Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 11:41 AM
To: 'Smith, Elliot'; Deborah Langelaan; Susan Kennedy
Cc: JoAnne Butler; 'Sebastiano, Rocco'
Subject: RE: OGS L/C

Agreed.

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

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

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

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

Elliot

Elliot Smith
Associate

416.862.6435 DIRECT
416.862.6666 FACSIMILE
esmith@osler.com

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

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

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

Deb

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

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 24, 2011 11:58 AM
To: Deborah Langelaan; Michael Killeavy; gene.meehan@nera.com; Anshul Mathur; Susan Kennedy
Subject: RE: Agenda for this morning's conference call
Attachments: #20297127v4_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; Blackline - Draft Response to A. Pourbaix Letter with Project Proposal.pdf

All,
I have attached a revised draft of the letter to TCE along with a blackline to the version previously circulated. Please note that I only made a few conforming changes to the Schedule "A" provided, as I believe there are a number of points in that Schedule that we need to discuss. Also, Rocco is still in the process of reviewing this so I may have some further revisions to incorporate prior to finalization.

Elliot

Elliot Smith
Associate

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416.862.6666 FACSIMILE
esmith@osler.com

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

From: Smith, Elliot
Sent: Tuesday, March 22, 2011 9:27 AM
To: 'Deborah Langelaan'; Michael Killeavy; gene.meehan@nera.com; Anshul Mathur
Subject: RE: Agenda for this morning's conference call

Also for this morning's call, I have attached a first draft of the proposed letter to TCE.

Elliot

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: Tuesday, March 22, 2011 9:15 AM
To: Michael Killeavy; Smith, Elliot; gene.meehan@nera.com; Anshul Mathur
Subject: Agenda for this morning's conference call

Gentlemen;

Please find attached the agenda for today's conference call.

Deb

****

****

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers. We have set out in Schedule "A" to this letter a technical description of the requirements of such a project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain this replacement project as compensation for the termination of the Contract. The contract for this project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in this proposed replacement project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation, on the basis set out in Schedule "C" to this letter. If this proposal is acceptable to you, we will prepare the necessary documentation for your review.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the replacement project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the replacement project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the project.

   If this did not occur and as a result the project were to be delayed by the delays TCE encountered in the issuance of such *Planning Act* approvals, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). The amount of the increase in the NRR would be based on the same factor used in Schedule "C" to amortize capital cost over the term. In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount of $50,000,000. TCE would be solely responsible for all other permits and approvals required for the project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The Replacement Contract would provide that verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station would be paid to TCE immediately upon its execution, provided that such amount shall not in any case exceed $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the replacement project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the replacement contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than **[90]**% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than **[90]**% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. **[NTD: Appropriate threshold to be confirmed by SMS.]**

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to

Exhibit J but would be willing to discuss any valid concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

Replacement Project

The replacement project shall:

(a) be a dispatchable facility designed for maximum operational flexibilities;

(b) be a simple cycle configuration generating facility with fast start capability;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO. **[NTD: Is this not covered by the obligation to comply with applicable laws and regulations?]**

Contract Capacity

The replacement project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the replacement project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;

(b) **[be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;]**

(c) have a Season 3 Contract Capacity of no less than 480 MW;

(d) have a Contract Capacity of no more than 550 MW in any Season; and

(e) have a Nameplate MVA Rating of no more than **[650]** MVA **[NTD: There are no short circuit issues due to connection at 230 kV, so this item can be omitted.]**

Electrical Connection

The replacement project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. **[Notwithstanding the foregoing, a replacement project may also connect to a Local Distribution System for the purpose of providing Islanding Capability and still be eligible.]**

The replacement project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[NTD: This assumes TCE builds the transmission line to Boxwood.]**

Operation Following a N-2 Contingency (Load Restoration)

For load restoration, the replacement project will comply with the load restoration criteria stipulated under Section 7 of the Ontario Resource and Transmission Assessment Criteria. The criteria are as follows:

- all load to be restored within 8 hours
- amount of load in excess of 150 MW must be restored within 4 hours
- amount of load in excess of 250 MW must be restored within 30 minutes.

Operational Flexibilities

1. **Fast Start Capability.** The replacement project must be such that each combustion turbine must be capable of fast start-up.

2. **Ramp Rate Requirement.** The replacement project must be such that each combustion turbine is capable of ramping at a rate of 8%/min or more of its Base Load. **[A Contract Ramp Rate will be agreed on by the parties to form part of the Replacement Contract. Ramp rate stipulated in the Replacement Contract will be subject to annual verification and shall form part of a capacity check test.]**

3. **Turnaround Time Requirement.** To be discussed.

4. **Black Start Capability.** The IESO advised that replacement project is not required to include black-start capability since the generators can be run-up (following a N-2 contingency of the Preston Tap) using the Preston auto-transformer to maintain a synchronous connection to the system.

5. **Emissions Requirements.** The replacement project shall be such that its emissions shall not exceed the following:

   (a) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; and

   (b) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract. **[NTD: What is the KWCG Emissions Measurement Methodology? What "Contract" is it set out in?]**

   (c) TCE will provide evidence **[NTD: when?]** to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the replacement project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the replacement project, or (3) the engineering company responsible for the design of the replacement project, which certificate must state that the replacement project, as designed, will operate within these stated limits for NOx and CO.

(d) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the replacement project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the replacement project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

(e) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the replacement project must comply with the NOx and CO limits set out above.

6. **Fuel Supply.** The replacement project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

7. **Equipment.** The replacement project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at **[250]** MW (measured at the Generator's output terminals) new and clean, at ISO conditions. TCE shall negotiate the purchase contract for the Generators with the Generator vendor. **[NTD: Is TCE negotiating a new contract with MPS?]**

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ **12,839** / MW-month
Net Revenue Requirement Indexing Factor	**20** %
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	$ [**30,000**]/start-up (* please refer to the note below)
O&M Costs	$ [●]/ MWh (* please refer to the note below)
OR Cost	$ [●]/ MWh (* please refer to the note below)

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW

* NOTE: These parameters will be determined following the OPA's review of the unredacted Long-Term Services Agreement between Mitsubishi Power System and TransCanada Energy Ltd. ("LTSA").

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the replacement project will be $425,000,000 (the "Target Capex"). So long as the actual cost to design and build the replacement project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

   (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

   (ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

   (iii) The adjusted NRR shall be equal to 4626.968162 plus 1.93219×10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA. **[NTD: This test should provide some measure of comfort about TCE's spending without the need for close oversight and approvals by the OPA.]**

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	Fixed Price
Main Turbine Original Costs (excluding change orders)	$156,274,358
Main Turbine Additional Scope (excluding change orders)	$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the replacement project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

(f) **[NTD: Michael, in your memo you state that the included cost components for Actual Capex are to mirror those of Target Capex. Is this intended to limit recovery to certain elements of Capex?]**

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers. We have set out in Schedule "A" to this letter a technical description of the requirements of such a project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain this replacement project as compensation for the termination of the Contract. The contract for this project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation ~~Contract (the "NYR Contract"), with~~Request for Proposals, subject to the changes set out below and necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. ~~As information about the~~In consideration of the uncertainties in this proposed replacement project~~ matures~~, we would ~~adjust the financial parameters of~~include a mechanism in the Replacement Contract ~~in accordance with the methodology~~to adjust the NRR upon commercial operation, on the basis set out in Schedule "C" to this letter. If this proposal is acceptable to you, we will prepare the necessary documentation for your review.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the replacement project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the replacement project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, ~~that~~ such *Planning Act* approvals do not impede the development of the project.

   ~~In the event of TCE encountering~~*~~ an event of Force Majeure~~*If this did not occur and as a result ~~of a delay~~the project were to be delayed by the delays TCE encountered in the issuance of such *Planning Act* approvals, such delay would be considered* an event of

Draft & Privileged

Force Majeure*, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). The amount of the increase in the NRR would be based on the same factor used in Schedule "C" to amortize capital cost over the term. In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount of $~~[●].~~50,000,000. TCE would be solely responsible for all other permits and approvals required for the project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The Replacement Contract would provide that verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generati~~o~~ng Station would be paid to TCE immediately upon its execution~~.~~, provided that such amount shall not in any case exceed $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would ~~include a mechanism for the NRR to be adjusted prior to commercial operation to incorporate~~provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the replacement project~~, plus an amount to reflect the reasonable cost to TCE in amortizing the recovery of these costs~~ ~~**[over the term][NTD: Consider appropriate recovery period.]**~~ ~~of the Replacement Contract.~~ ~~**[For the gas connection, this would include all costs paid to the local gas distribution company (the "LDC") that are associated with the connection of the project from the LDC, including a contribution in aid to construction, and terminating at the demarcation between the project and the LDC on the site of the project. For the electrical connection, this would include all costs associated with the design engineering, construction and commissioning of the electrical facilities between the high voltage side of the project switchyard and the point of* connection to the Hydro One *transmission system, including land and easements, if applicable.]**~~ would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor ("NRRIF").** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the replacement contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than [~~●~~90]% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than [~~●~~90]% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. **[NTD: Appropriate threshold to be confirmed by SMS.]**

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any valid concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

~~**[NTD: TCE's "Value Propositions" includes a note that Schedule "A" to the IA should set out the applicable emissions limits and measurement methodology. To confirm whether the OPA intends to carry these provisions over from the Contract.]**~~

Replacement Project

The replacement project shall:

(a) be a dispatchable facility designed for maximum operational flexibilities;

(b) be a simple cycle configuration generating facility with fast start capability;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO. **[NTD: Is this not covered by the obligation to comply with applicable laws and regulations?]**

Contract Capacity

The replacement project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the replacement project must be designed to supply either transmission circuit (M20D or M21D) at all times. Each unit must be able to supply either transmission circuit at all times;

(b) **[be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;]**

(c) have a Season 3 Contract Capacity of no less than 480 MW;

(d) have a Contract Capacity of no more than 550 MW in any Season; and

(e) have a Nameplate MVA Rating of no more than **[650]** MVA **[NTD: There are no short circuit issues due to connection at 230 kV, so this item can be omitted.]**

Electrical Connection

The replacement project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. **[Notwithstanding the foregoing, a replacement project may also connect to a Local Distribution System for the purpose of providing Islanding Capability and still be eligible.]**

The replacement project will have a connection point located with a direct* connection to the Hydro One *circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[NTD: This assumes TCE builds the transmission line to Boxwood.]**

Operation Following a N-2 Contingency (Load Restoration)

For load restoration, the replacement project will comply with the load restoration criteria stipulated under Section 7 of the Ontario Resource and Transmission Assessment Criteria. The criteria are as follows:

- all load to be restored within 8 hours
- amount of load in excess of 150 MW must be restored within 4 hours
- amount of load in excess of 250 MW must be restored within 30 minutes.

Operational Flexibilities

1. **Fast Start Capability.** The replacement project must be such that each combustion turbine must be capable of fast start-up.

2. **Ramp Rate Requirement.** The replacement project must be such that each combustion turbine is capable of ramping at a rate of 8%/min or more of its Base Load. **[A Contract Ramp Rate will be agreed on by the parties to form part of the Replacement Contract. Ramp rate stipulated in the Replacement Contract will be subject to annual verification and shall form part of a capacity check test.]**

3. **Turnaround Time Requirement.** To be discussed.

4. **Black Start Capability.** The IESO advised that replacement project is not required to include black-start capability since the generators can be run-up (following a N-2 contingency of the Preston Tap) using the Preston auto-transformer to maintain a synchronous connection to the system.

5. **Emissions Requirements.** The replacement project shall be such that its emissions shall not exceed the following:

   (a) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract; and

   (b) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O2 in the exhaust gases on a dry volume basis) as measured using the KWCG Emissions Measurement Methodology, and all as more particularly set out in the Contract. **[NTD: What is the KWCG Emissions Measurement Methodology? What "Contract" is it set out in?]**

   (c) TCE will provide evidence **[NTD: when?]** to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the replacement project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the replacement project, or (3) the engineering company responsible for the design of the replacement project, which certificate must state that the replacement project, as designed, will operate within these stated limits for NOx and CO.

(d) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the replacement project's Environmental Review Report prepared as part of its environmental assessment process or otherwise reflected in its completed environmental assessment, and (ii) ultimately reflected in the replacement project's application to the Ministry of the Environment for a Certificate of Approval (Air & Noise) Operating Permit, together with a request that such limits be imposed as a condition in such certificate of approval.

(e) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, that the replacement project must comply with the NOx and CO limits set out above.

6. **Fuel Supply.** The replacement project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

7. **Equipment.** The replacement project will be designed utilizing (2) Mitsubishi heavy Industries M501GAC Fast Start gas-fired combustion turbine generators (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at **[250]** MW (measured at the Generator's output terminals) new and clean, at ISO conditions. TCE shall negotiate the purchase contract for the Generators with the Generator vendor. **[NTD: Is TCE negotiating a new contract with MPS?]**

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ 12,839 / MW-month
Net Revenue Requirement Indexing Factor	20 %
Annual Average Contract Capacity	500 MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	700 MMBTU/start-up
Start-Up Maintenance Cost	$ [30,000]/start-up (* please refer to the note below)
O&M Costs	$ [●]/ MWh (* please refer to the note below)
OR Cost	$ [●]/ MWh (* please refer to the note below)

	Season 1	Season 2	Season 3	Season 4
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	[●] MW	[●] MW	[●] MW	[●] MW
10nORCC	0 MW	0 MW	0 MW	0 MW

* NOTE: These parameters will be determined following the OPA's review of the unredacted Long-Term Services Agreement between Mitsubishi Power System and TransCanada Energy Ltd. ("LTSA").

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

~~[NTD: E. Smith to draft adjustment methodology based on memo from M. Killeavy.]~~

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the replacement project will be \$425,000,000 (the "Target Capex"). So long as the actual cost to design and build the replacement project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

   (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed \$37,500,000

   (ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

   (iii) The adjusted NRR shall be equal to 4626.968162 plus 1.93219 × 10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA. **[NTD: This test should provide some measure of comfort about TCE's spending without the need for close oversight and approvals by the OPA.]**

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	\$156,274,358
Main Turbine Additional Scope (excluding change orders)	\$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the replacement project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

(f) **[NTD: Michael, in your memo you state that the included cost components for Actual Capex are to mirror those of Target Capex. Is this intended to limit recovery to certain elements of Capex?]**

Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 12:31 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: Deborah Langelaan; 'Safouh Soufi'; 'Gene.Meehan@NERA.com'
Subject: TCE Matter - OPA Counter-Proposal - Conversion of CAPEX into NRR Spreadsheet .....
Attachments: OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL.xls

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

Attached is the spreadsheet I used to derive the equation for converting Adjusted CAPEX into NRR. Please refer to the second tab entitled "Target Cost Adj."

Michael

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416-969-6288
416-520-9788 (CELL)
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Baseline NRR Calculation

CAPEX Spend:		$375,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

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

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

Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

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

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

TCE Cost of Capital	7.50%						1	2	3	4
	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%				
Yearly CAPEX Spend	$12,293,714	$17,870,388	$62,741,053	$75,486,742	$156,543,204	$50,064,899				
Book Value of Capital	$12,293,714	$30,164,102	$92,905,155	$168,391,897	$324,935,101	$375,000,000	$358,668,750	$327,428,702	$298,909,662	$272,874,630
Non-Indexed NRR							$9,498	$9,498	$9,498	$9,498
Indexed NRR							$2,375	$2,422	$2,470	$2,520
Total NRR							$11,873	$11,920	$11,969	$12,018
REVENUES = CSP							$71,236,084	$71,521,028	$71,811,672	$72,108,128
OPEX							$6,193,893	$6,317,771	$6,444,127	$6,573,009
GD&M							$10,824,322	$11,040,808	$11,261,624	$11,486,857
EBITDA							$54,217,869	$54,162,449	$54,105,921	$54,048,262
Depreciation (Capital Cost Allowance)							$16,331,250	$31,240,048	$28,519,040	$26,035,032
Taxes Payable							$9,471,655	$5,730,600	$6,396,720	$7,003,308
Total Cash Flow	($12,293,714)	($17,870,388)	($62,741,053)	($75,486,742)	($156,543,204)	($50,064,899)	$44,746,214	$48,431,849	$47,709,201	$47,044,954

	5	6	7	8	9	10	11	12	13	14
	01-Jul-19	01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28
Book Value of Capital	$249,107,250	$227,410,009	$207,602,597	$189,520,411	$173,013,183	$157,943,735	$144,186,835	$131,628,162	$120,163,349	$109,697,121
Non-Indexed NRR	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
Indexed NRR	$2,570	$2,622	$2,674	$2,728	$2,782	$2,838	$2,895	$2,952	$3,011	$3,072
Total NRR	$12,068	$12,120	$12,172	$12,226	$12,280	$12,336	$12,393	$12,451	$12,510	$12,570
REVENUES = CSP	$72,410,513	$72,718,946	$73,033,547	$73,354,441	$73,681,752	$74,015,610	$74,356,145	$74,703,491	$75,057,783	$75,419,161
OPEX	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461
GD&M	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414
EBITDA	$53,989,450	$53,929,461	$53,868,273	$53,805,861	$53,742,201	$53,677,268	$53,611,036	$53,543,479	$53,474,572	$53,404,286
Depreciation (Capital Cost Allowance)	$23,767,380	$21,697,241	$19,807,412	$18,082,186	$16,507,228	$15,069,448	$13,756,899	$12,558,673	$11,464,813	$10,466,228
Taxes Payable	$7,555,517	$8,058,055	$8,515,215	$8,930,919	$9,308,743	$9,651,955	$9,963,534	$10,246,201	$10,502,440	$10,734,514
Total Cash Flow	$46,433,932	$45,871,406	$45,353,058	$44,874,943	$44,433,458	$44,025,313	$43,647,502	$43,297,278	$42,972,132	$42,669,771

	15	16	17	18	19	20	21	22	23	24	25
	01-Jul-29	01-Jul-30	01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
Book Value of Capital	$100,142,502	$91,420,090	$83,457,400	$76,188,261	$69,552,263	$63,494,261	$57,963,911	$52,915,254	$48,306,336	$44,098,854	$40,257,844
Non-Indexed NRR	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498	$9,498
Indexed NRR	$3,133	$3,196	$3,260	$3,325	$3,391	$3,459	$3,528	$3,599	$3,671	$3,744	$3,819
Total NRR	$12,631	$12,694	$12,758	$12,823	$12,890	$12,957	$13,027	$13,097	$13,169	$13,243	$13,317
REVENUES = CSP	$75,787,767	$76,163,745	$76,547,243	$76,938,410	$77,337,401	$77,744,372	$78,159,482	$78,582,894	$79,014,775	$79,455,293	$79,904,621
OPEX	$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
GD&M	$14,281,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
EBITDA	$53,332,594	$53,259,469	$53,184,881	$53,108,801	$53,031,200	$52,952,046	$52,871,310	$52,788,959	$52,704,960	$52,619,282	$52,531,891
Depreciation (Capital Cost Allowance)	$9,554,619	$8,722,412	$7,962,690	$7,269,140	$6,635,998	$6,058,002	$5,530,350	$5,048,657	$4,608,919	$4,207,482	$3,841,010
Taxes Payable	$10,944,494	$11,134,264	$11,305,548	$11,459,915	$11,598,801	$11,723,511	$11,835,240	$11,935,075	$12,024,010	$12,102,950	$12,172,720
Total Cash Flow	$42,388,100	$42,125,204	$41,879,333	$41,648,886	$41,432,399	$41,228,535	$41,036,070	$40,853,883	$40,680,950	$40,516,332	$40,359,171

NRR	$11,873
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	$50,000,000
XNPV in 2012 plus spend	$38,621,540
XIRR	8.33%

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

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

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$125,000,000	
OPA Share	**$62,500,000**	
TCE Share	$62,500,000	
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share

