power train for a combined cycle build out, consistent with the letter agreements (also shared with the OPA) should the turbines be installed by TransCanada in a combined cycle application under a contract between TransCanada and the OPA to replace the SW GTA Clean Energy Supply Contract. Given the fact there is no agreement with the OPA to date on the Cambridge project or an alternative project that would utilize the gas turbines, TransCanada has proceeded with this solution on the basis that it preserves the ability to use the turbines in a future simple cycle or combined cycle replacement project, but mitigates the exposure to further cost increases and increases the marketability of the turbines for reuse or resale in the event a replacement project is not defined.

In addition to the above changes, MPS and TransCanada have also agreed to include "make good" performance on ramp rate and start-up time in the amended contract. The start-up time has been restated to be "press start to 100% load" and allows for new NFPA requirements, resulting in guaranteed start-up time of 26 minutes to 100% load.

TransCanada will execute the amended MPS agreement as described above as it provides both TransCanada and the OPA with maximum flexibility in the future, both in terms of mitigation efforts and any potential future projects. We trust that the OPA concurs with this decision.

Yours Truly,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street

24th Floor, South Tower
Toronto, Ontario M5J 2J1

Tel: 416.869.2102

Fax: 416.869.2056

Cell: 416.559.1664

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Christine Lafleur

From: Susan Kennedy
Sent: Thursday, June 02, 2011 2:43 PM
To: Michael Killeavy
Subject: FW: Invoice
Attachments: Bennett Jones.pdf

See attached invoice. The question from my boss is, "should we pay this or should they"? I'm completely indifferent. The work is TCE related so it should probably track to the TCE legal cost budget; however, the work is being done through LARA's general BJ retainer, so if it creates problems from your end, we can pay it.

Let me know.

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

From: Robert Godhue
Sent: June 2, 2011 2:19 PM
To: Susan Kennedy
Subject: Invoice

Robert Godhue
Administrative Assistant to
Michael Boll,
Caroline Jageman and
Susan H. Kennedy
Corporate/Commercial Law Group
Ontario Power Authority

416-969-6058

Robert.Godhue@powerauthority.on.ca

Ernest W. Belyea
Direct Line: 416.777.6445
e-mail: belyea@bennettjones.com

MAY 27 2011

May 13, 2011

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

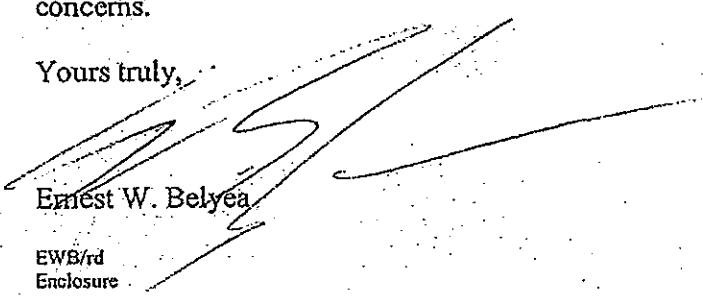
Dear Michael:

Re: Account
▪ Peaker Generation Facility (File no. 62629.15) (Invoice no. 896000)

Please find enclosed our statement of account for professional services rendered for the period ending April 30, 2011 for the above-noted matter.

I trust the foregoing is satisfactory. Please feel free to contact me should you have any questions or concerns.

Yours truly,


Ernest W. Belyea

EWS/rd
Enclosure

Bennett Jones LLP

Bennett Jones LLP
Suite 3400, 1 First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4
(416) 863-1200

ONTARIO POWER AUTHORITY
120 ADELAIDE ST. WEST
SUITE 1600
TORONTO, ON M5H 1T1
Attention: MICHAEL LYLE, GENERAL COUNSEL

Our File Number: 062629.00015

ONTARIO POWER AUTHORITY
Re: PEAKER GENERATION FACILITY/EWB

Date: 10/05/11
Invoice: 896000

Date	Lawyer	Professional Services	Hours	Amount
04/04/11	L. J. Griffiths	Communications from M. Killeavy with respect to Kitchener-Waterloo-Cambridge issues, including with respect to permitting and approvals risks and strategy; Communications with E. Belyea with respect to same; Consideration of issues and strategies (actual time 3.5)	2.10	1,732.50
05/04/11	L. J. Griffiths	Consideration of issues with respect to approvals and related matters for potential project and phone conference with M. Killeavy and provide report with respect to same, including suggested changes to slide deck	3.40	2,805.00
Total Hours and Fees			5.50	\$ 4,537.50
			GST/HST	\$ 589.88
			TOTAL DUE	\$ 5,127.38

Lawyer	Title	Hours	Rate	Amount
L. J. Griffiths	Partner	5.50	825.00	4,537.50

BENNETT JONES LLP

PER 

Statement of Account TERMS: Due upon receipt. Bennett Jones LLP reserves the right to charge interest at a rate not greater than 1.3% per annum on outstanding invoices after 30 days. GST/HST: R119346757
We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at www.bennettjones.com or contact our Privacy Officer by writing to our offices in Calgary, Edmonton, Toronto or Ottawa.



Bennett Jones LLP
Suite 3400, 1 First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4
(416) 863-1200

ONTARIO POWER AUTHORITY
120 ADELAIDE ST. WEST
SUITE 1600
TORONTO, ON M5H 1T1
Attention: MICHAEL LYLE, GENERAL COUNSEL

Our File Number: 062629.00015

ONTARIO POWER AUTHORITY
Re: PEAKER GENERATION FACILITY/EWB

Date: 10/05/11
Invoice: 896000

REMITTANCE STATEMENT

Please return this Remittance Statement with your payment in the attached envelope so that we may ensure your account is properly credited.

Fees	\$	4,537.50
Other Charges		0.00
Disbursements		0.00
Disbursements Incurred As Your Agent		0.00
GST/HST	\$	589.88
TOTAL DUE	\$	<u>5,127.38</u>

Statement of Account TERMS: Due upon receipt. Bennett Jones LLP reserves the right to charge interest at a rate not greater than 1.3% per annum on outstanding invoices after 30 days. GST/HST: R119346757.
We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at www.bennettjones.com or contact our Privacy Officer by writing to our offices in Calgary, Edmonton, Toronto or Ottawa.