Initial NRR	$11,873
Final NRR	$12,839

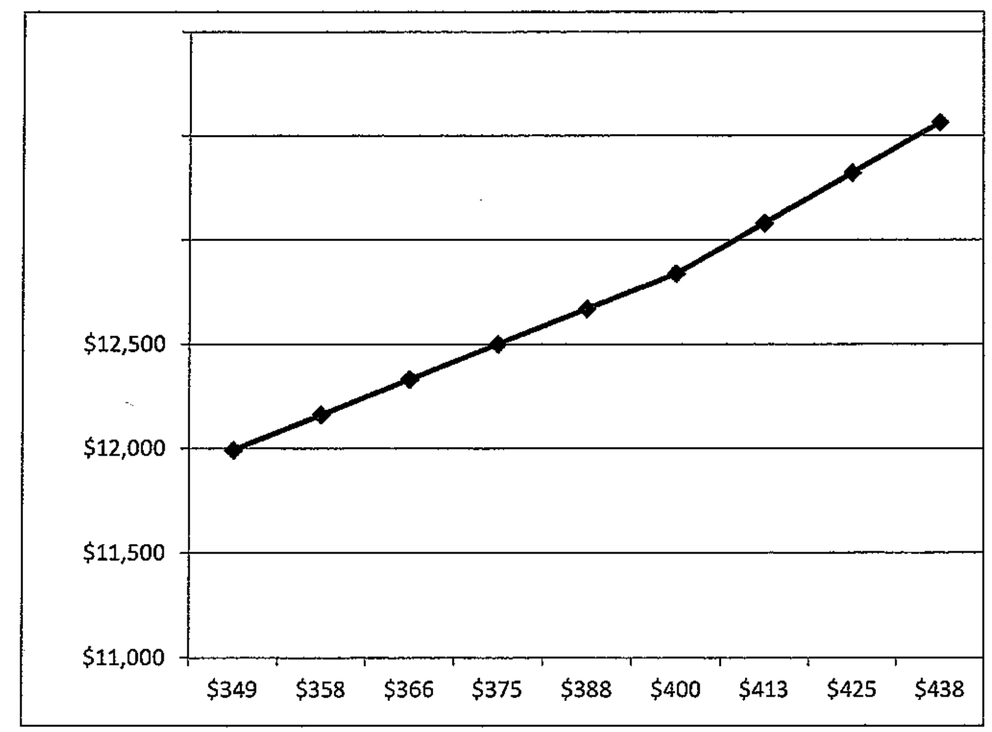
Target CAPEX $375,000,000 NRR = $11,873

FINAL CAPEX		FINAL NRR
$300,000,000	$300	$11,993
$325,000,000	$325	$12,163
$350,000,000	$350	$12,332
$375,000,000	$375	$12,501
$400,000,000	$400	$12,670
$425,000,000	$425	$12,839
$450,000,000	$450	$13,080
$475,000,000	$475	$13,322
$500,000,000	$500	$13,563

m = 1.78219E-05

b = 5185.205289

ADJUSTED CAPEX		FINAL NRR	FITTED LINE
$348,750,000	$349	$11,365	$11,401
$357,500,000	$358	$11,535	$11,557
$366,250,000	$366	$11,704	$11,712
$375,000,000	$375	$11,873	$11,868
$387,500,000	$388	$12,114	$12,091
$400,000,000	$400	$12,356	$12,314
$412,500,000	$413	$12,597	$12,537
$425,000,000	$425	$12,839	$12,760
$437,500,000	$438	$12,839	$12,982



Baseline NRR Calculation

Adjusted CAPEX Spend:		$437,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

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

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

Assume $29 million/year in nor — $5,500,000 (2009 $)
GD&M — $10,000,000 (2011 $)
Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

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

TCE Cost of Capital 7.50%

	02-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%
Yearly CAPEX Spend	$14,342,666	$20,848,785	$73,197,895	$88,067,866	$182,633,738	$58,409,049
Book Value of Capital	$14,342,666	$35,191,452	$108,389,347	$196,457,213	$379,090,951	$437,500,000
Non-Indexed NRR						
Indexed NRR						
Total NRR						
REVENUES = CSP						
OPEX						
GD&M						
EBITDA						
Depreciation (Capital Cost Allowance)						
Taxes Payable						
Total Cash Flow	($14,342,666)	($20,848,785)	($73,197,895)	($88,067,866)	($182,633,738)	($58,409,049)

	1	2	3	4	5	6	7	8	9
	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18	01-Jul-19	01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23
Book Value of Capital	$418,446,875	$382,000,152	$348,727,939	$318,353,735	$290,625,125	$265,311,677	$242,203,030	$221,107,146	$201,848,713
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$2,568	$2,619	$2,671	$2,725	$2,779	$2,835	$2,892	$2,950	$3,009
Total NRR	$12,839	$12,890	$12,943	$12,996	$13,050	$13,106	$13,163	$13,221	$13,280
REVENUES = CSP	$77,032,654	$77,340,785	$77,655,078	$77,975,657	$78,302,648	$78,636,178	$78,976,379	$79,323,384	$79,677,330
OPEX	$6,193,893	$6,317,771	$6,444,127	$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836	$7,257,133
GD&M	$10,824,322	$11,040,808	$11,261,624	$11,486,857	$11,716,594	$11,950,926	$12,189,944	$12,433,743	$12,682,418
EBITDA	$60,014,439	$59,982,205	$59,949,327	$59,915,791	$59,881,584	$59,846,694	$59,811,105	$59,774,805	$59,737,778
Depreciation (Capital Cost Allowance)	$19,053,125	$36,446,723	$33,272,213	$30,374,203	$27,728,610	$25,313,448	$23,108,647	$21,095,884	$19,258,432
Taxes Payable	$10,240,329	$5,883,871	$6,669,278	$7,385,397	$8,038,244	$8,633,311	$9,175,615	$9,669,730	$10,119,837
Total Cash Flow	$49,774,111	$54,098,335	$53,280,049	$52,530,394	$51,843,341	$51,213,382	$50,635,491	$50,105,075	$49,617,942

	10	11	12	13	14	15	16	17
	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29	01-Jul-30	01-Jul-31
Book Value of Capital	$184,267,690	$168,217,975	$153,566,189	$140,190,574	$127,979,975	$116,832,919	$106,656,772	$97,366,967
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$3,069	$3,130	$3,193	$3,257	$3,322	$3,388	$3,456	$3,525
Total NRR	$13,340	$13,401	$13,464	$13,528	$13,593	$13,659	$13,727	$13,796
REVENUES = CSP	$80,038,354	$80,406,598	$80,782,208	$81,165,329	$81,556,114	$81,954,713	$82,361,285	$82,775,988
OPEX	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165	$8,502,888
GD&M	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462	$14,568,112	$14,859,474
EBITDA	$59,700,012	$59,661,489	$59,622,197	$59,582,118	$59,541,238	$59,499,540	$59,457,009	$59,413,626
Depreciation (Capital Cost Allowance)	$17,581,023	$16,049,716	$14,651,786	$13,375,615	$12,210,599	$11,147,056	$10,176,147	$9,289,805
Taxes Payable	$10,529,747	$10,902,943	$11,242,603	$11,551,626	$11,832,660	$12,088,121	$12,320,215	$12,530,955
Total Cash Flow	$49,170,264	$48,758,546	$48,379,594	$48,030,492	$47,708,578	$47,411,419	$47,136,793	$46,882,671

	18	19	20	21	22	23	24	25
	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
Book Value of Capital	$88,886,304	$81,144,307	$74,076,638	$67,624,563	$61,734,463	$56,357,392	$51,448,663	$46,967,484
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$3,595	$3,667	$3,741	$3,816	$3,892	$3,970	$4,049	$4,130
Total NRR	$13,866	$13,938	$14,012	$14,087	$14,163	$14,241	$14,320	$14,401
REVENUES = CSP	$83,198,986	$83,630,443	$84,070,529	$84,519,418	$84,977,283	$85,444,307	$85,920,670	$86,406,561
OPEX	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
GD&M	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
EBITDA	$59,369,376	$59,324,241	$59,278,204	$59,231,245	$59,183,348	$59,134,492	$59,084,660	$59,033,830
Depreciation (Capital Cost Allowance)	$8,480,663	$7,741,997	$7,067,669	$6,452,075	$5,890,099	$5,377,072	$4,908,729	$4,481,179
Taxes Payable	$12,722,178	$12,895,561	$13,052,634	$13,194,793	$13,323,312	$13,439,355	$13,543,983	$13,638,163
Total Cash Flow	$46,647,198	$46,428,680	$46,225,570	$46,036,453	$45,860,036	$45,695,137	$45,540,677	$45,395,667

Final NRR	$12,839
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	$41,188,707
XNPV in 2012 plus spend	$25,343,624
XIRR	7.84%

Goal Seek NRR to Adjusted K-W NPV Based on Target OGS NPV and Adj CAPEX

Baseline NRR Calculation

Adjusted CAPEX Spend:		$462,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		

Capital Cost Allowance:

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

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

Assume $29 million/year in nor	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

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

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

TCE Cost of Capital	7.50%						1	2	3	4	5
	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18	01-Jul-19
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%					
Yearly CAPEX Spend	$15,162,247	$22,040,145	$77,380,632	$93,100,315	$193,069,952	$61,746,709					
Book Value of Capital	$15,162,247	$37,202,392	$114,583,024	$207,683,340	$400,753,291	$462,500,000	$442,358,125	$403,828,732	$368,655,250	$336,545,377	$307,232,275
Non-Indexed NRR							$10,851	$10,851	$10,851	$10,851	$10,851
Indexed NRR							$2,713	$2,767	$2,822	$2,879	$2,936
Total NRR							$13,563	$13,618	$13,673	$13,729	$13,787
REVENUES = CSP							$81,380,082	$81,705,602	$82,037,633	$82,376,304	$82,721,749
OPEX							$6,193,893	$6,317,771	$6,444,127	$6,573,009	$6,704,469
GD&M							$10,824,322	$11,040,808	$11,261,624	$11,486,857	$11,716,594
EBITDA							$64,361,867	$64,347,023	$64,331,882	$64,316,438	$64,300,686
Depreciation (Capital Cost Allowance)							$20,141,875	$38,529,393	$35,173,483	$32,109,872	$29,313,102
Taxes Payable							$11,054,998	$6,454,407	$7,289,600	$8,051,641	$8,746,896
Total Cash Flow	($15,162,247)	($22,040,145)	($77,380,632)	($93,100,315)	($193,069,952)	($61,746,709)	$53,306,869	$57,892,615	$57,042,282	$56,264,797	$55,553,790

Final NRR	**$13,563**
Target OGS NPV	$50,000,000
XNPV for K-W Peaking Plant	**$50,000,000**
XNPV in 2012 plus spend	$33,877,891
XIRR	8.00%

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

6	7	8	9	10	11	12	13	14	15
01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29
$280,472,344	$256,043,203	$233,741,840	$213,382,926	$194,797,273	$177,830,430	$162,341,400	$148,201,464	$135,293,116	$123,509,086
$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851
$2,995	$3,055	$3,116	$3,178	$3,242	$3,307	$3,373	$3,440	$3,509	$3,579
$13,846	$13,906	$13,967	$14,029	$14,093	$14,157	$14,224	$14,291	$14,360	$14,430
$83,074,102	$83,433,503	$83,800,092	$84,174,012	$84,555,411	$84,944,438	$85,341,246	$85,745,989	$86,158,828	$86,579,923
$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711
$11,950,926	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857	$14,002,414	$14,282,462
$64,284,618	$64,268,229	$64,251,512	$64,234,461	$64,217,069	$64,199,329	$64,181,235	$64,162,778	$64,143,952	$64,124,750
$26,759,931	$24,429,141	$22,301,363	$20,358,914	$18,585,653	$16,966,842	$15,489,030	$14,139,936	$12,908,348	$11,784,030
$9,381,172	$9,959,772	$10,487,537	$10,968,887	$11,407,854	$11,808,122	$12,173,051	$12,505,710	$12,808,901	$13,085,180
$54,903,446	$54,308,457	$53,763,975	$53,265,574	$52,809,215	$52,391,208	$52,008,184	$51,657,067	$51,335,051	$51,039,570

16	17	18	19	20	21	22	23	24	25
01-Jul-30	01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
$112,751,445	$102,930,794	$93,965,522	$85,781,125	$78,309,589	$71,488,824	$65,262,147	$59,577,814	$54,388,586	$49,651,341
$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851	$10,851
$3,651	$3,724	$3,798	$3,874	$3,952	$4,031	$4,112	$4,194	$4,278	$4,363
$14,502	$14,575	$14,649	$14,725	$14,803	$14,882	$14,962	$15,044	$15,128	$15,214
$87,009,440	$87,447,548	$87,894,417	$88,350,224	$88,815,148	$89,289,369	$89,773,075	$90,266,456	$90,769,703	$91,283,016
$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
$14,568,112	$14,859,474	$15,156,663	$15,459,797	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
$64,105,164	$64,085,186	$64,064,808	$64,044,023	$64,022,822	$64,001,197	$63,979,140	$63,956,641	$63,933,693	$63,910,285
$10,757,641	$9,820,651	$8,965,272	$8,184,397	$7,471,536	$6,820,765	$6,226,677	$5,684,333	$5,189,228	$4,737,246
$13,336,881	$13,566,134	$13,774,884	$13,964,906	$14,137,822	$14,295,108	$14,438,116	$14,568,077	$14,686,116	$14,793,260
$50,768,283	$50,519,052	$50,289,924	$50,079,116	$49,885,000	$49,706,089	$49,541,024	$49,388,564	$49,247,576	$49,117,025

Target Costing Allocation of Actual CAPEX

Target CAPEX = $425,000,000

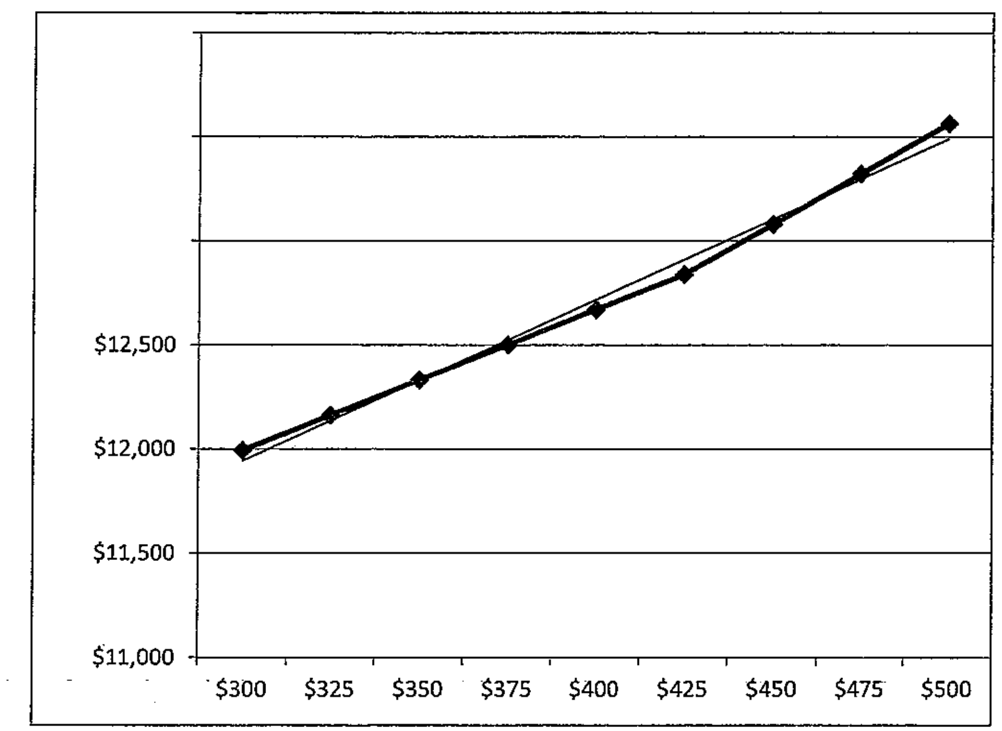
CAPEX Sharing:		Overrun	Underrun
	OPA	50%	35%
	TCE	50%	65%

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$75,000,000	
OPA Share	**$37,500,000**	
TCE Share	$37,500,000	
Adjusted CAPEX =	**$462,500,000**	Target CAPEX + OPA Share

Initial NRR	$12,839
Final NRR	$13,563

Target CAPEX $425,000,000 NRR = $12,839

FINAL CAPEX		FINAL NRR
$300,000,000	$300	$11,993
$325,000,000	$325	$12,163
$350,000,000	$350	$12,332
$375,000,000	$375	$12,501
$400,000,000	$400	$12,670
$425,000,000	$425	$12,839
$450,000,000	$450	$13,080
$475,000,000	$475	$13,322
$500,000,000	$500	$13,563



$10,423.54

m = 1.93219E-05
b = 4626.968162

ADJUSTED CAPEX	FINAL NRR	FITTED LINE
$381,250,000	$11,993	$11,993
$390,000,000	$12,163	$12,163
$398,750,000	$12,332	$12,332
$407,500,000	$12,501	$12,501
$416,250,000	$12,670	$12,670
$425,000,000	$12,839	$12,839
$437,500,000	$13,080	$13,080
$450,000,000	$13,322	$13,322
$462,500,000	$13,563	$13,563

Baseline NRR Calculation

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

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

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

Fixed O&M $5,500,000 (2009 $)
GO&M $10,000,000 (2011 $)
Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

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

TCE Cost of Capital	7.50%						1	2	3	4	5	6
	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18	01-Jul-19	01-Jul-20
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%						
Yearly CAPEX Spend	$13,932,876	$20,253,106	$71,106,527	$85,551,641	$177,415,631	$56,740,219						
Book Value of Capital	$13,932,876	$34,185,982	$105,292,509	$190,844,150	$368,259,781	$425,000,000	$406,491,250	$371,085,862	$338,764,284	$309,257,914	$282,321,550	$257,731,343
Non-Indexed NRR							$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR							$2,568	$2,619	$2,671	$2,725	$2,779	$2,835
Total NRR							$12,839	$12,890	$12,943	$12,996	$13,050	$13,106
REVENUES = CSP							$77,032,654	$77,340,785	$77,655,078	$77,975,657	$78,302,648	$78,636,178
OPEX							$6,193,893	$6,317,771	$6,444,127	$6,573,009	$6,704,469	$6,838,559
GO&M							$10,824,322	$11,040,808	$11,261,624	$11,486,857	$11,716,594	$11,950,926
EBITDA							$60,014,439	$59,982,205	$59,949,327	$59,915,791	$59,881,584	$59,846,694
Depreciation (Capital Cost Allowance)							$18,508,750	$35,405,388	$32,321,579	$29,506,369	$26,936,364	$24,590,207
Taxes Payable							$10,376,422	$6,144,204	$6,906,937	$7,602,356	$8,236,305	$8,814,122
Total Cash Flow	($13,932,876)	($20,253,106)	($71,106,527)	($85,551,641)	($177,415,631)	($56,740,219)	$49,638,017	$53,838,001	$53,042,390	$52,313,436	$51,645,279	$51,032,572

	7	8	9	10	11	12	13
	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27
Book Value of Capital	$235,282,943	$214,789,799	$196,081,607	$179,002,899	$163,411,747	$149,178,584	$136,185,129
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$2,892	$2,950	$3,009	$3,069	$3,130	$3,193	$3,257
Total NRR	$13,163	$13,221	$13,280	$13,340	$13,401	$13,464	$13,528
REVENUES = CSP	$78,976,379	$79,323,384	$79,677,330	$80,038,354	$80,406,598	$80,782,208	$81,165,329
OPEX	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354
GO&M	$12,189,944	$12,433,743	$12,682,418	$12,936,066	$13,194,788	$13,458,683	$13,727,857
EBITDA	$59,811,105	$59,774,805	$59,737,778	$59,700,012	$59,661,489	$59,622,197	$59,582,118
Depreciation (Capital Cost Allowance)	$22,448,400	$20,493,144	$18,708,191	$17,078,708	$15,591,153	$14,233,163	$12,993,455
Taxes Payable	$9,340,676	$9,820,415	$10,257,397	$10,655,326	$11,017,584	$11,347,258	$11,647,166
Total Cash Flow	$50,470,429	$49,954,390	$49,480,382	$49,044,686	$48,643,905	$48,274,938	$47,934,952

	14	15	16	17	18	19
	01-Jul-28	01-Jul-29	01-Jul-30	01-Jul-31	01-Jul-32	01-Jul-33
Book Value of Capital	$124,323,404	$113,494,836	$103,609,436	$94,585,054	$86,346,696	$78,825,898
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$3,322	$3,388	$3,456	$3,525	$3,595	$3,667
Total NRR	$13,593	$13,659	$13,727	$13,796	$13,866	$13,938
REVENUES = CSP	$81,556,114	$81,954,713	$82,361,285	$82,775,988	$83,198,986	$83,630,443
OPEX	$8,012,461	$8,172,711	$8,336,165	$8,502,888	$8,672,946	$8,846,405
GO&M	$14,002,414	$14,282,462	$14,568,112	$14,859,474	$15,156,663	$15,459,797
EBITDA	$59,541,238	$59,499,540	$59,457,009	$59,413,626	$59,369,376	$59,324,241
Depreciation (Capital Cost Allowance)	$11,861,725	$10,828,569	$9,885,400	$9,024,382	$8,238,358	$7,520,797
Taxes Payable	$11,919,878	$12,167,743	$12,392,902	$12,597,311	$12,782,755	$12,950,861
Total Cash Flow	$47,621,360	$47,331,797	$47,064,106	$46,816,315	$46,586,622	$46,373,380

	20	21	22	23	24	25
	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
Book Value of Capital	$71,960,163	$65,692,432	$59,970,622	$54,747,180	$49,978,701	$45,625,556
Non-Indexed NRR	$10,271	$10,271	$10,271	$10,271	$10,271	$10,271
Indexed NRR	$3,741	$3,816	$3,892	$3,970	$4,049	$4,130
Total NRR	$14,012	$14,087	$14,163	$14,241	$14,320	$14,401
REVENUES = CSP	$84,070,529	$84,519,418	$84,977,283	$85,444,307	$85,920,670	$86,406,561
OPEX	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
GO&M	$15,768,993	$16,084,372	$16,406,060	$16,734,181	$17,068,865	$17,410,242
EBITDA	$59,278,204	$59,231,245	$59,183,348	$59,134,492	$59,084,660	$59,033,830
Depreciation (Capital Cost Allowance)	$6,865,736	$6,267,730	$5,721,811	$5,223,441	$4,768,479	$4,353,145
Taxes Payable	$13,103,117	$13,240,879	$13,365,384	$13,477,763	$13,579,045	$13,670,171
Total Cash Flow	$46,175,087	$45,990,367	$45,817,964	$45,656,730	$45,505,615	$45,363,659

NRR	$12,839	[redacted]
Target OGS NPV	$50,000,000	
XNPV for K-W Peaking Plant	$50,000,000	
XNPV in 2012 plus spend	$35,910,883	
XIRR	8.13%	

Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 3:05 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: 'Gene.Meehan@NERA.com'; Deborah Langelaan; 'Safouh Soufi'
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...
Attachments: OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL v2.xls

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

Based on our discussion today, with a new target CAPEX of $375 million, I have arrived at an NRR of $11,873/MW-month.

The new NRR adjustment equation is:

NRR = 1.78219E-05 * Adjusted CAPEX + 5185.205289

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
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416-969-6288
416-520-9788 (CELL)
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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 24, 2011 3:44 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

Michael,
For your reference, attached is a stand-alone Schedule "C", which no longer forms part of the draft response to A. Pourbaix.

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, March 24, 2011 3:05 PM
To: Smith, Elliot; Susan Kennedy
Cc: Gene.Meehan@NERA.com; Deborah Langelaan; Safouh Soufi
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

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

Based on our discussion today, with a new target CAPEX of $375 million, I have arrived at an NRR of $11,873/MW-month.

The new NRR adjustment equation is:

NRR = 1.78219E-05 * Adjusted CAPEX + 5185.205289

Michael

Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide Street West, Suite 1600
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416-967-1947 (FAX)

Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 3:44 PM
To: 'ESmith@osler.com'
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

Thank you.

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

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Thursday, March 24, 2011 03:43 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

Michael,
For your reference, attached is a stand-alone Schedule "C", which no longer forms part of the draft response to A. Pourbaix.

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, March 24, 2011 3:05 PM

To: Smith, Elliot; Susan Kennedy
Cc: Gene.Meehan@NERA.com; Deborah Langelaan; Safouh Soufi
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

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

Based on our discussion today, with a new target CAPEX of $375 million, I have arrived at an NRR of $11,873/MW-month.

The new NRR adjustment equation is:

NRR = 1.78219E-05 * Adjusted CAPEX + 5185.205289

Michael

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

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 24, 2011 4:04 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...
Attachments: Draft Schedule C - Adjustment Methodology 20325513_1.DOC

TTWA.

From: Smith, Elliot
Sent: Thursday, March 24, 2011 3:44 PM
To: 'Michael Killeavy'
Cc: 'Deborah Langelaan'
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

Michael,
For your reference, attached is a stand-alone Schedule "C", which no longer forms part of the draft response to A. Pourbaix.

Elliot

Elliot Smith
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416.862.6435 DIRECT
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Box 50, 1 First Canadian Place
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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
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Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal ...

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The new NRR adjustment equation is:

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Michael

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416-969-6288
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416-967-1947 (FAX)

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the Replacement Project will be $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

(i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

(ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

(iii) The adjusted NRR shall be equal to 5185.205289 plus 1.78219×10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	Fixed Price
Main Turbine Original Costs (excluding change orders)	$156,274,358
Main Turbine Additional Scope (excluding change orders)	$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 24, 2011 5:27 PM
To: Safouh Soufi
Cc: Deborah Langelaan; Michael Killeavy
Subject: Temperature Requirements

Safouh,
I noticed that in your Schedule "A" the required contract capacities must be achieved at 35 deg. C, but in the TCE draft, the temperature is only required to be 30 deg. C. The latter seems more consistent with OPA requirements since FM relief for capacity test check typically occurs at 30 deg C. Do you know the origin is of this change?

Thanks,
Elliot

Elliot Smith
Associate
416.862.6435

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 24, 2011 5:56 PM
To: 'Smith, Elliot'
Cc: Deborah Langelaan; Michael Killeavy
Subject: RE: Temperature Requirements

Elliot:

The 35 deg C originated from the OPA PSP [transmission Group]. We could still use 30 deg C but the power output must go up correspondingly. Do you want me to figure out the equivalent output at 30C?

Now that you mentioned FM relief at 30 deg C for capacity_check test, this brings up another issue for the ramp rate test. Also we have to question the logic of having FM relief for a capacity test for simple cycle in or beyond a temperature range for which a simple cycle is most likely to be needed by the grid. Let me think about this and get back to you by tomorrow before our conference call/meeting. I may have a better solution that takes care of FM relief, what I call the capacity band (i.e. 90%) and ramp rate guarantee.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 24, 2011 5:27 PM
To: Safouh Soufi
Cc: Deborah Langelaan; Michael Killeavy
Subject: Temperature Requirements

Safouh,
I noticed that in your Schedule "A" the required contract capacities must be achieved at 35 deg. C, but in the TCE draft, the temperature is only required to be 30 deg. C. The latter seems more consistent with OPA requirements since FM relief for capacity test check typically occurs at 30 deg C. Do you know the origin is of this change?

Thanks,
Elliot

Elliot Smith
Associate
416.862.6435

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 5:59 PM
To: 'safouh@smsenergy-engineering.com'; 'ESmith@osler.com'
Cc: Deborah Langelaan
Subject: Re: Temperature Requirements

Let's use what PSP indicated.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Thursday, March 24, 2011 05:55 PM
To: 'Smith, Elliot' <ESmith@osler.com>
Cc: Deborah Langelaan; Michael Killeavy
Subject: RE: Temperature Requirements

Elliot:

The 35 deg C originated from the OPA PSP [transmission Group]. We could still use 30 deg C but the power output must go up correspondingly. Do you want me to figure out the equivalent output at 30C?

Now that you mentioned FM relief at 30 deg C for capacity check test, this brings up another issue for the ramp rate test. Also we have to question the logic of having FM relief for a capacity test for simple cycle in or beyond a temperature range for which a simple cycle is most likely to be needed by the grid. Let me think about this and get back to you by tomorrow before our conference call/meeting. I may have a better solution that takes care of FM relief, what I call the capacity band (i.e. 90%) and ramp rate guarantee.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 24, 2011 5:27 PM
To: Safouh Soufi
Cc: Deborah Langelaan; Michael Killeavy
Subject: Temperature Requirements

Safouh,
I noticed that in your Schedule "A" the required contract capacities must be achieved at 35 deg. C, but in the TCE draft, the temperature is only required to be 30 deg. C. The latter seems more consistent with OPA

requirements since FM relief for capacity test check typically occurs at 30 deg C. Do you know the origin is of this change?

Thanks,
Elliot

Elliot Smith
Associate
416.862.6435

Aleksandar Kojic

From: Michael Killeavy
Sent: March 24, 2011 9:25 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan; gene.meehan@nera.com; safouh@smsenergy-engineering.com; Andrew.Pizzi@NERA.com
Subject: TCE Matter - OPA Counter-Proposal - Corrected and Revised Financial Proposal ...
Attachments: OPA Counter-Proposal NRR Model 24 Mar 2011 COUNTER-PROPOSAL v3.xls

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

Andrew Pizzi discovered a cut-and-paste error in the sensitivity analysis table used to derive NRR-Adj. CAPEX equation. I apologize for the confusion this error might have caused. Attached is the corrected spreadsheet.

With the revised target CAPEX of $375 million, the NRR of $11,873/MW-month remains unchanged despite the cut-and-paste error.

The NRR adjustment equation is, however, corrected to:

NRR = 1.93201E-05 * Adjusted CAPEX + 4627.668956

Andrew, could you please run the new target CAPEX through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

Thanks,
Michael

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

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

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

FINAL CAPEX =	$500,000,000	
Overrun (Underrun) =	$125,000,000	
OPA Share	**$62,500,000**	
TCE Share	$62,500,000	
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share
Initial NRR	$11,873	
Final NRR	$13,080	

	m =	1.93201E-05
	b =	4627.668956
ADJUSTED CAPEX	FINAL NRR	FITTED LINE
$348,750,000	$11,365	$11,366
$357,500,000	$11,535	$11,535
$366,250,000	$11,704	$11,704
$375,000,000	$11,873	$11,873
$387,500,000	$12,114	$12,114
$400,000,000	$12,356	$12,356
$412,500,000	$12,597	$12,597
$425,000,000	$12,839	$12,839
$437,500,000	$13,080	$13,080
$437,500,000	$13,080	

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 25, 2011 9:30 AM
To: Michael Killeavy
Cc: Bonny Wong
Subject: FW: DRAFT: Terms of Reference for OPA-Special Audit
Attachments: Draft Terms of Reference_2011_OPA Special Audit of Damages Payable to TransCanada Energy Ltd Mar 24.doc

Importance: High
Sensitivity: Confidential

Michael;

Please find attached the Ministry of Finance's draft Terms of Reference for the OGS audit. Would you please provide your comments before noon on Monday?

Thanks,
Deb

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

From: Speevak, Ted (FIN) [mailto:Ted.Speevak@ontario.ca]
Sent: March 24, 2011 3:52 PM
To: Bonny Wong
Cc: Deborah Langelaan; King, Richard (FIN)
Subject: DRAFT: Terms of Reference for OPA-Special Audit
Importance: High
Sensitivity: Confidential

Privileged and Confidential
Prepared in Contemplation of Litigation

Hi - Bonnie:

Attached is our Draft Terms of Reference (TOR) for the OPA-Special Audit. Kindly review the TOR and provide Richard with OPA's consolidated comments (i.e., yours & Deb's) by **noon, Monday, March 28, 2011**.

Many Thanks;

- Ted Speevak

Ontario

CONFIDENTIAL
HIGH SENSITIVITY

Ontario Power Authority

Terms of Reference

Special Audit of Damages Payable to TransCanada Energy Ltd.

March, 2011

Ontario Internal Audit Division

Ministry of Finance

Serving:
Ontario Power Authority

<XXX – YY/

Privileged and Confidential
Prepared in Contemplation of Litigation

Table of Contents

[A] Background:

In October 2009, the OPA signed a contract with TransCanada Energy Ltd. (TCE) to design, build and operate a 900 megawatt electricity generating station in Oakville over a 20-year term.

The completion of this project was terminated at the direction of the Ministry of Energy of Ontario during October 2010 and the OPA has agreed to pay TCE an amount in damages in order to cover TCE's sunk costs. As a result of this agreement, TCE has abandoned its court actions with the OPA.

As of February 28, 2011, TCE has provided the OPA with 2 binders that include supporting documentation for the development and implementation costs incurred as part of the project. The total amount being claimed by TCE as sunk costs is approximately $37M as of February 28, 2011. These costs include interest costs, which will continue to accrue overtime.

These amounts have not been audited to date and have not been validated as true "sunk costs" by the OPA. A verification audit has been requested to be completed by the Finance Revenue Audit Service Team (FRAST) of the Ministry of Finance.

[B] Engagement Objectives, Criteria and Scope

Engagement Objective
The audit objectives are to provide OPA management with assurance that:

- The costs submitted by TCE to be paid by the OPA meet the definition of "sunk costs" (as established for the terms of this review) and are eligible for recovery by TCE.
- The amounts claimed by TCE were incurred in relation to the contracted Oakville generating station.
- The eligible sunk costs submitted for recovery by TCE include adequate supporting documentation to verify the accuracy and existence of amounts claimed.

<u>Definition of "sunk cost":</u> A cost that is incurred but not recoverable (in whole or in part). Not Recoverable, for the purpose of this review, refers to the inability of TCE to recover any or all of the costs incurred in any present or future undertaking.

Criteria

The submitted costs:

1. Meet the definition of "sunk cost";
2. Were incurred in relation to the planned Oakville Generating Station;
3. Were reasonable in amount; and
4. Were paid by TCE.

Scope

The scope of this review includes:

- Review of the binders and supporting documentation supplied by TCE for recovery of sunk costs.
- Review of any applicable documentation (e.g. negotiation terms, correspondence, agreements, evidence of payment, etc.) surrounding the terms of the costs being claimed by TCE for background.
- Scope of sample testing (including sample size) to be discussed and confirmed with management prior to sample testing.
- **Limitations of a review based on documentation alone:**
  We are reliant on the integrity and accuracy of the information provided. It is assumed that documented costs were actually incurred and related documentation is accurate. For example, in reviewing the labour costs, we assume:
  - That the listed employees actual exist;
  - That those employees have the stated job titles;
  - That those employees worked on the project for stated number of hours and for the implied rate; and
  - That TCE paid the stated amount for the work.
- **Limitations in the data**
  The data provided may in turn limit some planned audit procedures. For example, TCE's employment charge rates are based on the midpoint salary for the position, rather than the specific compensation of the individual assigned to the project. This is done to preserve the confidentiality of individual salaries. Consequently, the amount quoted as a cost incurred is not necessarily the amount that was actually paid and cannot be traced to the actual amount payment amount.

Interest during construction is out of scope of this review.

[C] Engagement Approach, Methodology & Engagement Reporting

Our engagement approach will include the following:

- Obtain summary and detailed spreadsheets (in suitable Excel format) from TCE via the OPA contact.
- Aggregate the spreadsheet data into categories (such as labour costs, invoices, employee expenses,...).
- For each category, select a sample for review and request the corresponding documents (invoices, receipts, evidence of payment,...) from TCE via the OPA contact. Risk and sensitivity will be considered in selecting the samples. For example, while employee expenses constitute a very small portion of the total amount that TCE is claiming, these expenses are of a very sensitive nature and the sampling will be adjusted accordingly.
- Some audit procedures may require assistance from OPA Management.
- Review the sample data and note any findings for discussion with and follow-up by OPA Management.

[D] Key Stakeholders & Client Contacts

- Michael Killeavy, Director, Contract Management, Electricity Resources
- Deborah Langelaan, Manager, Natural Gas Projects, Electricity Resources
- Bonny Wong, Manager, Accounting

[E] Engagement Timing & Deliverables

Analysis of the TCE provided spreadsheets of the summary and detailed data would begin upon the receipt by FRAST from OPA. As a category sample is selected for review, the selection will be discussed with the OPA contact along with a request for the corresponding category sample documentation (invoices, receipts, evidence of payments,...) that the OPA contact will convey to TCE. The prioritization will also be discussed with OPA.

In the interest of expediency, all of the category sample documentation requests will be conveyed before undertaking the review of the received sample documentation for a given category. As well, FRAST will review a category sample after all of the requested sample documentation has been received for the particular category. Category sample review may trigger further requests for information/data.

Throughout the audit, FRAST will communicate with OPA staff and management to provide updates on a regular basis. Upon conclusion of the engagement, FRAST will prepare a draft report outlining our findings for discussion with OPA management at an exit meeting.

A final report will be issued one week after receiving comments from OPA management. Specific items that the report will include:

1. Audit Objectives
2. Audit Approach
3. Audit results based on the audit's Objectives and Approach.

The draft and final reports will be issued to Michael Lyle – VP, Legal, Aboriginal & Regulatory Affairs.

[F] Engagement Team

- Richard King – Senior Audit Manager
- Ted Speevak – Consultant

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 25, 2011 10:42 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FW: TransCanada Potential Project - OGS Development Costs
Attachments: FIPPA protection for supplementary information

Susan;

TCE's counsel has determined that they require another designation letter to cover off the supplementary information provided regarding their sunk costs. Would you be so kind as to provide me with another letter? TCE's had kindly provided the description of the information in their e-mail below.

Thanks,
DEb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 25, 2011 10:01 AM
To: Deborah Langelaan
Subject: TransCanada Potential Project - OGS Development Costs

Dear Deborah,

On Wednesday we talked about whether there was a need to have supplementary materials provided to the OPA to respond to inquiries surrounding the OGS development costs designated as confidential pursuant to Section 25.13(3) of the Electricity Act. I don't know whether you have had an opportunity to discuss this with Susan, but it is our view that the current designation is specific to the two binders provided and a further designation will be required. My apologies, in that I should have expected this and considered a description originally which would have allowed supplementary supporting materials to be provided under the same designation.

Would you please consider a designation letter for materials to be provided which could be described as follows?

Supplementary information provided in support of the TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2067945 - February 24, 2011 and TransCanada Oakville Generating Station Development Cost Summary Development Phase - Project 2116164 - February 24, 2011.

Please do not hesitate to call me should you have any questions.

Many thanks,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

Royal Bank Plaza
200 Bay Street

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 23, 2011 10:07 AM
To: Susan Kennedy
Cc: Michael Killeavy
Subject: FIPPA protection for supplementary information
Attachments: MISC_110224_FIPPADesignation_DevelopmentCostSummary.pdf

Susan;

I have attached the designation letter we provided to TCE with respect to the binders they provided to the OPA containing copies of their sunk costs associated with OGS. The Ministry of Finance is conducting an audit of the costs on the OPA's behalf and there have been, and will continue to be, requests for additional information to support the costs. In your opinion, does the original designation letter apply to the supplementary information that is being provided by TCE?

Deb

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

MISC_110224_FIPPADesignation_DevelopmentCostSummary

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

ONTARIO POWER AUTHORITY

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

Article I. Authority for Designation

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

Article II. Effect of Designation

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

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

Article III. Designation

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

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

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

DATED this 24th day of February, 2011.

Colin Andersen
Chief Executive Officer

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 25, 2011 11:04 AM
To: 'Elliot Smith (esmith@osler.com)'; 'Rocco Sebastiano (rsebastiano@osler.com)'; Michael Killeavy; 'Safouh Soufi'; 'Gene Meehan (gene.meehan@nera.com)'
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: Capital Cost Estimate Boxwood Generating Station_Rev 5_February 17, 2011.pdf

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station", Rev.5 dated "Feb 17, 2011".