Christine Lafleur

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

Importance: High

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

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

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

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)

Christine Lafleur

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

Importance: High

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

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

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

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

Michael

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)

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

Plant Capacity	450 MW
Convert to KW	1000

TCE Bilateral Deal vs. K-C Competitive Procurement

	Lowest Cost Tender		Intermediate Cost Tender	
	Bilateral Deal TCE	Competitive Procurement	Bilateral Deal TCE	Competitive Procurement
Capital Expenditures (BOP)	\$330,000,000	\$200,000,000	\$330,000,000	\$270,000,000
Turbine Equipment Cost	\$210,000,000	\$210,000,000	\$210,000,000	\$210,000,000
OGS Sunk Costs	\$37,000,000	\$37,000,000	\$37,000,000	\$37,000,000
OGS Profits	\$375,000,000	\$375,000,000	\$375,000,000	\$375,000,000
Litigation Costs	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Total	\$957,000,000	\$827,000,000	\$957,000,000	\$897,000,000
\$/MW	\$2,126,667	\$1,837,778	\$2,126,667	\$1,993,333
\$/KW	\$2,127	\$1,838	\$2,127	\$1,993
Premium		\$130,000,000		\$60,000,000

TCE Bilateral Deal Premium

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

Note:

VERESEN:

Total Project Cost for YEC (including turbines) \$ 340,000,000

SMS Energy Engineering Estimated:

Low

Total Project Costs (including turbines) \$ 398,317,999

Cost of Turbines (OPA) \$ 210,000,000

Capex [Proj. Total with Equipment - Cost of Turbines (OPA)] \$ 188,317,999

OPA's analysis based on data from CERA

	High	Intermediate
Total Project Costs (including turbines)	\$ 525,443,218	\$ 480,356,628
CERA costs of Turbines	\$ 195,473,218	\$ 195,473,218
Cost of Turbines (OPA)	\$ 210,000,000	\$ 210,000,000
Capex [Total CERA Costs (including turbines) - Cost of Turbines (OPA)]	\$ 315,443,218	\$ 270,356,628

Other Supplementary Information**Halton Hills Generating Station**

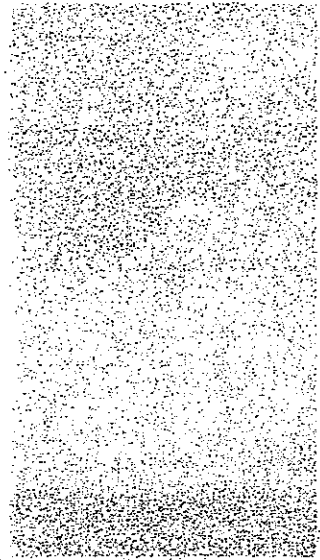
CTG Supply	\$ 82,037,749
Total Project Cost (including turbines)	\$ 670,877,811

The 641.5 MW Halton Hills is a combine cycle plant that implemented two Siemens SGT6 5000F turbines at an estimated cost of \$210M. Siemens SGT6-PAC 500F for the York Energy Center was not disclosed in its proposal, however, both Halton Hills and York Energy Center implemented Siemens "F" class gas turbines. Although the Cost of the turbines seem low in comparison to the \$210 M proposed by TCE for a contract capacity of 641.5 MW and 393 MW for Halton Hills and York Energy Center are significantly lower than the potential cost of a new plant.

Based on the total project cost above, low, intermediate and high case scenarios were estimated for CAPEX for competitive scenarios. A low case scenario of \$200M was estimated from VERESEN and SMS's data. The Intermediate and High case scenarios of \$270M and \$315M, respectively, are based on OPA's analysis.

Input

High Cost Tender	Competitive Procurement
Bilateral Deal TCE	
\$330,000,000	\$315,000,000
\$210,000,000	\$210,000,000
\$37,000,000	\$37,000,000
\$375,000,000	\$375,000,000
\$5,000,000	\$5,000,000
\$957,000,000	\$942,000,000
\$2,126,667	\$2,093,333
\$2,127	\$2,093
	\$15,000,000



ist of about \$82 M. The cost of the two
nergy Center have implemented two
for its two "G" class gas turbines, the
al 900 MW Contract Capacity of the SWGTA

procurement. The low case scenario CAPEX
respectively, were estimated from CERA.

Christine Lafleur

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

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

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

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



MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

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

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

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

3. TransCanada Energy Inc. Negotiations

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

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

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

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

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

4. Other Business

There was no other business.

5. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting



MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

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

2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

Mr. Livingston left the meeting.

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

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

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

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

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

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

3. Other Business

There was no other business.

4. In Camera Session

The directors met in the absence of management.

5. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting



MEETING OF THE BOARD OF DIRECTORS

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

PRESENT

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

MEMBERS OF STAFF IN ATTENDANCE

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

1. Constitution of the Meeting

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

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

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

2. TransCanada Energy Inc. Negotiations

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

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

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

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

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

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

3. Other Business

There was no other business.

4. Termination

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

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

James Hinds
Chair of the meeting

John Zych
Secretary of the meeting

DRAFT

Christine Lafleur

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...
Attachments: Need to Know 16 Nov 2011.docx

Importance: High

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

Michael

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

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PRIVILEGED & CONFIDENTIAL – PREPARED IN CONTEMPLATION OF LITIGATION

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

1. Details of how the project was to be financed by TCE. We need the proportion of debt and equity and costs associated with debt and equity. We'd like to understand how TCE's purported "unlevered cost of equity" was arrived at;
2. TCE's rationale for the "replacement contract" it was anticipating receiving at the end of the 20-year OPA contract term. It seems quite speculative to us and we need to understand how certain this prospect might have been. We also need to understand how the cash flows in 2034 to 2044 in the financial model¹, inclusive, were arrived at ("residual cash flows");
3. TCE's rationale for discounting these residual cash flows to arrive at a present value for these cash flows. It is discounting these cash flows at the same discount rate as the contract cash flow, which ignores their inherent riskiness;
4. We need to understand how the Actual Gross Market Revenues in the financial model were arrived at. In particular, we'd need to understand what the physical heat rate of the Contract Facility would have been, and what assumptions were made with regard to future HOEP, pre-dispatch prices, and natural gas prices;
5. We'd like to know how TCE arrived at its fixed and variable operating and maintenance costs ("O&M costs") for the Contract Facility. What maintenance and refurbishment activities, and their associated costs, were planned for the station equipment if it is to last 30+ years;
6. We'd like to look at the project development schedule, and in particular the construction schedule for the construction of the Contract Facility;
7. We will need a full accounting of all claimed sunk costs, including but not limited to the costs of the gas turbines, heat-recovery steam generator, and steam turbine. This not part of the anticipated financial value, but we likely are liable for its sunk costs, too, so we need to know this if we're working it into the NRR.