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

CAPITAL COST ESTIMATE

Boxwood Generating Station
2 x 0 x 0 M501GAC-Fast

Exclude Fuel Gas & HV Interconnections and OGS Sunk Cost

Rev.6
Mar 24, 2011

Item	Boxwood F/X at 1.05 Cdn$	%	540 MW @ ISO $ / kW
IBL			
Equipment			
Main Equipment			
CTG	$210,168,881	39%	
Others	$10,163,353	2%	
S/T	$220,332,234	41%	
BOP Equipment	$14,185,781	3%	
Equipment S/T	**$234,518,014**	44%	
Execution			
Engineering	$18,315,554	3%	
Construction	$106,333,140	20%	
Execution S/T	**$124,648,694**	23%	
Other IBL			
CTG Change Order	$4,098,732	1%	
EPC Change Order	$7,078,387	1%	
Landscaping	$2,000,000	0.4%	
Other IBL S/T	**$13,177,119**	2%	
IBL Total	**$372,343,827**	69%	$690 /kW
OBL			
Fuel Gas	$0	0%	
Electrical	$1,850,000	0.3%	
Other Utilities	$700,000	0.1%	
Storm Water Pond	$4,394,750	1%	
OBL Total	**$6,944,750**	1%	$13 /kW
OWNER'S COST			
Development Cost	$4,900,000	1%	
PM & CM	$13,807,794	3%	
O&M Mobilization	$4,797,287	1%	
Net Start-Up Energy	$9,234,172	2%	
Capital Maint.	$17,230,028	3%	
Site Purchase	$31,679,274	6%	
Insurance & Misc.	$5,807,887	1%	
Community Benefits	$20,000,000	4%	
Owner's Total	**$107,456,440**	20%	$199 /kW
TAXES			
Taxes, Duties & Fees	$4,304,725	1%	
Taxes Total	**$4,304,725**	1%	$8 /kW
PROJECT UNCERTAINTIES			
Escalation	$10,864,723	2%	
Risk & Contingency	$19,867,287	4%	
Development Allow.	$16,869,938	3%	
Project Margins Total	**$47,601,948**	9%	$88 /kW
Project Total	**$538,651,691**	100%	$998 /kW
OGS Sunk Cost	**Excld.**		
Project Grand Total	[illegible]	100%	$998 /kW

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 25, 2011 12:21 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Would this be included in the proposed NRR of $11,873, or would we be adding this on top? We may also want to consider whether to increase the $50MM termination applicable for extended permitting FM, since building the sunk costs into the NRR means they don't receive anything unless they achieve COD.

Elliot

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 12:17 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - OGS Sunk Costs ...

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

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Thank you,

Michael

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

****

Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 12:29 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

It will be an additional amount. Could we say that they would get the financial value of the OGS plus OGS Sunk Costs.

In the modelling I will need to add $37M to the NRR back-solving calculation.

Michael Killeavy, LL.B., MBA, P.Eng.
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Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 12:41 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

I'll cut lunch short and try to get the modelling done before our afternoon meeting - the sensitivity analysis takes a bit of time.

Michael Killeavy, LL.B., MBA, P.Eng.
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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 25, 2011 12:43 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Thanks. All we really need is the "m" value since we would take the Sunk Costs x "m" and add this to the proposed NRR. We know this amount will be approximately $37,000,000 (and is proposed to be capped at $37MM) so as long as the approximation works around this value we should be ok.

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From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 12:41 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

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Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 12:47 PM
To: 'ESmith@osler.com'; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

It's alright - I'm pretty efficient with it now. You are correct - it just shifts the curve up at the same slope - it's like an addition CAPEX input.

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----- Original Message -----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Friday, March 25, 2011 12:42 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - OGS Sunk Costs ...

Thanks. All we really need is the "m" value since we would take the Sunk Costs x "m" and add this to the proposed NRR. We know this amount will be approximately $37,000,000 (and is proposed to be capped at $37MM) so as long as the approximation works around this value we should be ok.

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Sent: Friday, March 25, 2011 12:41 PM
To: Smith, Elliot; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - OGS Sunk Costs ...

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Elliot

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****

Aleksandar Kojic

From: Susan Kennedy
Sent: March 25, 2011 1:48 PM
To: Michael Killeavy; Deborah Langelaan
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Just an fyi - won't be at todayks mmeting.

From: Michael Killeavy
Sent: Friday, March 25, 2011 01:47 PM
To: Smith, Elliot <ESmith@osler.com>; Susan Kennedy
Cc: Gene.Meehan@NERA.com <Gene.Meehan@NERA.com>; Deborah Langelaan; Safouh Soufi <safouh@smsenergy-engineering.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

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The NRR increases to $12,887/MW-month.

The intercept of the NRR adjustment equation (b) is , however, corrected to:

NRR = 1.93142E-05 * Adjusted CAPEX + 5644.131697

Basically, the new NRR-Adj. CAPEX line is shifted upwards to reflect the increase. Andrew, could you please run the change through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

Thanks,
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Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 1:50 PM
To: Susan Kennedy
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

☹

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Cc: Gene.Meehan@NERA.com <Gene.Meehan@NERA.com>; Deborah Langelaan; Safouh Soufi <safouh@smsenergy-engineering.com>; andrew.pizzi@nera.com <andrew.pizzi@nera.com>
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Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 25, 2011 3:19 PM
To: Deborah Langelaan; esmith@osler.com; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The ramp rate figures for the Facility (two units) will be as follows:

Q1: 37,800 MW
Q2: 35,800 MW
Q3: 33,000 MW
Q4: 35,200 MW

These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
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4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station", Rev.5 dated "Feb 17, 2011".

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 3:26 PM
To: Susan Kennedy; Deborah Langelaan
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Susan,

We finalized all of the details to the schedules and main text of the letter. I plan on circulating clean and blacklined versions this evening.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
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Michael.killeavy@powerauthority.on.ca

From: Susan Kennedy
Sent: Friday, March 25, 2011 01:48 PM
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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; Deborah Langelaan; Michael Killeavy
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

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Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station□, Rev.5 dated "Feb 17, 2011□.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 25, 2011 5:19 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute
Q2: 35.8 MW/minute
Q3: 33.0 MW/minute
Q4: 35.2 MW/minute

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Q3: 33,000 MW
Q4: 35,200 MW

These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
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3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 25, 2011 5:46 PM
To: Safouh Soufi; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh, this makes more sense. My last question is when you refer to Q1-Q4, are you referring to Season 1 – Season 4, or actual calendar quarters? As I'm sure you're aware, the Seasons in the CES contract are offset from calendar quarters.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

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From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

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From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

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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

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 25, 2011 6:00 PM
To: Safouh Soufi; Deborah Langelaan; Michael Killeavy
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: #20297127v6_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; Blackline.pdf

All,
Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

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

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Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

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The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater

than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 019 314 2 multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria.

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

2. **Emissions Requirements.**

   (a) The emissions from the Replacement Project shall meet or exceed the following criteria:

      (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

      (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

   (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

   (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

   (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

3. **Fuel Supply.** The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

4. **Equipment.** The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,887** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

DRAFT: MARCH 25, 2011

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II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

~~For load restoration, the Replacement Project will comply with the load restoration criteria stipulated under~~If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria.~~The criteria are as follows:~~

- ~~all load to be restored within 8 hours~~
- ~~amount of load in excess of 150 MW must be restored within 4 hours~~
- ~~amount of load in excess of 250 MW must be restored within 30 minutes.~~

~~**[NTD: We should discuss further. I remain unclear on what obligation(s) this imposes on TCE.]**~~

V. Operational Flexibilities

~~1. **Fast Start Capability.** The Replacement Project must be such that each combustion turbine must be capable of fast start-up. **[NTD: Is this subsumed by the Ramp Rate requirement?]**~~

1. ~~2.~~ **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate ~~of 8%/minute or more of its Base Load~~equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test. ~~**[NTD: SMS to define "Base Load". Can we use Nameplate Capacity instead of Base Load, as is currently done in the COD test?]**~~

2. ~~3.~~ **Emissions Requirements.**

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

3. ~~4.~~ **Fuel Supply.** The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

4. ~~5.~~ **Equipment.** The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ ~~11,873~~12,887 / MW-month
Net Revenue Requirement Indexing Factor	**20** %
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh
~~**Contract Ramp Rate**~~	~~8%/minute of Base Load~~

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW

Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 25, 2011 6:04 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Elliot.

Q1 = Season 1 and likewise for other Q's. Q1 = Dec – Feb.

The offset is in the figures and so we are good that way. I am available by email throughout the weekend. In case if you need to call me, please feel free to do so at anytime on my cell 416-788-0456.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 5:46 PM
To: Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh, this makes more sense. My last question is when you refer to Q1-Q4, are you referring to Season 1 – Season 4, or actual calendar quarters? As I'm sure you're aware, the Seasons in the CES contract are offset from calendar quarters.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
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Sent: March 25, 2011 6:25 PM
To: 'ESmith@osler.com'
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Michael Killeavy, LL.B., MBA, P.Eng.
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120 Adelaide St. West, Suite 1600
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All,
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From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
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Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 6:27 PM
To: 'ESmith@osler.com'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Great! Thanks for the quick turnaround.

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

From: Michael Killeavy
Sent: March 25, 2011 8:16 PM
To: Safouh Soufi
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Safouh,

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Sent: Fri 25-Mar-11 6:04 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Elliot.

Q1 = Season 1 and likewise for other Q's. Q1 = Dec - Feb.

The offset is in the figures and so we are good that way. I am available by email throughout the weekend. In case if you need to call me, please feel free to do so at anytime on my cell 416-788-0456.

Thanks,

Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 5:46 PM
To: Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh, this makes more sense. My last question is when you refer to Q1-Q4, are you referring to Season 1 - Season 4, or actual calendar quarters? As I'm sure you're aware, the Seasons in the CES contract are offset from calendar quarters.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute

Q2: 35.8 MW/minute

Q3: 33.0 MW/minute

Q4: 35.2 MW/minute

Thanks,

Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The ramp rate figures for the Facility (two units) will be as follows:

Q1: 37,800 MW

Q2: 35,800 MW

Q3: 33,000 MW

Q4: 35,200 MW

These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,

Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin

Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station.#157;, Rev.5 dated "Feb 17, 2011.#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

****

Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 8:17 PM
To: Smith, Elliot; gene.meehan@nera.com
Cc: Deborah Langelaan
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Elliot and Gene,

Thanks for all your help in the past few days in assisting us with the response back to TCE.

Michael

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

-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Fri 25-Mar-11 6:26 PM
To: Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

No, it's good. Safouh confirmed that Q1=Season 1, etc.

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 6:25 PM
To: Smith, Elliot
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

It's hard to read the attachment on my BlackBerry. Do you need to revise anything based on Safouh's last email?

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

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

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Friday, March 25, 2011 05:59 PM
To: Safouh Soufi <safouh@smsenergy-engineering.com>; Deborah Langelaan; Michael Killeavy
Cc: Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

All,

Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

Elliot

<file:///C:\program%20files\osler\Osler%20Outlook%20Email%20Signatures\email_logo.gif>

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

<http://www.osler.com/>

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca;
Michael.Killeavy@powerauthority.on.ca
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February 17, 2011

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Sent: March 25, 2011 11:04 AM

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Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....
Attachments: #20297127v6_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; OPA Counter-Proposal NRR Model 25 Mar 2011 COUNTER-PROPOSAL v4.xls; Draft Schedule C - Adjustment Methodology 20325513_1.DOC

Importance: High

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

3. The resulting NRR is $12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be $10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at $50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as $200 million and still be defensible, but that puts the NRR up around $15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the low NRR. We thought that if they did grudging accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will

not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS $50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater

than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 019 314 2 multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria.

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that each combustion turbine is capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

2. **Emissions Requirements.**

   (a) The emissions from the Replacement Project shall meet or exceed the following criteria:

   (i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

   (ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

   (b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

   (c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

   (d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

3. **Fuel Supply.** The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

4. **Equipment.** The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,887** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

Target Costing Allocation of Actual CAPEX

Target CAPEX = $375,000,000

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

FINAL CAPEX =	**$500,000,000**	
Overrun (Underrun) =	$125,000,000	
OPA Share	**$62,500,000**	
TCE Share	$62,500,000	
Adjusted CAPEX =	**$437,500,000**	Target CAPEX + OPA Share

Initial NRR	$12,887	11873	$1,014
Final NRR	**$14,094**		

	m =	1.93142E-05
	b =	5644.131697
ADJUSTED CAPEX	FINAL NRR	FITTED LINE
$348,750,000	$12,380	$12,380
$357,500,000	$12,549	$12,549
$366,250,000	$12,718	$12,718
$375,000,000	$12,887	$12,887
$387,500,000	$13,128	$13,128
$400,000,000	$13,370	$13,370
$412,500,000	$13,611	$13,611
$425,000,000	$13,853	$13,853
$437,500,000	$14,094	$14,094

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on an assumption that the capital cost to design and build the Replacement Project will be $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

   (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

   (ii) The adjusted capital cost ("Adjusted Capex") shall be equal to the OPA Share plus the Target Capex. For greater certainty, if the OPA Share is a negative number, the Adjusted Capex shall be less than the Target Capex.

   (iii) The adjusted NRR shall be equal to 5185.205289 plus 1.78219×10^{-5} multiplied by the Adjusted Capex.

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs" and "Oakville Sunk Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	Fixed Price
Main Turbine Original Costs (excluding change orders)	$156,274,358
Main Turbine Additional Scope (excluding change orders)	$39,198,860
[●]	

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 25, 2011 9:17 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Cc: 'Sebastiano, Rocco'
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: #20297127v6_LEGAL_1_ - Draft Response to A Pourbaix Letter with Project Proposal_SMS_Rev_1.doc

Group:

I made some comments on the document and few changes to Schedule A. It may appear as if I made significant changes to Schedule A; judging by track changes but I didn't. MSWord is awkward when you change section numbering it makes it look as if the entire section had been added.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 6:00 PM
To: Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

All,
Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

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: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute
Q2: 35.8 MW/minute
Q3: 33.0 MW/minute
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Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The ramp rate figures for the Facility (two units) will be as follows:

Q1: 37,800 MW
Q2: 35,800 MW
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These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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200 Bay Street
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authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

DRAFT: MARCH 25, 2011

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater

than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the sunk costs determined in accordance with paragraph 2, below, provided however that such total of the sunk costs shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be adjusted using ~~reduced by~~ a factor (the "NRR Adjusting Factor"). The NRR Adjusting Factor will be~~0.000 019 314 2~~ multiplied by the amount by which such costs are less than $37,000,000. {NTD: At this point, it is strategically in the OPA interest not to tip TCE's hand by disclosing a specific number to adjust NRR. I am concerned that TCE may find this figure acceptable and will be difficult for the OPA to back away from it. The OPA proposed-figure is 1.5 times more than what TCE has proposed for NRR adjustment. Yes it works in the OPA favour to adjust NRR sunk cost but not so for higher CAPEX. For upward CAPEX adjustment we would want the NRR Adjusting Factor to be as low as possible even lower than what TCE has proposed. To do that, we may have to take into account significant revenues from start-up as one way to lower NRR Adjusting Factor. Also, one other concern in giving TCE a specific number at this stage in the game is it could potentially allow TCE to figure out how OPA model works. We have to consider this very carefully.}

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract. {NTD – Food for thoughts: should we not say that we used $14+ Million as basis for NRR calculations and in so doing make the change to the $14+ be subject to NRR Adjusting Factor. Given that right now they seem to be using a relatively high number for a simple cycle duty. There is room for NRR reduction here. TCE wouldn't mind this approach as per email from Terry Bennett to JoAnne of March 18 in which Terry says referring to GD&M "This is another item that "will be what it will be" and we can figure out how to deal with it later".}

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria.

V. Operational Flexibilities

1. **Ramp Rate Requirement.** The Replacement Project must be such that the two ~~each~~ combustion turbines combined are~~is~~ capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test. {NTD: Reference to each CTG was correct in the earlier version of Schedule A since the ramp was expressed in %/min. Since we changed that to MW/min for the Facility, we are now by definition referring to two turbines.}

~~2.~~VI. Emissions Requirements~~.~~

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(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply.

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project may deploy Two (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,887** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000/start-up**
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 25, 2011 9:11 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

You are most welcome.

Have a great weekend,
Safouh

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 25, 2011 8:16 PM
To: Safouh Soufi
Cc: Deborah Langelaan
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Safouh,

Thank you very much for all your help over the past few days in helping us finalize the response back to TCE.

Michael

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

-----Original Message-----
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Sent: Fri 25-Mar-11 6:04 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Elliot.

Q1 = Season 1 and likewise for other Q's. Q1 = Dec - Feb.

The offset is in the figures and so we are good that way. I am available by email throughout the weekend. In case if you need to call me, please feel free to do so at anytime on my cell 416-788-0456.

Thanks,

Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 5:46 PM
To: Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh, this makes more sense. My last question is when you refer to Q1-Q4, are you referring to Season 1 - Season 4, or actual calendar quarters? As I'm sure you're aware, the Seasons in the CES contract are offset from calendar quarters.

Elliot

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Sent: March 25, 2011 11:04 AM

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T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca
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Cc: Geoff Murray; Terry Bennett; John Cashin
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Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

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Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: JoAnne Butler
Sent: March 25, 2011 10:19 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Ok...just had a quick read through...sounds like a great team effort...I will look at it more closely on Sunday but probably wait to talk to y'all on Monday....

JCB

----- Original Message -----
From: Michael Killeavy
Sent: Friday, March 25, 2011 09:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

3. The resulting NRR is $12,887/MW-month. NERA has independently developed a model that is somewhat different from ours and has confirmed the figure. This is encouraging: two different models and the variation in calculated NRR is ~$100/MW-month (<1%). We have done an "all equity" analysis with a cost of equity at 7.5%, which is at about the middle of the calculated costs of equity. We are ignoring the 5.25% that TCE purports is its unlevered cost of equity since it is far too low. NERA has confirmed that 7.5% is a reasonable cost of equity to use. If we used TCE's 5.25% the NRR would be $10,530/MW-month, keeping all other parameters the same. We used as many of TCE's other modelling parameters as we could.

4. The financial value of the OGS is set at $50 million. NERA has some good arguments for using a value in this neighbourhood, so we used this to solve for the NRR. We recognize that we may need to raise this, but I think we can push back on claims for a higher value. NERA thinks it might go as high as $200 million and still be defensible, but that puts the NRR up around $15,984/MW-month, holding all other parameters the same.

5. The alleged OGS Sunk Costs are included in the NRR.

6. We still haven't seen the LTSA so we estimated our own figures for O&M. Deb has worked out some reasonable figures for GD&M, too.

7. We have developed a framework for target costing the CAPEX and then adjusting the NRR (also attached). We thought that it was best to disclose this to TCE once we had gauged their reaction to the main proposal. Accordingly, it isn't part of the proposed response back, but can be given to TCE at the afternoon or Tuesday meeting if they are dismayed at the

low NRR. We thought that if they did grudging accept the counter-proposal, why bother offering up target costing the CAPEX? In any event, it is developed and ready to go if we need it. We also developed a formula for converting the final target cost adjusted CAPEX into NRR to avoid getting into a "battle of the financial models" with TCE afterward.

8. Although it isn't part of the letter, we thought that you might tell TCE when you call that we are prepared to give TCE the full residual value for K-W peaking plant, i.e., we will not build in a "clawback" mechanism in the substantive contract with TCE to re-capture any residual value for the plant - it's theirs to keep. Their reaction to this may help us counter their arguments for a high OGS residual value to boost up the OGS $50 million financial value. I think there is value in holding this back for the time being and using our judgment on when it's best to propose target costing the CAPEX and adjusting the NRR.

NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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

Aleksandar Kojic

From: Michael Killeavy
Sent: March 25, 2011 10:20 PM
To: JoAnne Butler
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Ok.

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

----- Original Message -----
From: JoAnne Butler
Sent: Friday, March 25, 2011 10:18 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Ok...just had a quick read through...sounds like a great team effort...I will look at it more closely on Sunday but probably wait to talk to y'all on Monday....

JCB

----- Original Message -----
From: Michael Killeavy
Sent: Friday, March 25, 2011 09:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

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

Attached is the proposed response back to TCE and the model used to calculate the NRR. The salient points are:

1. We have responded to each of TCE's purported value propositions as we discussed and agreed.

2. We spent a great deal of time reviewing the CAPEX and we believe that the CAPEX ought to be pegged at $375 million. We used the TCE CAPEX spend profile and just pro-rated it down from $540 million to $375 million.

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 26, 2011 2:49 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Micheal:

Would you be available to meet for one hour over the weekend before the offer is made to TCE. I can meet you ANY time that is convenient for you at our office or anywhere else.

Thanks,
Safouh

From: "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
Date: Fri, 25 Mar 2011 20:15:35 -0400
To: Safouh Soufi<safouh@smsenergy-engineering.com>
Cc: Deborah Langelaan<Deborah.Langelaan@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Safouh,

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From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Fri 25-Mar-11 6:04 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Elliot.

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To: Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
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Thanks Safouh, this makes more sense. My last question is when you refer to Q1-Q4, are you referring to Season 1 - Season 4, or actual calendar quarters? As I'm sure you're aware, the Seasons in the CES contract are offset from calendar quarters.

Elliot

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Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
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Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

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Thanks,

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Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Let me know if you have any questions.

Thanks,

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Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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T: 416.969.6052 | F: 416.967.1947| deborah.langelaan@powerauthority.on.ca
<blocked::mailto:|deborah.langelaan@powerauthority.on.ca> |

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station.#157;, Rev.5 dated "Feb 17, 2011.#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Michael Killeavy
Sent: March 26, 2011 5:44 PM
To: 'safouh@smsenergy-engineering.com'
Cc: Deborah Langelaan
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

What's up? We were planning to meet prior to the TCE meeting.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Saturday, March 26, 2011 02:48 PM
To: Michael Killeavy
Cc: Deborah Langelaan
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Micheal:

Would you be available to meet for one hour over the weekend before the offer is made to TCE. I can meet you ANY time that is convenient for you at our office or anywhere else.

Thanks,
Safouh

From: "Michael Killeavy" <Michael.Killeavy@powerauthority.on.ca>
Date: Fri, 25 Mar 2011 20:15:35 -0400
To: Safouh Soufi<safouh@smsenergy-engineering.com>
Cc: Deborah Langelaan<Deborah.Langelaan@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Le contenu du pr?nt courriel est privil??confidentiel et
soumis ?es droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

****

Aleksandar Kojic

From: Michael Killeavy
Sent: March 26, 2011 5:45 PM
To: Deborah Langelaan
Subject: Fw: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

This is strange? Any idea what this is about?

Michael Killeavy, LL.B., MBA, P.Eng.
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From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

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Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

****

Le contenu du pr?nt courriel est privil??confidentiel et
soumis ?es droits d'auteur. Il est interdit de l'utiliser ou
de le divulguer sans autorisation.

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 27, 2011 3:12 AM
To: Michael Killeavy
Cc: Deborah Langelaan; 'Safouh Soufi'
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Michael:

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Sent: March 26, 2011 4:44 PM
To: safouh@smsenergy-engineering.com
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Sent: March 27, 2011 6:56 AM
To: 'safouh@smsenergy-engineering.com'
Cc: Deborah Langelaan
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Yes. I actually have a new model that takes sunk costs into account differently. I will distribute this later today. I have to run to catch an airplane.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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Michael.killeavy@powerauthority.on.ca

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Sent: Sunday, March 27, 2011 03:11 AM
To: Michael Killeavy
Cc: Deborah Langelaan; 'Safouh Soufi' <safouh@smsenergy-engineering.com>
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To: safouh@smsenergy-engineering.com
Cc: Deborah Langelaan
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station.#157;, Rev.5 dated "Feb 17, 2011.#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

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****

Aleksandar Kojic

From: Michael Killeavy
Sent: March 27, 2011 2:59 PM
To: Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....
Attachments: OPA Counter-Proposal NRR Model 26 Mar 2011 COUNTER-PROPOSAL v5.xls
Importance: High

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

I reviewed how I had incorporated the OGS Sunk Costs into the NRR and I am proposing an alternative approach. I had incorporated them into the OGS NPV and then solved for NRR, which means TCE earns a return on these sunk costs. As an alternative, I am proposing that these sunk costs be amortized over the term of the agreement at TCE's after-tax cost of borrowing (average yield-to-maturity of its long-term debt) and then allocating the amortized amount over the MW of contract capacity on a monthly basis as a sunk cost adder to the NRR. In doing so, TCE only is compensated for the cost of borrowing to fund The adder is $406/MW-month and this results in a total NRR of $12,278/MW-month. The equation to convert Adjusted CAPEX into NRR is now:

NRR = 1.93200E-05 * Adjusted CAPEX + 5033.277778

I would be interested in comments from anyone on this approach. It changes the NRR by about $600 per MW-month (from $12,887/MW-month to $12,278/MW-month) , which is significant if the analysis is correct. I am proposing to use the after-tax cost of borrowing to amortize the sunk costs over the term because TCE can deduct the interest payments and gain a tax shield effect.

Thank you,
Michael

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

OGS Sunk Cost Analysis

OGS Sunk Costs	$37,000,000	
TCE Borrowing Cost	5.68%	Based on Average YTM of LT Debt
After-tax Cost of Borrowing	4.26%	
Contract Term	25	years
Amortization of OGS Sunk Costs	$2,433,974	/year
NRR Sunk Cost Adder	$406	allocation per MW-month

Aleksandar Kojic

From: JoAnne Butler
Sent: March 27, 2011 8:34 PM
To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

I have gone over this again and would like to review it with you before I talk to TCE. I know that we have a meeting booked for 9:30 AM but I will be at the Ministry. Could we re-schedule this until 10:00 AM and I will try to hurry back. After our meeting, I plan to call Terry Bennett at TCE with a heads up and then we can take it from there.

JCB

-----Original Message-----
From: Michael Killeavy
Sent: Fri 25/03/2011 9:15 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

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NERA won't be at the meeting with TCE as we want to preserve NERA's independence in the event we need to go to litigation and rely on Gene as an expert. Safouh will come in case there are questions about the technical specifications in Schedule A. I did the modelling, so I can answer the modelling questions. So we think we've got all the bases covered.

I am very pleased with how everyone came together this week to develop and finalize this response back to TCE.

I'll be monitoring my BlackBerry over the weekend if you should have any questions.

Michael

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Michael.killeavy@powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: March 27, 2011 8:40 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: Re: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Sure. I think we can shuffle our schedules.

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Aleksandar Kojic

From: Michael Killeavy
Sent: March 27, 2011 8:40 PM
To: Yvonne Cuellar; Manuela Moellenkamp
Subject: Fw: TCE Matter - Response to TCE Letter of 10 March 2011 to the OPA ....

Please see below.

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To: Michael Killeavy; Susan Kennedy
Cc: Deborah Langelaan
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Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 27, 2011 11:32 PM
To: Michael Killeavy; 'Smith, Elliot'; Susan Kennedy; 'Sebastiano, Rocco'
Cc: Deborah Langelaan; JoAnne Butler; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: RE: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....

Hello Michael:

Few comments for your consideration:

1. The model is using a 4-year schedule to build K-W with COD in July 2015. TCE is using 3.5-year schedule with COD in January 2015. I believe TCE schedule is conservative enough and if used in the model, the PV of CSP payment will go up by over $20M. That is a significant amount in OPA's favour, so to speak.
2. I believe the proforma schedule should start in July 2011 and 2011$ is used as basis. August 2009 starting point, used by TCE, is not appropriate in my opinion. Terry Bennett indicated in his last email to JoAnne that TCE is looking into the appropriateness of August 2009. Of course, for July 2011 to work we would escalate OGS NPV to 2011$. My understanding is that the OPA is incurring interest charges on OGS sunk costs and so they are inherently in 2011$. If the schedule is started in July 2011 and COD is made in January 2014 (achievable assuming no major objection to the project) the NPV of the Potential Project will be significantly improved. This is something we should keep in mind if TCE asks for COD in Jan 2015 but actually achieved it in Jan 2014. The OPA would have left lots of money at the table unless we have a provision in the contract to adjust NRR to (2014$). This should take away any economic interest TCE may have in stretching COD for the purpose of the contract with OPA.
3. The model escalates 100% of GD&M charges. Since GD&M forms part of NRR then only the NRRIF portion of such expense should be indexed. At 20% NRRIF, the PV of GD&M will go down by about $10M. This is another significant charge that works in OPA's favour.
4. Our model shows that when IDC is included in the modelling, as TCE will undoubtedly do in its model, it provides a tax relief such that the NPV of the Potential Project is boosted by about $10M at 6.50% interest rate.
5. I reviewed the adder and noticed that the cash flows are all based on $11,873 NRR. In other words are not reflective of the revised NRR ($12,278 w/t OGS sunk cost adder). If they were we would see the incremental NRR (12,278-11,873=$405) being subject to indexing at NRRIF. Unless I misunderstood something this suggests that the sunk costs would earn an additional premium over and above YTM (I have to think this little further in the morning).

Thanks,
Safouh

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Sent: March 27, 2011 1:59 PM
To: Smith, Elliot; Susan Kennedy; Sebastiano, Rocco
Cc: Deborah Langelaan; JoAnne Butler; safouh@smsenergy-engineering.com; gene.meehan@nera.com; andrew.pizzi@nera.com
Subject: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....
Importance: High

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Aleksandar Kojic

From: Michael Killeavy
Sent: March 28, 2011 4:36 AM
To: 'safouh@smsenergy-engineering.com'; 'ESmith@osler.com'; Susan Kennedy; 'RSebastiano@osler.com'
Cc: Deborah Langelaan; JoAnne Butler; 'gene.meehan@nera.com'; 'andrew.pizzi@nera.com'
Subject: Re: TCE Matter - OPA Counter-Proposal - Revision to Incorporation of OGS Sunk Costs into NRR .....

The sunk cost is just an adder to the NRR to cover the time-value cost. I didn't factor it into the NPV calculation - that's what I'd done originally.

I kept the CAPEX spend profile the same as TCE. There'll be less to argue about.

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From: Pizzi, Andrew [Andrew.Pizzi@NERA.com]
Sent: March 28, 2011 11:11 AM
To: Michael Killeavy
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Michael,

I ran these through the model and came out with approximately the same numbers. I'll take a look at your more recent changes now.

Andrew

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 1:47 PM
To: Smith, Elliot; Susan Kennedy
Cc: Meehan, Gene; Deborah Langelaan; Safouh Soufi; Pizzi, Andrew
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...
Importance: High

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

It was decided earlier today that cannot pay for the alleged OGS sunk costs separately. These costs need to be included into the NRR. I modelled this by adding the alleged OGS Sunk Costs ($37 M) to the OGS NPV Target ($50M) and then solved for NRR for the aggregate amount.

The NRR increases to $12,887/MW-month.

The intercept of the NRR adjustment equation (b) is , however, corrected to:

NRR = 1.93142E-05 * Adjusted CAPEX + 5644.131697

Basically, the new NRR-Adj. CAPEX line is shifted upwards to reflect the increase. Andrew, could you please run the change through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

Thanks,
Michael

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

Aleksandar Kojic

From: Michael Killeavy
Sent: March 28, 2011 11:20 AM
To: 'Andrew.Pizzi@NERA.com'
Subject: Re: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Thx

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

From: Pizzi, Andrew [mailto:Andrew.Pizzi@NERA.com]
Sent: Monday, March 28, 2011 11:10 AM
To: Michael Killeavy
Subject: RE: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...

Michael,

I ran these through the model and came out with approximately the same numbers. I'll take a look at your more recent changes now.

Andrew

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, March 25, 2011 1:47 PM
To: Smith, Elliot; Susan Kennedy
Cc: Meehan, Gene; Deborah Langelaan; Safouh Soufi; Pizzi, Andrew
Subject: TCE Matter - OPA Counter-Proposal - Revised Financial Proposal to Include OGS Sunk Costs in NRR ...
Importance: High

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

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The NRR increases to $12,887/MW-month.

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Basically, the new NRR-Adj. CAPEX line is shifted upwards to reflect the increase. Andrew, could you please run the change through your NERA model to confirm the NRR and please also check the m and b parameters for the fitted line.

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416-969-6288
416-520-9788 (CELL)
416-967-1947 (FAX)

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 28, 2011 1:46 PM
To: Safouh Soufi; Deborah Langelaan; Michael Killeavy
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: #20297127v7_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; blackline.pdf

Please find attached a revised draft of the response letter to A. Pourbaix, along with a blackline to Friday afternoon's draft.

Elliot

From: Smith, Elliot
Sent: Friday, March 25, 2011 6:00 PM
To: 'Safouh Soufi'; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

All,
Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

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: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute
Q2: 35.8 MW/minute
Q3: 33.0 MW/minute
Q4: 35.2 MW/minute

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The ramp rate figures for the Facility (two units) will be as follows:

Q1: 37,800 MW
Q2: 35,800 MW
Q3: 33,000 MW
Q4: 35,200 MW

These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

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.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the

OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to $37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by **[0.000 019 314 2]** multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount". **[NTD: To discuss possible interrelationship between Interconnection Costs and scope of contracted GD&M services.]**

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In

addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,887** / MW-month
Net Revenue Requirement Indexing Factor	**20** %
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

   (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

   (ii) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [●]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B". **[NTD: The adjustment value may need to correspond to the adjustment value being used for Oakville Sunk Costs.]**

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	US$144,900,000
Main Turbine Additional Scope (excluding change orders)	US$36,295,000
Hedge Costs	$[●]

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to $50,000,000 plus the total amount of the verified, non-recoverable sunk costs ~~determined in accordance with paragraph 2, below~~(net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total ~~of the sunk costs~~amount shall not exceed $37,000,000. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to $37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by **[0.000 019 314 2]** multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount". **[NTD: To discuss possible interrelationship between Interconnection Costs and scope of contracted GD&M services.]**

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In

addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

~~1. **Ramp Rate Requirement.**~~ The Replacement Project must be such that ~~each~~the two combustion ~~turbine is~~turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

~~2.~~ VI. Emissions Requirements.

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

~~3.~~ VII. Fuel Supply~~.~~

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

~~4.~~ VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,887** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within 3% higher or lower than the Target Capex, there shall be no adjustment in the NRR. If the Actual Capex is more than 3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis. For greater certainty, none of the other parameters set out in Schedule "B" is subject to adjustment.

   (i) The OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex) × 0.50, provided that the OPA Share shall not exceed $37,500,000

   (ii) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by [●]. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B". **[NTD: The adjustment value may need to correspond to the adjustment value being used for Oakville Sunk Costs.]**

(b) The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

(c) The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	US$144,900,000
Main Turbine Additional Scope (excluding change orders)	US$36,295,000
Hedge Costs	$[●]

(d) The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

(e) All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 28, 2011 4:41 PM
To: Smith, Elliot; Safouh Soufi; Deborah Langelaan; Michael Killeavy
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011
Attachments: #20297127v8_LEGAL_1_ - Draft Response to A. Pourbaix Letter with Project Proposal.doc; Blackline.pdf

All,
Please find attached a further revised draft of the letter, to reflect this afternoon's discussion.

Elliot

From: Smith, Elliot
Sent: Monday, March 28, 2011 1:46 PM
To: 'Safouh Soufi'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Please find attached a revised draft of the response letter to A. Pourbaix, along with a blackline to Friday afternoon's draft.

Elliot

From: Smith, Elliot
Sent: Friday, March 25, 2011 6:00 PM
To: 'Safouh Soufi'; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

All,
Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

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: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute
Q2: 35.8 MW/minute
Q3: 33.0 MW/minute
Q4: 35.2 MW/minute

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The ramp rate figures for the Facility (two units) will be as follows:

Q1: 37,800 MW
Q2: 35,800 MW
Q3: 33,000 MW
Q4: 35,200 MW

These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

TCE decreased the following costs:

1. Reduced Fuel gas connection charges to $0 (decrease of ~$62 MM)
2. Reduced Electrical connection charges by ~$34 MM
3. Reduced Insurance & Misc. by ~$1 MM
4. Reduced Project Uncertainties by ~$20 MM

Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the

Draft & Privileged

OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to (i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed $37,000,000 plus (ii) fifty percent of the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Replacement Project. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

2. **Oakville Sunk Costs.** The NRR set out in Schedule "B" to this letter includes an amount equal to $37,000,000 on account of TCE's sunk costs associated with the development of the Oakville Generating Station. To the extent that the total of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station is less than $37,000,000, the NRR shall be reduced by 0.000 012 681 3 multiplied by the amount by which such costs are less than $37,000,000.

3. **Interconnection Costs.** The Replacement Contract would provide that all out-of-pocket costs incurred by TCE for the electrical and natural gas interconnection of the Replacement Project would be reimbursed by the OPA. Such costs would be reimbursed on terms that are substantially the same as the terms set out in Section 1 of Exhibit S of the Accelerated Clean Energy Supply Contract between the OPA and Portland Energy Centre L.P. with the necessary conforming changes being made, provided that (i) there shall be no "Budgeted Costs" included in the NRR on account of such costs, (ii) references to the "Simple Cycle Operation Date" shall be replaced with references to the "Commercial Operation Date", and (iii) there shall be no "Excess H1 Amount".

4. **Gas Delivery and Management Services Costs.** Unlike the NYR Contract, the NRR for the Replacement Contract would take into account all gas delivery and management services costs, and TCE would be responsible for managing natural gas delivery and management services, consistent with the approach taken in the Contract.

5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that

the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

8. **Potential One Hour Runs.** Because of the absence of the "NINRR" term in Exhibit J to the NYR Contract, we do not believe that the potential for single hour imputed production intervals would be detrimental to TCE. We are not proposing any change to Exhibit J but would be willing to discuss any concerns TCE may have in this regard.

9. **Commercial Operation Date.** The NRR set out in Schedule "B" is based on the assumption that Commercial Operation occurs on July 1, 2015. If Commercial Operation were to occur before that date, the NRR would be adjusted downwards to account for the value of having the payments under the Replacement Contract start earlier than if Commercial Operation had occurred on July 1, 2015.

If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

(a) be able to provide a minimum of 250 MW at 35 °C under both N-1 System Conditions and N-1 Generating Facility Conditions simultaneously. For further clarity, the Replacement Project must be designed to supply either transmission circuit M20D or M21D at all times. Each unit must be able to supply either transmission circuit at all times;

(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. <u>Operational Flexibilities</u>

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. <u>Emissions Requirements.</u>

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,500** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within $25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

   (a) If the Actual Capex is more than $25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex – $25,000,000) × 0.50, provided that the OPA Share shall not exceed $25,000,000

   (b) If the Actual Capex is less than $25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex + $25,000,000) × 0.50

   (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 012 681 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	USD$**[144,900,000]**
Main Turbine Additional Scope (excluding change orders)	USD$**[36,295,000]**
Costs of Hedging USD to CAD	CAD$**[13,500,000]**

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

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Dear Mr. Pourbaix:

Southwest GTA Clean Energy Supply Contract (the "Contract") between TransCanada Energy Ltd. ("TCE") and the Ontario Power Authority ("OPA") dated October 9, 2009

We are writing to you in response to your letter to Colin Andersen, dated March 10, 2011. As stated in Colin's October 7, 2010 letter to you, we wish to work with you to identify projects and the extent to which such projects may compensate TCE for termination of the Contract while appropriately protecting the interests of ratepayers. We have reviewed the proposal contained in the draft implementation agreement and schedules TCE provided to us, and find that it does not meet this requirement. We would like to suggest an alternative proposal which we believe meets this requirement.

The Government of Ontario's Long-Term Energy Plan has identified a need for a peaking natural gas-fired plant in the Kitchener-Waterloo-Cambridge area. We believe such a plant is a project that could compensate TCE for the termination of the Contract and at the same time protect the interests of ratepayers (the "Replacement Project"). We have set out in Schedule "A" to this letter a technical description of the requirements of the Replacement Project.

We would propose to enter into a contract with TCE for TCE to construct, own, operate and maintain the Replacement Project as compensation for the termination of the Contract. The contract for the Replacement Project (the "Replacement Contract") would be based on the final form of contract (the "NYR Contract") included as part of the Northern York Region Peaking Generation Request for Proposals, subject to the changes set out below and otherwise as necessitated by Schedule "A". The financial parameters of the Replacement Contract would be as set out in Schedule "B" to this letter. In consideration of the uncertainties in the Replacement Project, we would include a mechanism in the Replacement Contract to adjust the NRR upon commercial operation on the basis set out in Schedule "C" to this letter.

The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

1. **Permits and Approvals.** With respect to the approvals required pursuant to the *Planning Act* to construct the Replacement Project, the OPA would work with TCE, the host municipality and the Province of Ontario to ensure that once all of the requirements for the *Planning Act* approvals have been satisfied, the approvals are issued in a timely manner, or if they are not issued in a timely manner, that so long as the Replacement Project has been approved under Part II or Part II.1 of the *Environmental Assessment Act* or is the subject of (i) an order under section 3.1 or a declaration under section 3.2 of that Act, or (ii) an exempting regulation made under that Act, such *Planning Act* approvals do not impede the development of the Replacement Project.

   If this did not occur and the delay in the issuance of such *Planning Act* approvals caused TCE not to achieve Commercial Operation by the Milestone Date for Commercial Operation, such delay would be considered an event of Force Majeure, and TCE would be entitled to recover its reasonable, out-of-pocket costs resulting from such delay, by way of a corresponding increase in the Net Revenue Requirement (NRR). In addition, the OPA would not have the right to terminate the Replacement Contract for such event of Force Majeure, unless the event of Force Majeure resulted in a delay that was greater than two years and the OPA paid TCE a termination amount equal to ~~$50,000,000 plus~~(i) the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Oakville Generating Station, provided however that such total amount shall not exceed $~~37,000,000.~~37,000,000 plus (ii) fifty percent of the total amount of the verified, non-recoverable sunk costs (net of any residual value) associated with the development of the Replacement Project. TCE would be solely responsible for all other permits and approvals required for the Replacement Project, subject to the standard Force Majeure provisions set out in the NYR Contract.