¹ Referenced in TCE's financial model spreadsheet entitled "TransCanada Oakville GS – Unlevered Economics (July 8, 2009)"

Christine Lafleur

From: Michael Killeavy
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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

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Sent: December 5, 2011 11:00 AM
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Cc: Susan Kennedy; JoAnne Butler
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Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
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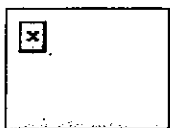
Christine Lafleur

From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Wednesday, December 07, 2011 6:01 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list.

We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request. Please let me know your thoughts on this front.

Regards,
Paul



Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.
- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");
2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;
3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;
4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;
5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

Draft & Privileged

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith;
11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.
14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;
15. All project development schedules and construction schedules for the OGS;
16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
17. The Long Term Service Agreement;
18. Operating and Maintenance ("O&M") Agreements for the OGS; and
19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].

Christine Lafleur

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

I agree as well.

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

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

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

JCB

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

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

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

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

I agree.

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

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

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

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

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

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

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

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

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

Kristin

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

Christine Lafleur

From: Michael Killeavy
Sent: Wednesday, December 07, 2011 6:03 PM
To: 'PIvanoff@osler.com'
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Information Needed ...

Will do. Thank you.

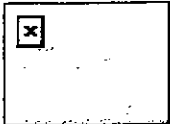
Michael Killeavy, LL.B., MBA, P.Eng.
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416-969-6071 (fax)
416-520-9788 (cell)
Michael.killeavy@powerauthority.on.ca

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Wednesday, December 07, 2011 06:00 PM
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Information Needed ...

I spoke to John Kelly about the issue of documentary production. He asked that we provide him with a list of "essential documents" that the OPA needs to assess TCE's claims. He said IO would like to see a short list as opposed to a long and thorough list. He advised that there is a meeting tomorrow afternoon between TCE and IO and that he would like to have the short list before that meeting. He also said that the OPA was not invited to the meeting. I told him that I would get instructions on a list.

We have prepared the attached Documentary Production List which we believe would be appropriate for the arbitration. We have not pared it down in any way and think that this is a reasonable documentary request. Please let me know your thoughts on this front.

Regards,
Paul



Paul Ivanoff
Partner

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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From: Michael Lyle
Sent: December 5, 2011 11:00 AM
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Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

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Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
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Christine Lafleur

From: JoAnne Butler
Sent: Thursday, December 08, 2011 9:15 AM
To: 'Ivanoff, Paul'; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

Paul,

It has been made clear to us (again) that TCE will NOT share their model. From an earlier email from IO, quote:

"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

So, I am not sure if asking them for the model again will add any value or move anything forward. Perhaps we can word our request (thinking future audit) something like the following:

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Thoughts??

JCB

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

From: Ivanoff, Paul [mailto:PIvanoff@osler.com]
Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

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Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

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Sent: Thursday, December 08, 2011 9:34 AM
To: JoAnne Butler; 'Ivanoff, Paul'
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: OPA_v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

We have reviewed the document and made a few suggested changes. The changes are in blackline in the attached version of the document.

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From: JoAnne Butler
Sent: December 8, 2011 9:15 AM
To: 'Ivanoff, Paul'; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
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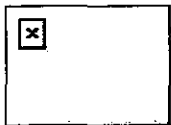
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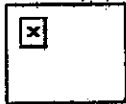
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M5H 1T1
416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

From: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

Sorry Paul. You would not be aware of call but are aware of the draft changes to the arbitration agreement that we have expressed concerns about.

From: Michael Killeavy
Sent: Monday, December 05, 2011 10:54 AM
To: Ivanoff, Paul <PIvanoff@osler.com>
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler
Subject: TCE Matter - Information Needed ...

Paul,

I believe that you are aware of Mike's telephone call with John Kelly this morning, and John's subsequent request that we develop a list of information that we think we'd need to see to verify the claimed financial value of the OGS and sunk costs. Attached is an information list document that I developed a while ago and just updated recently. Perhaps this might be useful to us in developing a document request list. John's telephone number is 416-212-1161.

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Christine Lafleur

From: Michael Killeavy
Sent: Thursday, December 08, 2011 9:34 AM
To: JoAnne Butler; 'Ivanoff, Paul'
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...
Attachments: OPA_v3 Scope of Documentary Discovery OPA re TCE 22287002_3.doc

We have reviewed the document and made a few suggested changes. The changes are in blackline in the attached version of the document.

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From: JoAnne Butler
Sent: December 8, 2011 9:15 AM
To: 'Ivanoff, Paul'; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

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joanne.butler@powerauthority.on.ca

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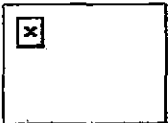
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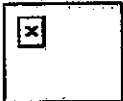
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Paul Ivanoff
Partner

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

TRANSCANADA ENERGY LTD.

Claimant

- and -

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

Respondents

Scope of Documentary Production

All parties agree that the following parameters apply to potentially relevant documents:

- Types of Documents: Electronic and paper documents including notes, correspondence, memoranda, presentations, contracts, forecasts, proposals, invoices, financial statements, minutes and e-mails. Electronically stored information may be located on networks, desktop computers, laptops, personal digital assistants, mobile phones, Blackberries, smartphones, voice mail systems, backup media, external hard drives, USB drives and any other similar devices or storage media.
- Relevant Time Frame: October 2, 2008 - Present

All parties agree that the scope of documentary discovery of the parties includes any and all documents in the possession, power, or control of the parties that are relevant to:

1. Project development work by TransCanada Energy Ltd. ("TCE"), including without limitation, energy production estimates, construction cost estimates, budgets, project plans, subcontracts and consulting agreements, correspondence with subcontractors/consultants relating to the Oakville Generating Station ("OGS");
2. Progress of development on the OGS project, including without limitation project status reports, and budget and schedule updates;
3. Charges and costs for development work performed by TCE, including documents reflecting TCE's cost estimates, material and equipment purchases, labour costs, service contracts, overhead and profits in connection with the OGS project;
4. TCE's alleged business expectancy with respect to OGS project, including without limitation, projections, forecasts and estimates of value of work;
5. All financial models used by TCE in connection with their proposal to the OPA for the Southwest GTA RFP in excel format, complete with all operative cells, in electronic format;

Draft & Privileged

6. TCE's anticipated tax liability in respect of the revenues and profits associated with OGS;
7. The financing of the Project, the proportion of debt and equity, the costs associated with debt and equity, the calculation of the purported "unlevered cost of equity";
8. The "replacement contract" that TCE allegedly anticipated receiving at the end of the 20-year CES contract term. The calculation of any cash flows in 2034 to 2044 claimed by TCE (the alleged "residual cash flow");
9. The documentation and analyses relating to the discounting of these residual cash flows and the calculation of the present value for these cash flows;
10. All documentation and analyses relating to the revenues forecasted to be earned from the IESO-administered markets and the variable costs associated therewith (including ancillary market revenues);
11. The expected physical heat rate and capacity of the OGS facility over the term of the CES contract;
12. The assumptions made with regard to future HOEP, pre-dispatch prices, and natural gas prices and actual pricing used in the OGS financial model for HOEP, pre-dispatch and natural gas;
13. All supporting documentation relating to fixed and variable operating and maintenance costs ("O&M costs") for the OGS facility.
14. The planned maintenance, refurbishment and decommissioning activities for the OGS and their associated costs;
15. All project development schedules and construction schedules for the OGS;
16. A full accounting of all claimed sunk costs, including but not limited to, the costs of the gas turbines, heat-recovery steam generator, and steam turbine;
17. The Long Term Service Agreement with MPS Canada Ltd.;
18. Operating and Maintenance ("O&M") Agreements for the OGS; and
19. Actual O&M costs from other similar TCE projects [Note: that this item is not confined to the Time Frame of October 2, 2008 – present].
20. Strategy for offering energy into IESO Administered Market
- ~~19-21.~~ The assumptions made with respect to the forecasted price of carbon.

Christine Lafleur

From: Sebastiano, Rocco [RSebastiano@osler.com]
Sent: Thursday, December 08, 2011 9:40 AM
To: JoAnne Butler; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

Although TCE has resisted in providing their financial model during our settlement negotiations, as part of the private arbitration proceedings, TCE should be required (as would any other plaintiff in any legal proceedings) to prove their damages. They only way they can do so is by presenting a detailed financial model, complete with underlying assumptions and forecasts which the arbitrator and the defendant's expert can review and ask questions about. Without disclosure of this most seminal piece of information and supporting documentation, there is no way that TCE could prove its purported losses in a court of law. They cannot refuse to provide simply on the basis that it is commercially confidential and expect us to simply "trust them" that their model would survive scrutiny by a third party expert like Gene Meehan. In my view, if TCE is allowed not to disclose their financial model and background assumptions and forecasts, then it would make a mockery of the entire arbitration process because their model could be full of errors, incorrect assumptions and overly favourable forecasts of electricity prices and gas prices which we would be unable to challenge.... I know that I am preaching to the converted, but it is frustrating that the Province would even entertain TCE's refusal to disclose this information as part of the arbitration proceedings.

Thanks, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Thursday, December 08, 2011 9:15 AM
To: Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
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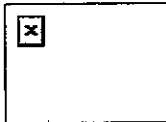
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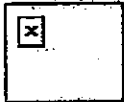
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Christine Lafleur

From: JoAnne Butler
Sent: Thursday, December 08, 2011 9:50 AM
To: 'Sebastiano, Rocco'; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
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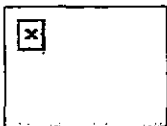
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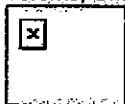
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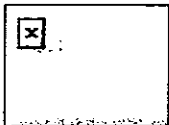
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Christine Lafleur

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Sent: Thursday, December 08, 2011 11:57 AM
To: JoAnne Butler; Sebastiano, Rocco; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

I'll send the document (as revised by Michael) over to John Kelly.

Paul



Paul Ivanoff
Partner

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416.862.6666 FACSIMILE
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Thanks, Rocco

From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Thursday, December 08, 2011 9:15 AM
To: Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

Paul,

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"Terry reiterated that, due to commercial sensitivity, TCE wishes to give us the bare minimum required for the Province to get comfort that the top line P&L numbers provided (also attached) are reasonable. He suggests that we instead rely on OPA's own internal models for similar transactions to get comfort. For clarity, TCE won't provide a walk-through of its financial models and we won't be able to trace through all the formulas that derive the top-line numbers. Terry says that there are multiple large, complex models that feed into each other."

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Thoughts??

JCB

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

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

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

From: Ivanoff, Paul [<mailto:PIvanoff@osler.com>]
Sent: Miércoles, 07 de Diciembre de 2011 06:01 p.m.
To: Michael Killeavy
Cc: Michael Lyle; Susan Kennedy; JoAnne Butler; Sebastiano, Rocco
Subject: RE: TCE Matter - Information Needed ...

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Please let me know your thoughts on this front.

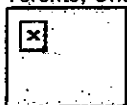
Regards,
Paul



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Partner

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416.862.6666 FACSIMILE
pivanoff@osler.com

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



From: Michael Killeavy [<mailto:Michael.Killeavy@powerauthority.on.ca>]
Sent: Monday, December 05, 2011 11:01 AM
To: Michael Lyle; Ivanoff, Paul
Cc: Susan Kennedy; JoAnne Butler
Subject: RE: TCE Matter - Information Needed ...

My mistake. Sorry about that.

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

From: Michael Lyle
Sent: December 5, 2011 11:00 AM
To: Michael Killeavy; 'pivanoff@osler.com'
Cc: Susan Kennedy; JoAnne Butler
Subject: Re: TCE Matter - Information Needed ...