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5. **Net Revenue Requirement Indexing Factor (NRRIF).** As set out in Schedule "B", the NRRIF would be equal to 20%. In the course of finalizing the Replacement Contract, the OPA would be willing to consider accepting a higher NRRIF, so long as there was a corresponding reduction in the NRR.

6. **Term of Replacement Contract.** The term of the Replacement Contract would be 25 years. For greater certainty, this would be the definitive length of the term and not an option.

7. **Capacity Check Test.** The Capacity Check Test provisions of the Replacement Contract would be modified so that as long as the demonstrated capacity was not less than 90% of the applicable Seasonal Contract Capacity, the failure to achieve the required Seasonal Contract Capacity would not be an event of default. If the demonstrated capacity was greater than 90% but less than 100% of the applicable Seasonal Contract Capacity, a

Capacity Reduction Factor would apply in accordance with the provisions of Exhibit J. In addition, there would be a requirement as part of a Capacity Check Test to confirm that the Replacement Project is capable of achieving the Contract Ramp Rate set out in Schedule "B" to this letter.

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If this proposal is acceptable to you, we will prepare the necessary documentation for your review. For greater certainty, although this proposal is made in good faith, it remains subject to internal OPA approvals and does not constitute an offer capable of acceptance.

Yours very truly,

JoAnne Butler

c. Colin Andersen, *Ontario Power Authority*
Michael Killeavy, *Ontario Power Authority*
Rocco Sebastiano, *Osler, Hoskin & Harcourt LLP*

SCHEDULE "A" – TECHNICAL REQUIREMENTS

I. Replacement Project

The Replacement Project shall:

(a) be a dispatchable facility designed for maximum operational flexibility;

(b) be a simple cycle configuration generating facility;

(c) utilize natural gas supplied by pipeline as the fuel; and

(d) comply with Section 6 (Generation Connection Criteria), as specified in the 'Ontario Resources and Transmission Assessment Criteria' document published by the IESO.

II. Contract Capacity

The Replacement Project will be a single generating facility and will:

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(b) be able to provide a minimum of 500 MW at 35 °C under N-2 System Conditions;

(c) have a Season 3 Contract Capacity of not less than 480 MW; and

(d) have a Contract Capacity of not more than 550 MW in any Season.

III. Electrical Connection

The Replacement Project will be connected directly to the IESO-Controlled Grid via new double circuit 230 kV transmission lines. Notwithstanding the foregoing, the Replacement Project may also connect to a Local Distribution System for the purpose of providing Islanding Capability.

The Replacement Project will have a connection point located with a direct connection to the Hydro One circuits M20D and M21D between the [●]th transmission tower (Tower #●) leaving the Preston TS connecting to the Galt TS. **[Note: This assumes the Replacement Project is located at the Boxwood site.]**

IV. Operation Following a N-2 Contingency (Load Restoration)

If a disruption occurs that leads to N-2 system conditions, TCE shall be required to use Commercially Reasonable Efforts (as such term is defined in the Contract) to assist the IESO, as directed by the IESO, in restoring load in accordance with Section 7 of the Ontario Resource and Transmission Assessment Criteria. This obligation would replace the provision for Islanding Capability set out in Section 1.11 of the NYR Contract.

V. Operational Flexibilities

The Replacement Project must be such that the two combustion turbines combined are capable of ramping at a rate equal to or greater than the Contract Ramp Rate. The Contract Ramp Rate will be subject to verification as part of the Capacity Check Test.

VI. Emissions Requirements.

(a) The emissions from the Replacement Project shall meet or exceed the following criteria:

(i) Nitrogen Oxides (NOx) in a concentration not exceeding 15 ppmv (based upon Reference Conditions (as such term is defined in the Contract) and 15% O_2 in the exhaust gases on a dry volume basis) as measured using an emissions measurement methodology substantially based on Exhibit W to the Contract (the "Emissions Measurement Methodology"); and

(ii) Carbon Monoxide (CO) in a concentration not exceeding 10 ppmv (based upon Reference Conditions and 15% O_2 in the exhaust gases on a dry volume basis) as measured using the Emissions Measurement Methodology.

(b) TCE will provide evidence to support the stated emission levels of NOx and CO in the form of a signed certificate by an authorized representative of any of: (1) the original equipment manufacturer of the Replacement Project's turbines, (2) the supplier or manufacturer of any post combustion emission control equipment utilized by the Replacement Project, or (3) the engineering company responsible for the design of the Replacement Project, which certificate must state that the Replacement Project, as designed, will operate within these stated limits for NOx and CO.

(c) The Replacement Contract will require that the emission limits for NOx and CO be (i) incorporated into the Replacement Project's Environmental Review Report or its completed environmental assessment, and (ii) reflected in the Replacement Project's application to the Ministry of the Environment for a Certificate of Approval (Air) Operating Permit, together with a specific request in such application that such limits be imposed as conditions of such Certificate of Approval.

(d) The emission limits for NOx and CO stated in the Replacement Contract will form the basis of an ongoing operating requirement. For greater certainty, the OPA is not requiring TCE to adopt any specific facility design or utilize any particular control equipment with respect to air emissions, provided, however, the Replacement Project must comply with the NOx and CO limits set out above, including, without limitation, at the time of attaining Commercial Operation and during any Capacity Check Test.

VII. Fuel Supply

The Replacement Project will obtain gas distribution services from Union Gas Limited, and TCE cannot by-pass Union Gas Limited.

VIII. Project Major Equipment.

The Replacement Project will be designed utilizing (2) M501GAC Fast Start gas-fired combustion turbine generators to be supplied by MPS Canada, Inc. (the "Generators"), with evaporative cooling and emission reduction equipment. Each Generator shall be nominally rated at [●] MW (measured at the Generator's output terminals) new and clean, at ISO conditions.

SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	$ ~~12,887~~12,500 / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	**[●]** MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within ~~3%~~$25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. *~~If the Actual Capex is more than *3% higher or lower than the Target Capex, the NRR shall be adjusted on the following basis.~~ For greater certainty, none of the ~~other~~ parameters ~~set out~~ in Schedule ~~"B" is~~B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

(a) ~~(i) The~~*If the Actual Capex is more than *$25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

*~~**OPA Share** = (Actual Capex – Target Capex**) × 0.50, provided that the OPA Share shall not exceed $*37,500,000~~

***OPA Share** = (Actual Capex – Target Capex* – $25,000,000*) × 0.50, provided that the OPA Share shall not exceed $*25,000,000

(b) If the Actual Capex is less than $25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

OPA Share = (Actual Capex – Target Capex + $25,000,000) × 0.50

(c) ~~(ii)~~ The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by ~~[●]~~ 0.000 012 681 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B". ~~**[NTD: The adjustment value may need to correspond to the adjustment value being used for Oakville Sunk Costs.]**~~

2. ~~(b)~~ The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. ~~(c)~~ The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	~~US~~USD$[144,900,000]
Main Turbine Additional Scope (excluding change orders)	~~US~~USD$[36,295,00

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	~~US~~USD$[144,900,000]
	0]
~~Hedge~~ Costs of Hedging USD to CAD	CAD$[~~●~~13,500,000]

4. ~~(d)~~ The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. ~~(e)~~ All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From:	Deborah Langelaan
Sent:	March 28, 2011 5:06 PM
To:	'John Mikkelsen'
Cc:	JoAnne Butler; Michael Killeavy; Susan Kennedy; 'Rocco Sebastiano (rsebastiano@osler.com)'; 'Elliot Smith (esmith@osler.com)'
Subject:	OPA Draft Response to A. Pourbaix Letter dated March 10, 2011
Attachments:	#20297127v8_LEGAL_1_- Draft Response to A. Pourbaix Letter with Project Proposal.doc
Importance:	High

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John;

Please find enclosed the OPA's draft response to Alex Pourbaix's letter to Colin Andersen dated March 10, 2011. We look forward to discussing it with you during tomorrow's meeting.

Kind Regards,
Deb

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

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The following sets out the changes to the NYR Contract that would be applicable to the Replacement Contract:

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SCHEDULE "B" – FINANCIAL PARAMETERS

Net Revenue Requirement	**$ 12,500** / MW-month
Net Revenue Requirement Indexing Factor	**20 %**
Annual Average Contract Capacity	**500** MW
Nameplate Capacity	[●] MW
Start-Up Gas for the Contract Facility	**700** MMBTU/start-up
Start-Up Maintenance Cost	**$30,000**/start-up
O&M Costs	**$0.89** / MWh
OR Cost	**$0.50** / MWh

	Season 1	**Season 2**	**Season 3**	**Season 4**
Contract Heat Rate	10.42 MMBTU/MWh (HHV)	10.55 MMBTU/MWh (HHV)	10.66 MMBTU/MWh (HHV)	10.58 MMBTU/MWh (HHV)
Contract Capacity Note: Subject to Schedule "A", TCE to determine Seasonal Contract Capacities so long as the AACC is 500 MW.	**[●] MW**	**[●] MW**	**[●] MW**	**[●] MW**
10nORCC	0 MW	0 MW	0 MW	0 MW
Contract Ramp Rate	37.8 MW/minute	35.8 MW/minute	33.0 MW/minute	35.2 MW/minute

SCHEDULE "C" – ADJUSTMENT METHODOLOGY

1. The Net Revenue Requirement set out in Schedule "B" is based on a target capital cost for the design and construction of the Replacement Project of $375,000,000 (the "Target Capex"). So long as the actual cost to design and build the Replacement Project (the "Actual Capex") is within $25,000,000 higher or lower than the Target Capex, there shall be no adjustment in the NRR. For greater certainty, none of the parameters in Schedule B" other than the NRR shall be subject to adjustment pursuant to this Schedule "C".

   (a) If the Actual Capex is more than $25,000,000 greater than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex – $25,000,000) × 0.50, provided that the OPA Share shall not exceed $25,000,000

   (b) If the Actual Capex is less than $25,000,000 less than the Target Capex, the OPA's share of any difference between the Target Capex and the Actual Capex shall be determined as follows:

   OPA Share = (Actual Capex – Target Capex + $25,000,000) × 0.50

   (c) The adjusted NRR shall be equal to the NRR set out in Schedule "B", plus the OPA Share multiplied by 0.000 012 681 3. For greater certainty, if the OPA Share is a negative number, the adjusted NRR shall be less than the NRR set out in Schedule "B".

2. The determination of the Actual Capex shall not include: (i) any costs being reimbursed by the OPA, including, without limitation, "Interconnection Costs", as set out above, (ii) any costs incurred by TCE that were not reasonably required to be incurred in order for TCE to fulfill its obligations under the Replacement Contract or that were not incurred in accordance with "Good Engineering and Operating Practices" (as such term is defined in the Contract), or (iii) any costs not substantiated to the reasonable satisfaction of the OPA.

3. The following costs shall be considered fixed components of the Target Capex not subject to change in determining the Actual Capex:

Cost	**Fixed Price**
Main Turbine Original Costs (excluding change orders)	USD$**[144,900,000]**
Main Turbine Additional Scope (excluding change orders)	USD$**[36,295,000]**
Costs of Hedging USD to CAD	CAD$**[13,500,000]**

4. The determination of the Actual Capex shall be done through an "open book" process, such that all costs incurred by TCE in designing and building the Replacement Project shall be transparent to the OPA and fully auditable. Any dispute relating to the

determination of the Actual Capex shall be resolved in accordance with the dispute resolution provisions of the Replacement Contract.

5. All dollar amounts referenced in this letter are in Canadian dollars, unless otherwise specified.

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 28, 2011 5:56 PM
To: 'Smith, Elliot'; Deborah Langelaan; Michael Killeavy
Cc: 'Sebastiano, Rocco'
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To: Deborah Langelaan
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Director, Eastern Canada, Power Development

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disclosed, copied, forwarded or distributed without authorization. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

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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: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
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From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
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Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

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Royal Bank Plaza
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Further to today's discussion, please find attached a revised draft letter to TCE along with a blackline. Please note that this draft presumes that the quarterly ramp rates set out below correspond to the Seasons used in the CES contract. If this is not the case, further revision may be required.

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: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 5:19 PM
To: Smith, Elliot; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Hello Elliot:

The figures are per minute and the comma should be replaced with period ".". Sorry about that.

Here are the figures as they should appear in the Contract

Q1: 37.8 MW/minute
Q2: 35.8 MW/minute
Q3: 33.0 MW/minute
Q4: 35.2 MW/minute

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 25, 2011 3:30 PM
To: 'safouh@smsenergy-engineering.com'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Thanks Safouh. Can you clarify the units of measurement for me?

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Friday, March 25, 2011 03:18 PM
To: 'Deborah Langelaan' <Deborah.Langelaan@powerauthority.on.ca>; Smith, Elliot; 'Michael Killeavy' <Michael.Killeavy@powerauthority.on.ca>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

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These rates do not required adjustment for ambient conditions and are subject to negotiation with TCE, of course. TCE may see one of these rates in particular as being little aggressive but that is OK for now.

Let me know if you have any questions.

Thanks,
Safouh

From: Deborah Langelaan [mailto:Deborah.Langelaan@powerauthority.on.ca]
Sent: March 25, 2011 11:04 AM
To: esmith@osler.com; rsebastiano@osler.com; Michael Killeavy; Safouh Soufi; gene.meehan@nera.com
Cc: Susan Kennedy
Subject: FW: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Privileged and Confidential

Please find attached TCE's revised capital cost estimate for a peaking plant in Cambridge. Although TCE has reduced its CAPEX by ~$118 MM we're still miles apart with our estimates.

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3. Reduced Insurance & Misc. by ~$1 MM
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Deb

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

From: John Mikkelsen [mailto:john_mikkelsen@transcanada.com]
Sent: March 24, 2011 5:00 PM
To: Deborah Langelaan
Cc: Geoff Murray; Terry Bennett; John Cashin
Subject: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Dear Deborah,

Further to the receipt of your designation letter of March 21, 2011 received today, please find attached capital cost estimate TransCanada Capital Cost Estimate titled "Capital Cost Estimate Boxwood Generation Station...#157;, Rev.5 dated "Feb 17, 2011...#157;.

Best Regards,

John Mikkelsen, P.Eng.

Director, Eastern Canada, Power Development

TransCanada

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

Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 28, 2011 7:19 PM
To: Michael Killeavy
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

No problem!

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 28, 2011 7:16 PM
To: safouh@smsenergy-engineering.com
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

We should talk about GD&M costs tomorrow. I'm a bit confused.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Monday, March 28, 2011 06:12 PM
To: 'Smith, Elliot' <ESmith@osler.com>; Michael Killeavy; Deborah Langelaan
Cc: 'Sebastiano, Rocco' <RSebastiano@osler.com>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Must say I am impressed. Can you please circulate the final version.

Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 28, 2011 6:06 PM
To: Michael Killeavy; safouh@smsenergy-engineering.com; Deborah Langelaan
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Don't worry – we caught that one too! In the latest draft (i.e. the one sent to TCE) the costs in Schedule "C" have been square bracketed to signal to them that they remain subject to validation.

Elliot

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, March 28, 2011 6:02 PM
To: safouh@smsenergy-engineering.com; Smith, Elliot; Deborah Langelaan
Cc: Sebastiano, Rocco
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

No worries. Thanks for coming in for the meeting.

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

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Monday, March 28, 2011 05:59 PM
To: Michael Killeavy; ESmith@osler.com <ESmith@osler.com>; Deborah Langelaan
Cc: RSebastiano@osler.com <RSebastiano@osler.com>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Like I said, Elliott is very quick. I just got to my office after our meeting.

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: March 28, 2011 5:58 PM
To: safouh@smsenergy-engineering.com; ESmith@osler.com; Deborah Langelaan
Cc: RSebastiano@osler.com
Subject: Re: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

It's already gone. Too late.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
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120 Adelaide St. West, Suite 1600
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Sent: Monday, March 28, 2011 05:56 PM

To: 'Smith, Elliot' <ESmith@osler.com>; Deborah Langelaan; Michael Killeavy
Cc: 'Sebastiano, Rocco' <RSebastiano@osler.com>
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Elliott:

You are very quick, have just one comment:

1. Schedule C, Section 3: I think we should state that the Fixed Costs listed in the table are still subject to validation by OPA. For example; TCE has not submitted any info on FE hedge and what if they don't have it then the Fixed Cost principle allows it to stay in irrespective of whether or not such cost is valid.

If I understood Schedule C correctly then OPA maximum NRR will be $12,500+$317.07=$12,817.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 28, 2011 4:41 PM
To: Smith, Elliot; Safouh Soufi; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

All,
Please find attached a further revised draft of the letter, to reflect this afternoon's discussion.

Elliot

From: Smith, Elliot
Sent: Monday, March 28, 2011 1:46 PM
To: 'Safouh Soufi'; 'Deborah.Langelaan@powerauthority.on.ca'; 'Michael.Killeavy@powerauthority.on.ca'
Cc: Sebastiano, Rocco
Subject: RE: TransCanada Potential Project Negotiations - Capital Cost Estimate Rev 5 February 17, 2011

Please find attached a revised draft of the response letter to A. Pourbaix, along with a blackline to Friday afternoon's draft.

Elliot

From: Smith, Elliot
Sent: Friday, March 25, 2011 6:00 PM
To: 'Safouh Soufi'; Deborah.Langelaan@powerauthority.on.ca; Michael.Killeavy@powerauthority.on.ca
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Tel: 416.869.2102

Fax:416.869.2056

Cell:416.559.1664

Aleksandar Kojic

From: Michael Killeavy
Sent: March 28, 2011 7:52 PM
To: 'safouh@smsenergy-engineering.com'
Subject: Fw: Meeting Tomorrow

Here are TCE's questions.

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
Toronto, Ontario, M5H 1T1
416-969-6288 (office)
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From: Geoff Murray [mailto:geoff_murray@transcanada.com]
Sent: Monday, March 28, 2011 06:23 PM
To: JoAnne Butler; Deborah Langelaan; Michael Killeavy
Cc: Brandon Anderson <brandon_anderson@transcanada.com>; Terry Bennett <terry_bennett@transcanada.com>; John Mikkelsen <john_mikkelsen@transcanada.com>
Subject: Meeting Tomorrow

JoAnne:

We are in receipt of the OPA's proposal and haven't fully digested it; however as per your communication with Terry and in an effort to ensure we understand the OPA's counter-offer here is a list of the things we would like to understand coming out of tomorrow's meeting:

- The proposed mechanism for recovery of the OGS Sunk Costs and OBL Costs
- The proposed mechanism for true-up of actual vs estimated Capital Costs
- The OPA's capital cost estimate in the same format as the previously provided TransCanada capital cost estimates
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- The OPA's estimate of Contract Capacity by season
- The OPA's estimated GD&M costs, the associated services and volumes

On several fronts this will probably consist of walking us through your proposal. We look forward to meeting with you and your team tomorrow.

Geoff

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.

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 28, 2011 7:57 PM
To: JoAnne Butler; Deborah Langelaan; Michael Killeavy
Cc: Sebastiano, Rocco
Subject: RE: Meeting Tomorrow

Good evening all:
If these are all of their questions, this may be a short meeting tomorrow. I have inset below what I understand our position to be on their various inquiries.

Elliot

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Cc: 'RSebastiano@osler.com'
Subject: Re: Meeting Tomorrow

This is very helpful. Thank you for preparing this for us - you saved me some work tonight!

Michael Killeavy, LL.B., MBA, P.Eng.
Director, Contract Management
Ontario Power Authority
120 Adelaide St. West, Suite 1600
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From: Michael Killeavy
Sent: March 29, 2011 9:50 AM
To: 'safouh@smsenergy-engineering.com'
Subject: FW: Meeting Tomorrow

FYI

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

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 29, 2011 9:35 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: NRR Comparison - Confidential
Attachments: NRR-Comparison-OPA-Presentation-OPA_Mar_29.xls

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

Susan and Elliot:

Earlier today Micheal Killeavy has asked me to send the attached file to the OPA through you. If you have any questions please feel free to contact me at any time.

JoAnne: the attached is more up-to-date than the one you have and have moved 20-year charts next to each other for easier comparison.

Thanks,
Safouh

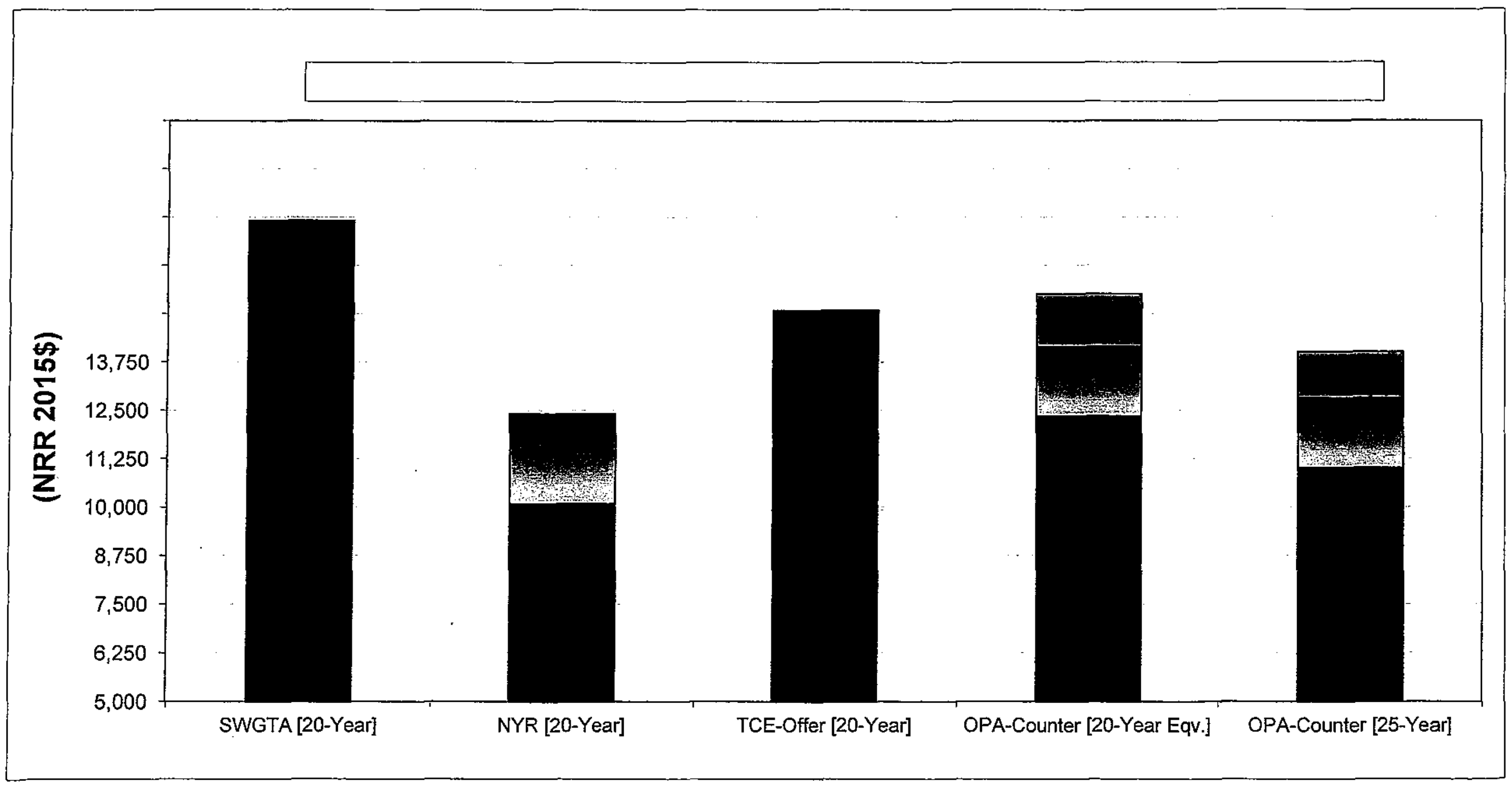
Confirm with OPA that NYR GD&M total is $2,327

		SWGTA [20-Year]	NYR [20-Year]	TCE-Offer [20-Year]	OPA-Counter [20-Year Eqv.]	OPA-Counter [25-Year]
1. Plant NRR	(2015$)	17,417	10,090	15,096	11,988	10,696
2. Fixed GD&M-Portion	(2015$)	0	2,327	1,804	1,804	1,804
3. CAPEX-Adder	(2015$)	0	0	377	363	317
4. Connection-Adder	(2015$)	0	0	1,190	1,358	1,190

Under the deck (Time Value of Money TVM)

COD Year		2013	2012	2015	2015	2015
NRR	(COD$)	17,277	9,998	-	-	-
Index		20%	15%	-	-	-
NRR Index Adjustment	(2015$)	140	92	-	-	-
GD&M	(COD$)	-	812			
GD&M Index Adjustment	(2015$)	-	7	-	-	-

	2012	2013	2014	2015	Adj.
SWGTA	-	17,277	17,346	17,417	140
NYR	9,998	10,028	10,059	10,090	92
	812	814	817	819	7



Notes:
1. Index adjustment is as per OPA contract
2. Assumed Connection Adder of 80M for offers/counter offers
3. Assumed Fixed GD&M of $10.82M, flow-thru charge, for offers/counter offers
4. Corrected NRR and Connection-Adder from 25-Year to 20-Year equivalent

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: March 30, 2011 1:08 PM
To: Safouh Soufi; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: RE: NRR Comparison - Confidential

Safouh,
Does the "TCE Offer – 20 Year" column take into account the NRRIF being at 50% instead of 20%? In terms of "normalizing" NRRs so they are on the same basis, it would probably make sense to add this back in. This must be worth something in the order of $1200/MW-month.

Elliot

From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: Tuesday, March 29, 2011 9:35 PM
To: Smith, Elliot; 'Susan Kennedy'
Cc: 'Michael Killeavy'; 'Deborah Langelaan'; 'JoAnne Butler'
Subject: NRR Comparison - Confidential

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

Susan and Elliot:

Earlier today Micheal Killeavy has asked me to send the attached file to the OPA through you. If you have any questions please feel free to contact me at any time.

JoAnne: the attached is more up-to-date than the one you have and have moved 20-year charts next to each other for easier comparison.

Thanks,
Safouh

Aleksandar Kojic

From: Safouh Soufi [safouh@smsenergy-engineering.com]
Sent: March 30, 2011 1:36 PM
To: 'Smith, Elliot'; Susan Kennedy
Cc: Michael Killeavy; Deborah Langelaan; JoAnne Butler
Subject: RE: NRR Comparison - Confidential

Elliot:

The chart is based on 2015 NRR which is (assumed by OPA & TCE to be) the first year of operation for Cambridge. Therefore, NRRIF doesn't come into play.

However, if we were comparing NPV's or anticipated out-of-market costs for the projects in question then NRRIF will weight in and I expect it to have a significant impact on the results. Of course, the results, WILL NOT be expressed in NRR terms but in $/MW. Also, it is important to keep in mind that SWGTA can no longer be used in that comparison due to the fact that it has a lower heat rate and higher capacity factor. But we will put it in the chart with a qualifier.

I have asked Orlando Lameda to do what we call the "Ratepayer View" of the projects which is the out-of-market cost based on OPA evaluation model. We will add the results as a separate graph to the spreadsheet I circulated yesterday. I would expect SWGTA and NYR to come below $1Million/MW. The others will be much higher.

Thanks,
Safouh

From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: March 30, 2011 1:08 PM
To: Safouh Soufi; 'Susan Kennedy'
Cc: 'Michael Killeavy'; 'Deborah Langelaan'; 'JoAnne Butler'
Subject: RE: NRR Comparison - Confidential

Safouh,
Does the "TCE Offer – 20 Year" column take into account the NRRIF being at 50% instead of 20%? In terms of "normalizing" NRRs so they are on the same basis, it would probably make sense to add this back in. This must be worth something in the order of $1200/MW-month.

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JoAnne: the attached is more up-to-date than the one you have and have moved 20-year charts next to each other for easier comparison.

Thanks,

Safouh

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 31, 2011 12:09 PM
To: Michael Killeavy
Subject: FW: TCE audit
Attachments: TOR - Special Audit TCE - Final draft.doc

Michael;

Do you have any comments?

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: Bonny Wong
Sent: March 31, 2011 11:55 AM
To: Deborah Langelaan
Subject: TCE audit

Hi Deborah,

I attach the final draft of TOR for your review. The Ministry of Finance have already updated our comments provided, including the timing of completion date in section E. I have rephrased some languages in terms of the delay receipts of information from TCE.

Please let me know if I can finalize the TOR today.

In the meantime, I would appreciate if you could follow up with TCE.

Thanks and regards,

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

Ontario

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HIGH SENSITIVITY

Ontario Power Authority

Terms of Reference

Special Audit of Sunk Costs Payable to TransCanada Energy Ltd.

March, 2011

Ontario Internal Audit Division

Ministry of Finance

Serving:
Ontario Power Authority

<XXX – YY/

Privileged and Confidential
Prepared in Contemplation of Litigation

Table of Contents

[A] Background:

In October 2009, the OPA signed a contract with TransCanada Energy Ltd. (TCE) to design, build and operate a 900 megawatt gas-fired generating station in Oakville over a 20-year term.

The contract was cancelled at the direction of the Ministry of Energy of Ontario during October 2010 and the OPA has agreed to reimburse TCE for its sunk costs associated with the development of the Oakville Generating Station.

As of February 28, 2011, TCE has provided the OPA with 2 binders that include supporting documentation for the development and implementation costs incurred as part of the project. The total amount being claimed by TCE as sunk costs is approximately $37M as of February 28, 2011. These costs include interest costs, which will continue to accrue overtime.

These amounts have not been audited to date and have not been validated as true "sunk costs" by the OPA. A verification audit has been requested to be completed by the Finance Revenue Audit Service Team (FRAST) of the Ministry of Finance.

[B] Engagement Objectives, Criteria and Scope

Engagement Objective

The audit objectives are to provide OPA management with assurance that:

- The costs submitted by TCE to be paid by the OPA meet the definition of "sunk costs" (as established for the terms of this review) and are eligible for recovery by TCE.
- The amounts claimed by TCE were incurred in relation to the contracted Oakville Generating Station.
- The eligible sunk costs submitted for recovery by TCE include adequate supporting documentation to verify the accuracy and existence of amounts claimed.

<u>Definition of "sunk cost"</u>: A cost that is incurred but not recoverable (in whole or in part). Not Recoverable, for the purpose of this review, refers to the inability of TCE to recover any or all of the costs incurred in any present or future undertaking.

Criteria
The submitted costs:
1. Meet the definition of "sunk cost";
2. Were incurred in relation to the planned Oakville Generating Station;
3. Were reasonable in amount; and
4. Were paid by TCE.

Scope
The scope of this review includes:
- Review of the binders and supporting documentation supplied by TCE for recovery of sunk costs.
- Review of any applicable documentation (e.g. negotiation terms, correspondence, agreements, evidence of payment, etc.) surrounding the terms of the costs being claimed by TCE for background.
- Scope of sample testing (including sample size) to be discussed and confirmed with management prior to sample testing.
- **Limitations of a review based on documentation alone:**
  We are reliant on the integrity and accuracy of the information provided. It is assumed that documented costs were actually incurred and related documentation is accurate. For example, in reviewing the labour costs, we assume:
  - That the listed employees actual exist;
  - That those employees have the stated job titles;
  - That those employees worked on the project for stated number of hours and for the implied rate; and
  - That TCE paid the stated amount for the work.
- **Limitations in the data**
  The data provided may in turn limit some planned audit procedures. For example, TCE's employment charge rates are based on the midpoint salary for the position, rather than the specific compensation of the individual assigned to the project. This is done to preserve the confidentiality of individual salaries. Consequently, the amount quoted as a cost incurred is not necessarily the amount that was actually paid and cannot be traced to the actual payment amount.

Interest during construction is out of scope of this review.

[C] Engagement Approach, Methodology & Engagement Reporting

Our engagement approach will include the following:

- Obtain summary and detailed spreadsheets (in suitable Excel format) from TCE via the OPA contact. These spreadsheets will include updated costs as at approximately end of March 2011. Subsequent changes by TCE to these spreadsheets will be tracked and reconciled by OPA.
- Aggregate the spreadsheet data into categories (such as labour costs, invoices, employee expenses).
- For each category, select a sample for review and request the corresponding documents (i.e., invoices, receipts, evidence of payment) from TCE via the OPA contact. Risk and sensitivity will be considered in selecting the samples. For example, while employee expenses constitute a very small portion of the total amount that TCE is claiming, these expenses are of a very sensitive nature and the sampling will be adjusted accordingly.
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- Review the sample data and note any findings for discussion with and follow-up by OPA Management.

[D] Key Stakeholders & Client Contacts

- Michael Killeavy, Director, Contract Management, Electricity Resources
- Deborah Langelaan, Manager, Natural Gas Projects, Electricity Resources
- Bonny Wong, Manager, Accounting

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In the interest of expediency, all of the category sample documentation requests will be conveyed before undertaking the review of the received sample documentation for a given category. As well, FRAST will review a category sample after all of the requested sample documentation has been received for the particular category. Category sample review may trigger further requests for information/data.

At present fieldwork for the audit is expected to commence the first week of April, provided the required information is received from TCE. The field work time will depend on how quickly TCE and the OPA staff respond to our issues raised and our documentation requests. Information requests could include receipt of original documentation, where needed. For examples, a request of ~~delays to date, in receipt of~~ soft copies of the information pertaining to the two hardcopy binders ~~was requested~~ on March 21, 2011 ~~and~~ has still not been received from TCE in full. Provided this delay is not typical, as a best case scenario the fieldwork may be completed by the end of April.

Throughout the audit, FRAST will communicate with OPA staff and management to provide updates on a regular basis. Upon conclusion of the engagement, FRAST will prepare a draft report outlining our findings for discussion with OPA management at an exit meeting. A final report will be issued one week after receiving comments from OPA management. Specific items that the report will include:

1. Audit Objectives
2. Audit Approach
3. Audit results based on the audit's Objectives and Approach.

The draft and final reports will be issued to Susan Kennedy, Director Corporate/Commercial Law Group.

[F] Engagement Team

- Richard King – Senior Audit Manager
- Ted Speevak – Consultant

Aleksandar Kojic

From: Deborah Langelaan
Sent: March 31, 2011 1:41 PM
To: Bonny Wong
Cc: Michael Killeavy
Subject: RE: TCE audit

Bonny;

Michael and I have no further comments.

With respect to the OPA's information requests, TCE has advised me that they are working on the balance of the requests but their main priority right now is working on a response to a proposal the OPA provided to them on Monday. Based on this I think it is overly optimistic to have Ted start working on the Audit next Monday. I will keep you posted.

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: Bonny Wong
Sent: March 31, 2011 11:55 AM
To: Deborah Langelaan
Subject: TCE audit

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Please let me know if I can finalize the TOR today.

In the meantime, I would appreciate if you could follow up with TCE.

Thanks and regards,

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

Aleksandar Kojic

From:	Bonny Wong
Sent:	March 31, 2011 5:11 PM
To:	Michael Killeavy; Deborah Langelaan; Susan Kennedy
Cc:	Terry Gabriele
Subject:	Fw: Final TOR
Attachments:	FINAL Terms of Reference_2011_OPA Special Audit of Sunk Costs Payable to TransCanada Energy Ltd Mar 31.doc

Hi Michael, Deborah, Susan,

I attach the terms of reference for the special audit of sunk costs payable to TCE for your information. Please let me know if you have any questions on this subject matter.

Regards,
Bonny Wong

From: King, Richard (FIN) [mailto:Richard.King@ontario.ca]
Sent: Thursday, March 31, 2011 04:46 PM
To: Bonny Wong
Cc: Speevak, Ted (FIN) <Ted.Speevak@ontario.ca>
Subject: Final TOR

Bonny Attached is the final TOR for the Special Audit of Sunk Costs Payable to TransCanada Energy Ltd. Could you please circulate to all the required individuals.

Let me know if you need me to send a hardcopy.

Thanks
Richard
Richard King, CGA
Manager, Risk & Assurance Services (A)
Finance & Revenue Audit Service Team
Ontario Internal Audit Division
Ministry of Finance
Tel: 416-325-8488
Fax: 416-325-5096
richard.king@ontario.ca

Ontario

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- Ted Speevak – Consultant

Draft for Discussion Only

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Prepared in Contemplation of Litigation

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 1, 2011 4:07 PM
To: Michael Killeavy; Sebastiano, Rocco
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

Michael,
I got your voice message but I'm now in another meeting. I'll take a look at the proposed email below and get back to you with comments later this afternoon.

Elliot

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Friday, April 01, 2011 03:49 PM
To: Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Sebastiano, Rocco; Smith, Elliot
Cc: Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>; JoAnne Butler <joanne.butler@powerauthority.on.ca>
Subject: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

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

Colin and Alex Pourbaix spoke on the telephone this morning. Colin has asked me to prepare a follow-up email addressing several points that Alex raised during the telephone call. My proposed email is below:

CONFIDENTIAL & WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me this morning. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX build up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around $750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an average annual contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW Contract Capacity on average was achievable. TCE is free to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degree Celsius, and we recognize that this isn't likely achievable. We're happy to contact the IESO to see if this can be relaxed.

You also raised an issue with the computation of the net present value ("NPV) of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose a capital structure on you for the investment in the facility, any addition of debt to the capital structure will only serve to increase the NPV as your cost of capital decreases with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. This is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR for the K-W plant. Our position is that, as with the OGS, the residual value of the K-W peaking facility is to TCE account. TCE can make of it what it wishes and value it as it wishes. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will have real value in the future.

It is hard for us to land on a NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and come to a settlement and wind up the OGS contract.

Colin

I appreciate your comments on ths proposed response back.

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)

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 1, 2011 5:04 PM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

Michael, I just spoke with Deb. We won't bother providing a mark-up this afternoon, but instead will wait until after our strategy call on Monday.

Elliot

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You also raised an issue with the computation of the net present value ("NPV") of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose a capital structure on you for the investment in the facility, any addition of debt to the capital structure will only serve to increase the NPV as your cost of capital decreases with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. This is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR for the K-W plant. Our position is that, as with the OGS, the residual value of the K-W peaking facility is to TCE account. TCE can make of it what it wishes and value it as it wishes. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will have real value in the future.

It is hard for us to land on a NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and come to a settlement and wind up the OGS contract.

Colin

I appreciate your comments on ths proposed response back.

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)

Aleksandar Kojic

From: JoAnne Butler
Sent: April 2, 2011 8:51 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

Sure, send it on...and then take the rest of the weekend off!!!

Hasta lunes...

JCB

From: Michael Killeavy
Sent: Saturday, April 02, 2011 08:21 AM
To: JoAnne Butler
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

I'm not sure. If they are insisting on a $500M CAPEX I don't think we've much more to discuss. Our 20-y equivalent NRR is ~$15,000/MW-mo. We can't go much over this without express authorization to do so.

I did the presentation Friday - do you want to look it over this weekend?

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

From: JoAnne Butler
Sent: Saturday, April 02, 2011 07:37 AM
To: Michael Killeavy
Subject: Re: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

Looks good to me! Let's see what the lawyers say...

So it's not over??

JCB

From: Michael Killeavy
Sent: Friday, April 01, 2011 03:49 PM

To: Susan Kennedy; Sebastiano, Rocco <RSebastiano@osler.com>; Smith, Elliot <ESmith@osler.com>
Cc: Deborah Langelaan; JoAnne Butler
Subject: TCE Matter - Proposed Email Message Follow-up to Telephone Call With Alex Pourbaix of TCE ....

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

Colin and Alex Pourbaix spoke on the telephone this morning. Colin has asked me to prepare a follow-up email addressing several points that Alex raised during the telephone call. My proposed email is below:

\-\-\-

CONFIDENTIAL & WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me this morning. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX build up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around $750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an average annual contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW Contract Capacity on average was achievable. TCE is free to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degree Celsius, and we recognize that this isn't likely achievable. We're happy to contact the IESO to see if this can be relaxed.

You also raised an issue with the computation of the net present value ("NPV") of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose a capital structure on you for the investment in the facility, any addition of debt to the capital structure will only serve to increase the NPV as your cost of capital decreases with increasing leverage.