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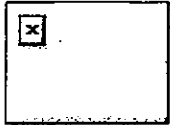
Christine Lafleur

From: Ivanoff, Paul [Pivanoff@osler.com]
Sent: Thursday, December 08, 2011 12:08 PM
To: john.kelly@ontario.com
Cc: Michael Killeavy; Michael Lyle; Susan Kennedy; Sebastiano, Rocco
Subject: Privileged and Confidential - OPA/TCE
Attachments: v4 Scope of Documentary Discovery OPA re TCE 22287002_4.doc

John,

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Paul



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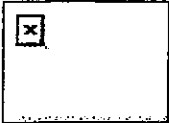
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From: Ivanoff, Paul [PIvanoff@osler.com]
Sent: Thursday, December 08, 2011 11:57 AM
To: JoAnne Butler; Sebastiano, Rocco; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

I'll send the document (as revised by Michael) over to John Kelly.
Paul



Paul Ivanoff
Partner

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From: JoAnne Butler [mailto:joanne.butler@powerauthority.on.ca]
Sent: Thursday, December 08, 2011 9:50 AM
To: Sebastiano, Rocco; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

I am quite happy for Paul/Mike to fight the good fight with John Kelly on this and therefore, we should leave it in for the purposes of arbitration. There seems to be a background group looking at a more "flexible" list in efforts to get some movement forward without going to arbitration. If we keep insisting on the model among this group, it's just Ground Hog Day again.....

JCB

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

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

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

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Jueves, 08 de Diciembre de 2011 09:40 a.m.
To: JoAnne Butler; Ivanoff, Paul; Michael Killeavy
Cc: Michael Lyle; Susan Kennedy
Subject: RE: TCE Matter - Information Needed ...

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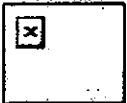
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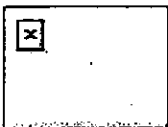
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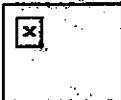
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AIRD & BERLIS LLP

Barristers and Solicitors

MEMORANDUM

STRICTLY PRIVILEGED AND CONFIDENTIAL

TO: Ontario Power Authority (the "OPA")

FROM: Aird & Berlis LLP

DATE: October 8, 2010

RE: Consequences of Termination of the Southwest GTA Clean Energy Supply Agreement dated October 9, 2009 (the "Contract") between the OPA and TransCanada Energy Ltd. (the "Supplier")

File #: 103661 – SWGTA

Client #: 33770 – Ontario Power Authority

I. Introduction and Background

On October 7, 2010, the Ontario Minister of Energy announced that the Oakville Generating Station to have been built pursuant to the Contract (the "Facility") is "no longer needed".

A letter the same day from the OPA to the Supplier (the "Letter") says that "the OPA will not proceed with the Contract [and] ... acknowledges that [the Supplier] is entitled to ... reasonable damages from the OPA, including the anticipated financial value of the Contract."

The Letter also states: "We would like to begin negotiations with you to reach mutual agreement to terminate the Contract".

In the letter the OPA directs the Supplier to "cease all further work and activities in connection with the Facility ... other than as may be reasonably necessary in the circumstances to bring such work or activities to a conclusion."

Finally, the Letter contemplates that the OPA will work with the Supplier to identify other generation projects and the extent to which they may serve as compensation for the termination of the Contract.

This memorandum considers the potential scope of liability of the OPA in respect of these events in light of the Letter's acknowledgment of OPA liability for the financial value of the Contract.

All capitalized terms used but not defined herein have the meanings set out in the Contract.

II. The Basis of the OPA's Liability

While a mutually satisfactory termination of the Contract may be the ultimate goal, at this point the legal status of the Contract is likely that it was repudiated by the OPA by virtue of the OPA's direction to the Supplier to cease work.

The OPA's conduct also likely constitutes a Buyer Event of Default, although this is a moot point because the Contract contains very few consequences for Buyer Events of Default, and none that would be useful to the Supplier in these circumstances.

The Supplier's source of relief in these circumstances is, instead, to be found at common law. Specifically, the Supplier would likely seek to bring an action against the OPA for damages consisting of two principal claims: (i) a claim to recover the sunk costs of the project up to the date of the repudiation and (ii) a claim to obtain the present value of the net profits that would have been earned by the Supplier over the term of the Contract.

III. The Exclusionary Clause

The Contract contains an "exclusionary clause" (Section 14.1), which provides as follows:

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

The wording of Section 14.1 *prima facie* supports a position denying or reducing the Supplier's claim for breach of contract. The exclusions with respect to "loss of profits" and "incidental damages"¹ is designed to prevent or reduce a claim for the present value of the Supplier's future profits. The exclusions with respect to "special damages"², "indirect damages", "consequential damages",³ could prevent or reduce a claim for the Supplier's sunk costs. The exclusions with respect to "punitive damages" and "exemplary damages" could be used to further reduce or eliminate heads of damages.⁴

Thus, *prima facie*, the plain words of Section 14.1 support an argument that, on a breach of the Contract by the OPA, the Supplier has no claim to compensation.

However, a court might be hesitant to conclude that the Supplier would not be entitled to any compensation, even in respect of its sunk costs. Taking into account that the Contract was entered into as a result of an RFP process and was not subject to negotiation, a court could be moved to engage in a legal analysis to avoid what might be considered an unfair result. If so, the court might find that Section 14.1 or portions thereof are unconscionable, contrary to public policy or otherwise unenforceable in these circumstances. Or, the court could determine that the Supplier, despite being precluded from a breach of contract claim, could be entitled to be reimbursed under the principles of restitution.

¹ "Incidental damages" refer to the costs of remedying the effects of contractual breaches.

² "Special damages" is not commonly used in cases of a breach of contract, but is rather a concept more readily used in tort law where, as distinct from "general damages" (e.g. damages for pain and suffering), "special damages" refers to quantifiable monetary losses suffered by the plaintiff.

³ "Indirect" or "consequential damages" are essentially synonymous, and refer to losses that outside the usual course of things that are nonetheless compensable because the parties ought reasonably to have contemplated might result from a breach.

⁴ "Punitive damages" and "exemplary damages" are essentially synonymous, and refer to compensation in excess of actual damages as a form of punishment awarded in cases of malicious or wilful misconduct.

IV. The Letter

D The Letter explicitly "acknowledges that [the Supplier] is entitled to ... reasonable damages from the OPA, including the anticipated financial value of the Contract." Taking into account the difficulty the OPA would likely face in enforcing Section 14.1 in any case, the wording of the Letter likely serves to restrict the ability of the OPA to rely on the exclusionary wording of Section 14.1.

R Having said that, the Letter specifically contemplates that the parties will enter into a "mutual agreement to terminate the Contract". It is not clear whether or not a court would hold the Letter to be legally binding, whether on a contractual or quasi-contractual/reliance basis. Arguably, if no mutual agreement is reached, the OPA could continue to rely on the provisions of the Contract, including Section 14.1.

V. Categories of Potential Damages

A The OPA may be found to be liable to the Supplier for all of its damages, including its sunk costs to date and loss of future profits. An estimate of the magnitude of the damages can be made by calculating the net present value of the Net Revenue Requirement of the Contract (equal to \$17,277/MW/Month, times 900 MW, or roughly \$15.5 million per month). Assuming a reasonable discount rate (7-10%), the net present value of this amount equals roughly \$1-\$2 billion in revenues. This amount should also approximate the capital costs of the project with an internal rate of return. Lost profits would be calculated based on such lost revenues.

F In addition, actual sunk costs, any extra revenues over the revenue floor provided by the Net Revenue Requirements, and any value for the lost capital asset that would remain at the end of the Term of the Contract, could each increase the quantum of damages.

At the same time, the foregoing does take into account the Supplier's rate of return on capital, which could lower the potential liability, or any form of mitigation of damages in the form of alternate investments.

T While the Supplier has a duty to mitigate its damages, absent the paragraph in the Letter regarding future generation opportunities, it is difficult to see how in the current climate for gas-fired generation it would be able to obtain a similar investment.

The precise figures for lost profit and damages are difficult to calculate precisely, but the figures and categories above should give an indication of the magnitude of the potential claim.

VI. Other Generation Projects

The Letter states: "Given Ontario's ongoing need for power generation projects and your desire to generate power in Ontario, we wish to work with you to identify other projects and the extent to which such project may compensate you for termination of the Contract, while appropriately protecting the interests of the ratepayers."

The Letter thus contemplates a path forward that would serve to mitigate if not entirely reduce the damages suffered by the Supplier. An issue is whether and how any termination agreement would depend on such a contract of a new generation facility, and the timing of each. The Supplier may have considerable leverage in negotiations on a contract for a new generation facility because the alternative would be payment of damages by the OPA. On the other hand, as stated above, failure to reach an agreement on a termination agreement may allow the OPA to rely on the exclusionary provisions in the Contract.

VII. Discriminatory Action

Sections 13.1 and 13.2 of the Contract provide that if a Discriminatory Action occurs, the OPA shall be liable for certain increased costs of the Supplier and, in general terms, the reduction in net revenues caused by the Discriminatory Action. The definition of Discriminator Action includes "the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier" "Legislative Assembly" is not defined. Arguably, the Minister of Energy's announcement regarding the Oakville plant is not a direct or indirect amendment by the Legislative Assembly. However, the Supplier would likely dispute this.

Thus, in the absence of a mutually acceptable termination agreement, there is some risk that the OPA may also incur liability for Discriminatory Action. Note that the exclusionary provisions of Section 14.1 expressly do not apply to Section 13.2.

OSLER

Privileged & Confidential

Memorandum

To: File Date: December 1, 2010

From: Paul Ivanoff and Rocco Sebastiano Ext: 4223 and 5859

Subject: Ontario Power Authority Matter No: 1126205

Re: Cancellation of Southwest GTA CES Contract
with TransCanada Energy Ltd.

The following is a preliminary review of the potential litigation relating to the Province's cancellation of the Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority (the "OPA").

Background

On October 7, 2010, the Ministry of Energy announced that the Oakville Generating Station would not proceed. On the same day, the OPA delivered a letter to TCE referencing the announcement and confirming that the announcement was supported by the OPA's planning analysis of the current circumstances in southwest GTA. In its letter to TCE, the OPA stated that:

The OPA will not proceed with the Contract. As a result of this, the OPA acknowledges that you are entitled to your reasonable damages from the OPA, including the anticipated financial value of the Contract. We would like to begin negotiations with you to reach mutual agreement to terminate the Contract.

The OPA's letter to TCE indicated the OPA's desire to work with TCE to identify other projects, as well as the extent to which such projects may compensate TCE for termination of the Contract. In its letter, the OPA directed TCE to cease all further work and activities in connection with Oakville Generating Station.

One day following the delivery of the October 7th letter, TCE responded to the OPA by way of a "without prejudice" letter dated October 8, 2010. In this letter, TCE indicated its willingness to meet with the OPA to "discuss your request that the Contract be terminated, as well as an efficient and economical wind-up of work and activities in connection with the Facility."

Following the delivery of TCE's letter dated October 8, 2010, there were discussions between the OPA and TCE relating to the identification of other projects that may be available to TCE.

Draft

However, on November 8, 2010, TCE delivered a letter to the OPA in which TCE took the position that the OPA's notification that it would not proceed with the Contract (made on October 7, 2010) was a repudiation of the Contract. Moreover, TCE purported to confirm its "acceptance of the OPA's repudiation of the Contract." TCE also stated that it "continues to reserve its right to sue the OPA and others for damages should our settlement negotiations not proceed satisfactorily."

On November 11, 2010, the OPA responded in writing to TCE's letter of November 8, 2010 stating that the OPA did not accept the assertion that the OPA had repudiated the Contract. At that time, the OPA indicated its willingness to continue to meet and discuss the OPA's request that the Contract be mutually terminated.

Potential Litigation

In light of TCE's allegation that the OPA has repudiated the Contract, along with its assertion that it continues to reserve its right to sue the OPA (and others) for damages should settlement negotiations not proceed satisfactorily, there is clearly the potential for TCE to advance litigation against the OPA. It is anticipated that in any court action initiated by TCE, there will be an allegation that the OPA repudiated the Contract, that TCE accepted such repudiation, and that TCE is entitled to recover all damages respecting the OPA's alleged breach. Should litigation be commenced, it is anticipated that TCE would pursue not only the costs it has incurred to date, but also loss of profits resulting from the Southwest GTA project not proceeding.

If litigation is commenced, loss of profits would constitute the bulk of TCE's claim (approximately \$450M, as estimated by the OPA's consultant, SMS Energy-Engineering Inc.). In looking at the Contract, there is helpful language contained in Section 14.1 respecting the exclusion of consequential damages including loss of profits. In this regard, Section 14.1 of the Contract states that:

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

In spite of the existence of this clause, it is anticipated that TCE will attempt to argue that Section 14.1 does not limit their ability to pursue a claim for loss of profits on the grounds that: (i) there has been an express acknowledgement made by the OPA that TCE is entitled to "the anticipated financial value of the Contract" (as was stated in the OPA's letter dated October 7, 2010); (ii) the OPA's letter of October 7, 2010 constitutes a waiver of the OPA's ability to rely upon Section 14.1; and/or (iii) the OPA's alleged repudiation of Contract results from a "Discriminatory Action" (as such term is defined under the Contract), in which case Section 14.1 does not apply.

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In response to the first two positions set out above, the OPA could argue, among other things, that there has been no express acknowledgement by the OPA to pay TCE for loss of profits, and that waiving any protection against a \$450M claim for loss of profits would require clear, unequivocal and express language to that effect. On the issue of waiver, the Supreme Court of Canada has held that there is a two-part test to be met for waiver to be found. The Court has held that:

Waiver will be found only where the evidence demonstrates that the party waiving had (1) a full knowledge of rights; and (2) an unequivocal and conscious intention to abandon them. The creation of such a stringent test is justified since no consideration moves from the party in whose favour a waiver operates. An overly broad interpretation of waiver would undermine the requirement of contractual consideration (Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co., [1994] 2 S.C.R. 490).

Bearing in mind this legal test, in order to find the existence of a waiver of the OPA's rights under Section 14.1, a court will need to conclude that the OPA's October 7th letter constituted an unequivocal and conscious intention by the OPA to abandon its rights respecting claims for loss of profits.

With respect to the claim that the alleged repudiation resulted from a "Discriminatory Action", a court would have to find that the Legislative Assembly of Ontario, directly or indirectly, amended the Contract. In response to such allegation, the OPA could argue, among other things that (i) any actions taken were by the Minister, not the Legislative Assembly of Ontario, (ii) the Minister's only actions were to make a public statement in response to new planning information from the OPA, and (iii) no amendment has been made to the Contract, except by the mutual agreement of the parties.

The entitlement to loss of profits will be the subject of significant debate in the potential litigation. At this stage, we have compiled a preliminary estimate of TCE's potential damage claim should they elect to pursue litigation. The attached schedule includes a description of potential damages and preliminary estimates of the losses TCE may be considering in respect of an action against the OPA.

PI:hi
Attachment

Draft

Schedule "A"
OPA - Cancellation of SWGTA CES
Potential Damage Claims of TCE if Replacement Deal Not Reached

	Description	Estimated Cost
1.	Loss of profits and return on investment	\$450M ¹
2.	Losses payable to equipment suppliers (assuming cancellation of MPS contract 12/10)	\$114M ²
3.	Land ³	\$9M to \$56M ⁴
4.	Internal TCE Costs and Overheads on OGS	\$14M ⁴
5.	Demolition costs to demolish existing buildings on site (if not included in "Internal")	\$1M to \$2M ⁵
6.	EPC (costs incurred on EPC Contract)	\$4M ⁴
7.	Legal and consulting costs in connection with SWGTA (if not included in "Internal")	\$2M ⁵
8.	Costs of litigating with Town of Oakville (i.e. TCE's own costs and any costs payable to the Town by TCE relating to the litigation)	\$2M ⁵
9.	Costs incurred in attempt to mitigate (e.g. legal and consulting costs in negotiating replacement contract with OPA and amendments with MPS)	\$2M to \$3M ⁵
10.	Interest During Construction	\$4M ^{4 6}
11.	Other	\$5M ⁴
	Total Estimate	~ \$650M

¹ Estimate presented by S. Soufi, SMS Energy-Engineering Inc., on November 22, 2010.

² TCE advises that the MPS Agreement has cancellation milestones that increase 5-15% per month until 100% committed in May 2011. In that scenario, losses to MPS would increase from \$114M to \$180M and would increase the total estimated damages to approximately \$720M.

³ TCE has provided a wide range for a potential loss regarding the Ford land, however, current value of the land is not known and so extent of loss, if any, is not determinable at this stage.

⁴ This is a preliminary estimate provided by TCE on October 18, 2010.

⁵ These items are largely speculative as we have no hard figures from TCE regarding these items.

⁶ Given that TCE was not proposing to use project financing for OGS, it is difficult to assess how TCE has accounted for IDC, but if it were an incurred cost, it may be recoverable as damages.

Susan Kennedy

From: Michael Lyle
Sent: November 2, 2010 3:58 PM
To: Susan Kennedy
Subject: FW: MPS Letter Agreement
Attachments: MPS Letter Agreement Oct 29_2010.pdf

FYI. I do not know how looped in you want to be on 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

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From: Deborah Langelaan
Sent: November 2, 2010 3:33 PM
To: Michael Lyle; JoAnne Butler; Amir Shalaby; Ben Chin; Michael Killeavy
Subject: FW: MPS Letter Agreement

Please find attached the Letter Agreement between MPS and TCE that was executed last Friday.

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: Terry Bennett [mailto:terry_bennett@transcanada.com]
Sent: November 2, 2010 2:40 PM
To: Deborah Langelaan
Subject: MPS Letter Agreement

Deborah, as a follow up to the call between the OPA and TransCanada last Friday, I am attaching the Letter Agreement between Mitsubishi Power Systems Americas, Inc. (MPS) and TransCanada Energy Ltd.(TCE)

As communicated to the OPA earlier, the options available to us with respect to the MPS gas turbines were to either terminate the contract and face the cancellation charges of approximately \$92 million (45% of the value of the contract), or to allow the contract to continue into November, with the corresponding cancellation fee increasing to approximately \$106 million (or 55% of the value of the contract).

TCE was successful in negotiating terms with MPS with the following provisions:

- Allow the contract to continue, but roll back the cancellation fee to only 50% of the value of the contract for the month of November
- MPS agrees to work with TCE to supply equipment changes for an alternative project – including a fast start option on the G machine and the option to supply an F class machine
- MPS has exclusive rights to supply the balance of the equipment for the power island, including as necessary, the steam turbine and HRSG, if the event the configuration is a combined cycle.

As discussed and agreed to on our call with the OPA last Friday afternoon, with the OPA's consent and agreement, TCE executed the Letter Agreement with MPS on Friday (October 29) which allows us additional time to identify a viable alternative site.

The agreement commits us to meet with MPS no later than November 19 to determine whether and/or how to proceed beyond this interim agreement.

We look forward to a productive session on Friday.

Regards,

Terry

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.



October 29, 2010

MPS Canada, Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3220
Toronto, ON Canada M5J 2J1

Attention: Shinichi Ueki

Subject: Equipment Supply Contract #6519 dated July 7, 2009 between TransCanada Energy Ltd. and MPS Canada, Inc. (the "Contract")

Dear Mr. Ueki,

This letter (this "Letter Agreement") is intended to set forth certain agreements, understandings and commitments between TransCanada Energy Ltd. ("Purchaser") and MPS Canada, Inc. (the "Supplier") regarding the Contract.

1. Background. Purchaser has been informed by the Ontario Power Authority (the "OPA") that the Project will not proceed forward based on the current site location designated in the Contract. OPA has requested Purchaser's cooperation to seek a viable alternative site or multiple sites in order to avoid, at this time, paying cancellation fees and costs, including Supplier's Termination Payment. Attachment 1 contains a list of the potential alternative projects and potential configurations that TransCanada will pursue with OPA. Therefore, Purchaser hereby suspends Supplier's Work effective immediately until November 30, 2010. As a result of such suspension, the Scheduled Delivery Dates will be redefined and any amounts determined in accordance with Article 14 will be paid.

2. Commitment. The Parties agree to amend the amount of the termination payment included in the Cancellation Schedule in Appendix VI, "Payment and Cancellation Schedule" for the date that corresponds to "Month 15" or November 2010 from "55%" to "50%." The Parties agree to cooperate with each other and use all reasonable good faith efforts to identify a viable alternative project(s). The Parties shall provide updated information to each other regarding the progress of selecting an alternative project(s) and meet no later than November 19, 2010 to further discuss the ongoing status of an alternative project(s). Supplier agrees to provide information to Purchaser to support its efforts to identify an alternative project(s) with the configuration as listed in Attachment 1. Upon identifying an alternative project(s) and site(s), the Parties shall meet on a regular basis to identify and agree upon the changes to the Contract based upon the alternative project(s), including without limitation changes to the equipment delivery schedules and performance guarantees based upon the configuration of the alternative project(s).

Furthermore, Purchaser agrees to work exclusively with Supplier and Supplier agrees to cooperate with Purchaser for furnishing the heat recovery steam generators and steam turbine generators, if such equipment is required by such alternative project(s). For greater clarity, the Parties agree that the obligations to identify an alternative project(s) and to work exclusively with each other for the furnishing of the heat recovery steam generators and steam turbine generators shall terminate if the Contract is terminated.

3. Defined Terms. Capitalized terms used but not defined herein shall have the meaning given them in the Contract.

4. Other Terms and Conditions. Except as expressly set forth herein, this Letter Agreement shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of either party to the Contract, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Contract, all of which shall continue and remain in full force and effect.

5. Governing Law. This Letter Agreement shall be, for all purposes, governed by and construed in accordance with the laws of the Province of Ontario, excluding its rules governing conflicts of law.

6. Entire Agreement. This Letter Agreement represents the entire agreement and understanding of the Parties with respect to the amendment and modification of the Contract on the subject hereof, and supersedes all prior or contemporaneous discussions, understandings and agreements between the Parties with respect thereto.

7. Amendments in Writing. No change, amendment or modification of this Letter Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

8. Counterparts; Signatures. This Letter Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Letter Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

9. Confidentiality. The Parties agree that neither Party shall disclose the contents of this Letter Agreement to any third party without the prior written consent of the other Party; provided that Purchaser may disclose the contents of this Letter Agreement to the OPA.

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CONFIDENTIAL

*Letter Agreement
between TransCanada Energy Ltd.
and MPS Canada, Inc.*

If the foregoing accurately reflects the understanding and agreements of Supplier and Purchaser with respect to the subject matter hereof, please indicate your assent by having a duly authorized representative of Supplier countersign below and return one duplicate original of this Letter Agreement to Purchaser.

TransCanada Energy Ltd.

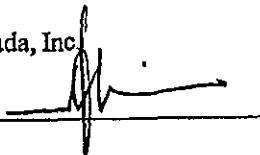
By: 

Name: Terry Bennett

Title: Vice President

Accepted this 29th day of October, 2010.

MPS Canada, Inc.

By: 

Name: Shinichi Ueki

Title: President

CONFIDENTIAL

*Letter Agreement
between TransCanada Energy Ltd.
and MPS Canada, Inc.*

Attachment 1
Project Options

Options	Configuration	GT	Output(MW)	COD	GT Delivery	Emission s	Remarks
S/C (Fast Start) C/C (no Fast Start)	2on1 C/C (with Duct Firing)	GAC Fast	475 MW - 900 MW	S/C May/Jun-2015 C/C Jun-2017	Jan-14	15ppm	GAC Fast information is required within 20days. CC Fast is not required.
CC (Single or Multi)	1on1 C/C (with Duct Firing) x 2 Block	GAC	450 MW x 2	May/Jun - 2015	Jun-13	SCR	Potential for Single Shaft subject to capacity of Duct firing. Could be one or two sites.
S/C (Fast Start) C/C (no Fast Start)	1on1 C/C (with Duct Firing) x 2 Block	GAC Fast	240 MW x2 - 450 MWx2	S/C May/Jun-2015 C/C Jun-2017	Jun-13	15ppm	GAC Fast information is required within 20 days. Single Shaft Capacity for Duct Firing is required.
CC	2on1 C/C (with Duct Firing)	GAC	900 MW	May/Jun - 2015	Jun-13	SCR	Original Specification
CC	2x1 C/C (with Duct Firing)	F3	600MW	May/Jun - 2015	Jun-13	SCR	
SC	3 x S/C	F3	500 MW	May/Jun - 2015	Jan-14	15ppm	
S/C (Fast Start)	2 x S/C	GAC Fast	475 MW	May/Jun - 2015	Jan-14	15ppm	

***Note: All Information provided herein is preliminary and subject to change.**