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416-520-9788 (CELL)
416-967-1947 (FAX)

Aleksandar Kojic

From: Michael Killeavy
Sent: April 2, 2011 12:44 PM
To: JoAnne Butler; Susan Kennedy
Cc: Deborah Langelaan
Subject: RE: TCE Matter - Proposed 6 April 2011 BOD Presentation ....
Attachments: OGS_BOD_CM_20110406 v2.ppt

Importance: High

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

Attached is the proposed presentation. Deb's still reviewing it. I have sent a copy to Len Griffiths at BJ but he's not yet responded to my email.

I have asked John Zych for time on 6 April, to which he was amenable. I also explained that the presentation would be late, but we'd try to get it to them in advance.

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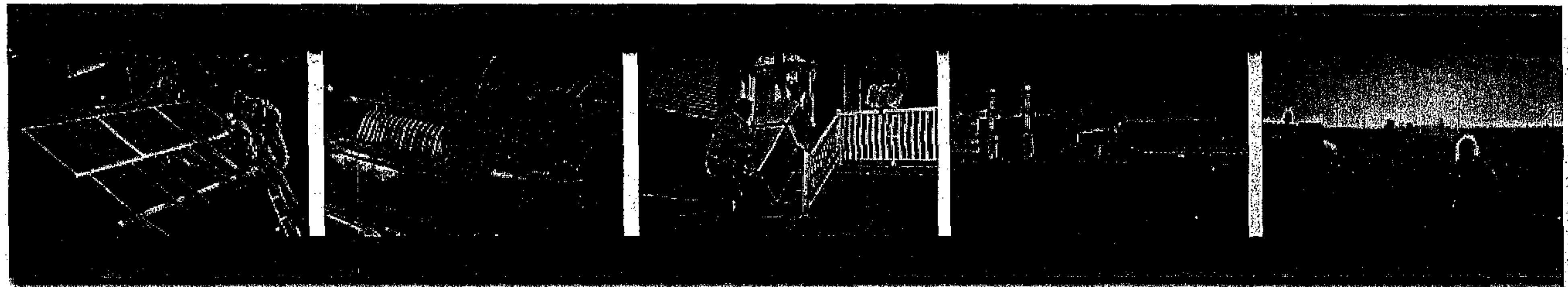
Michael.killeavy@powerauthority.on.ca



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Summary

- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- The salient features are:

1. Net Revenue Requirement (NRR) of $12,500/MW-month;
2. 25-year contract term;
3. 500 MW Contract Capacity;
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5. Separate payment for gas/electrical interconnections;
6. Assistance on mitigating *Planning Act* approvals risk;

ONTARIO POWER AUTHORITY

Net Revenue Requirement

- The OPA proposed NRR is based on a targeted capital cost expenditure (CAPEX) of $400 million and reasonable projected operating expenditures (OPEX). This CAPEX is based on an independent review by our technical expert as well as published information on other similar generation facilities.
- TCE has a much higher proposed CAPEX of $540 million. TCE could not satisfactorily explain why its CAPEX was so high.
- TCE's $540 million CAPEX estimate translated into an NRR of $16,900/MW-month. This is slightly below the OGS NRR of $17,277/MW-month, which was roughly a $1 billion projected CAPEX.
- The OPA believes that the TCE NRR is far too high for a plant that is much smaller in size, even when factoring in the anticipated financial value of the OGS

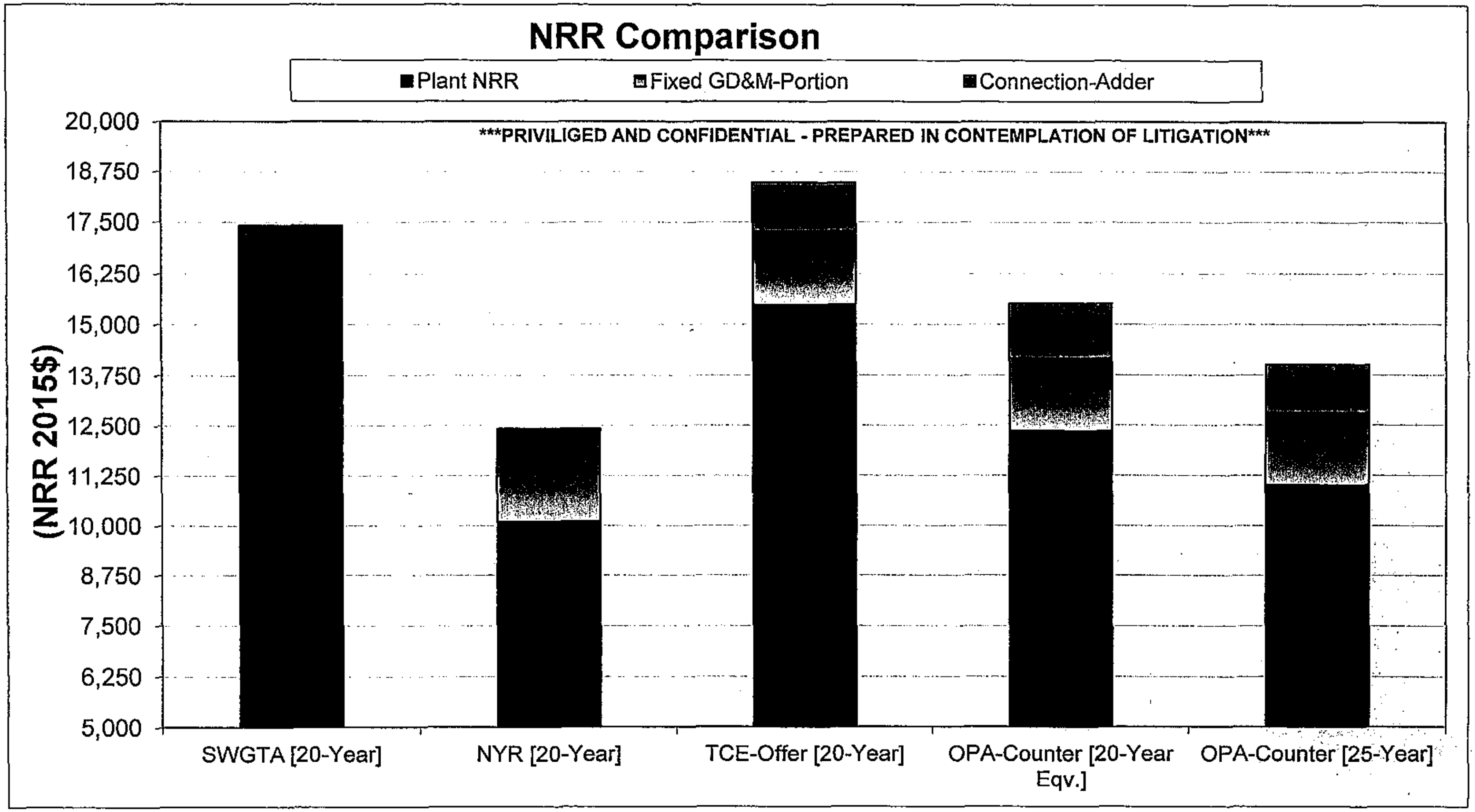
Net Revenue Requirement – Target Costing

- In order to mitigate the CAPEX risk we proposed to TCE that we target cost the CAPEX, where the OPA and TCE would share equally on any CAPEX increases above or decreases below the target CAPEX (gain share/pain share). The final NRR would then be adjusted upwards or downwards depending on final shares based on the actual CAPEX.

- A target cost mechanism with gain share/pain share provides both TCE and the OPA with an incentive to bring the project in below the target CAPEX.

- The target costing approach is commonly used in the energy and infrastructure industries to provide an incentive to both sides to minimize CAPEX. We understand that TCE has used target costing itself and is consequently familiar with the concept.

Net Revenue Requirement



Annual Payments Based on NRR

[NTD: Insert slide showing annual $ payments based on NRR and state assumptions]

Contract Term

- OPA contracts typically have 20-year terms.
- A longer term allows for CAPEX to be recovered over a longer period of time, which reduces the NRR.
- TCE had asked for a 30 year term. This would set a precedent for gas-fired generation contracts for the OPA.

Contract Term

- The OPA proposed a 25-year term.
- In analyzing the TCE numbers it looked to us as if TCE were actually using a 20-year time horizon for recovering its costs.
- Portlands Energy Centre has an option for an additional five years on the 20-year term to make the contract have a 25-year term.

Contract Capacity

- The Long-term Energy Plan ("LTEP") indicates the need for a peaking generation facility in the Kitchener-Waterloo-Cambridge area.

- PSP has indicated that at least 450 MW of summer peaking capacity is required.

- The OPA proposed an average 500 MW of Contract Capacity to provide additional system flexibility in the summer months and to reduce the NRR on per MW basis.

Contract Capacity

- The 500 MW we proposed is an average annual Contract Capacity.
- The nameplate capacity the GT units TCE proposes to use is 540 MW.
- We have given TCE the flexibility to nominate seasonal Contract Capacities for the purposes of imputing revenue and performing capacity check tests.

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- TCE has claimed $37 million in OGS Sunk Costs.
- The OPA has the Ministry of Finance auditing these costs.
- We proposed to include the amount of OGS Sunk Costs in the NRR provided the costs were reasonable and substantiated.

ONTARIO POWER AUTHORITY

Interconnection Costs

- The OPA proposed to pay for the gas and electrical interconnection costs on a cost-recovery basis.
- This is done on some other OPA contracts.
- Paying on a cost-recovery basis, i.e., a pass-through cost to the OPA is cheapest for the ratepayer since there is no opportunity to charge an additional risk premium on top of the actual cost.
- The interconnection costs are estimated at about $100 million

ONTARIO POWER AUTHORITY

Approvals and Permitting Risk Mitigation

- TCE had proposed to the OPA that it be protected from all permitting and approvals risk.
- This basically puts the OPA in the developer role, a role in which we are not comfortable.
- As a compromise, we proposed to approach the government to have it provide a *Planning Act* approvals exemption, similar to what had been done for the York Energy centre project.

ONTARIO POWER AUTHORITY

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Risk Description	Owner	Mitigation Strategies
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ONTARIO POWER AUTHORITY

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ONTARIO POWER AUTHORITY

TCE Response to OPA Counter-Proposal

- TCE has indicated that it does not accept the OPA counter-proposal.

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ONTARIO POWER AUTHORITY

Next Steps

- TBD

Aleksandar Kojic

From: Michael Killeavy
Sent: April 2, 2011 12:50 PM
To: griffithsl@bennettjones.com
Cc: Susan Kennedy; Deborah Langelaan
Subject: TCE Matter - BOD Presentation for 6 April 2011 ...
Attachments: OGS_BOD_CM_20110406 v2.ppt

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

Len,

Attached is a presentation that we have prepared to inform our Board of the ongoing discussions with TransCanada Energy about the cancellation of the Oakville GS. Towards the end of the presentation I have a few tables that set out the permitting and approvals risks. Could you please review the presentation with a view to advising on whether the tables capture and explain how to mitigate the various risks? I will make my self available Monday to discuss this with you if you wish.

Thank you,
Michael

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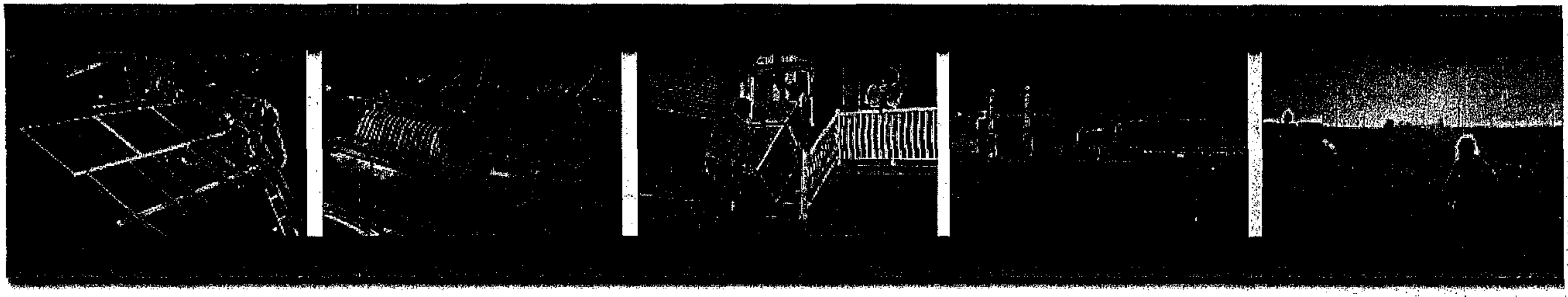

Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

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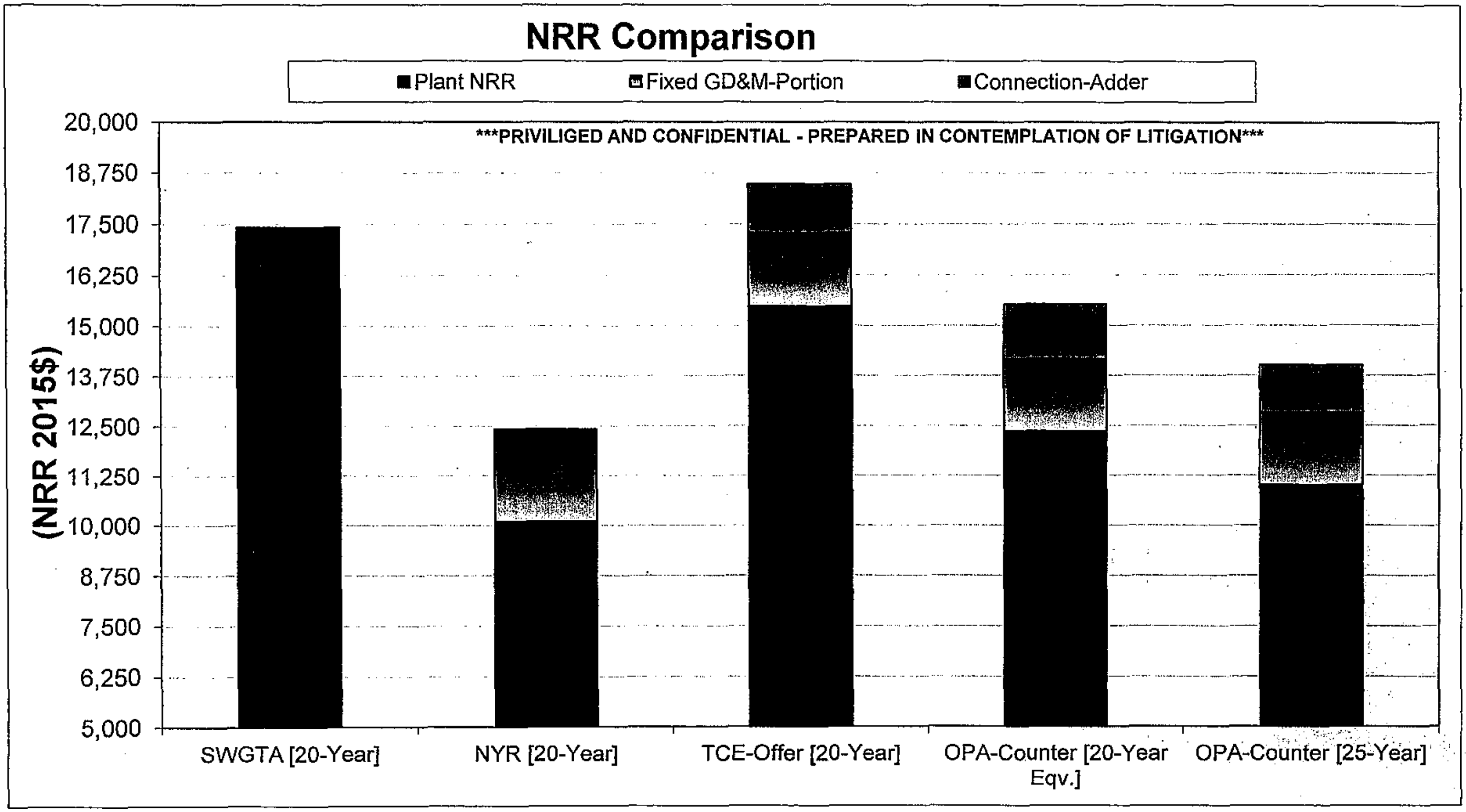

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ONTARIO POWER AUTHORITY

Next Steps

- TBD

Aleksandar Kojic

From: Michael Killeavy
Sent: April 3, 2011 8:21 PM
To: 'GriffithsL@bennettjones.com'
Subject: Re: TCE Matter - BOD Presentation for 6 April 2011 ...

Great! Thanks.

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

From: Leonard Griffiths [mailto:GriffithsL@bennettjones.com]
Sent: Sunday, April 03, 2011 08:13 PM
To: Michael Killeavy
Subject: Re: TCE Matter - BOD Presentation for 6 April 2011 ...

Sorry, just back in range- will open tomorrow and contact you. Len
This message is sent from my blackberry, and thus may contain inadvertent typos. Len Griffiths

---

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Saturday, April 02, 2011 10:50 AM
To: Leonard Griffiths
Cc: Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>
Subject: TCE Matter - BOD Presentation for 6 April 2011 ...

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

Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 4, 2011 3:13 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Sebastiano, Rocco
Subject: RE: TCE Matter - Email Response to Alex Pourbaix ...

I do have comments. I'm going to do a mark-up right now and will get it back to you later this afternoon.

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, April 04, 2011 2:46 PM
To: Smith, Elliot
Cc: Deborah Langelaan
Subject: TCE Matter - Email Response to Alex Pourbaix ...

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

Colin wants to send the email. Can you suggest any edits?

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Aleksandar Kojic

From: Smith, Elliot [ESmith@osler.com]
Sent: April 4, 2011 4:20 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Sebastiano, Rocco
Subject: RE: TCE Matter - Email Response to Alex Pourbaix ...
Attachments: #20380047v2_LEGAL_1_ - Draft email to A. Pourbaix (Osler Draft).doc; blackline.pdf

Michael,
Further to your request, please find attached a blackline showing our proposed revisions. If you have any questions about any of the changes, please let us know.

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

osler.com

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****

****

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an annual average contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW annual average contract capacity was achievable. We invited TCE to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degrees Celsius, and we recognize that this may not be achievable using the current turbines. We are happy to contact the IESO to understand how much flexibility there is on this requirement.

You also raised an issue with the computation of the net present value (NPV) of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose or assume a capital structure on TCE for the investment in the facility. Any addition of debt to the capital structure will only serve to increase the NPV as we would expect the cost of capital to decrease with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. We worked with our advisors to determine the appropriate NPV of the OGS contract, taking into account the applicable risks and appropriate discount rates and built this into the NRR in our proposal. As with OGS, the residual value of the K-W peaking facility would be to TCE's account. We think that a plant with peaking capability affords the system with a great deal of flexibility, which will continue to have real value in the future.

It is impossible for us to specify TCE's NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and resolve the issues between us.

Sincerely,

Colin

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me ~~this morning~~last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I would like to respond directly.

~~We have conducted our own analysis of the CAPEX for the peaking plant and we believe that the estimate that you are proposing is rather high. Your team has not been completely transparent with us about how you arrived at your CAPEX build-up so we have undertaken some independent costing and referred to independent experts for their advice. All of these sources indicate to us that the CAPEX for a peaking plant like the one we are discussing ought to be around $750,000/MW, excluding gas and electrical interconnection costs. In order to bridge the divide between your team and our team we proposed a target costing mechanism, which would provide for the adjustment of the NRR up or down based on the actual CAPEX upon achieving Commercial Operation. We think that this is a reasonable way forward and provide both TCE and the OPA with an incentive to control CAPEX.~~

With regard to the 500 MW contract capacity, I think it is important to point out that this is an annual average ~~annual~~ contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW ~~Contract Capacity on~~annual average contract capacity was achievable. We invited TCE ~~is free~~ to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degrees Celsius, and we recognize that this ~~isn't likely~~may not be achievable using the current turbines. We~~'re~~ are happy to contact the IESO to ~~see if this can be relaxed~~understand how much flexibility there is on this requirement.

You also raised an issue with the computation of the net present value ("NPV") of cash flows to TCE. We did this computation on an after-tax basis, and we did our modelling on the basis of an all-equity investment and only considered the cash flows generated by the proposed facility during the 25 year contract term. We took this approach because we did not want to impose or assume a capital structure on ~~you~~TCE for the investment in the facility~~,~~. ~~a~~Any addition of debt to the capital structure will only serve to increase the NPV as ~~your~~we would expect the cost of capital ~~decreases~~to decrease with increasing leverage.

You raised a concern about the residual value of the OGS not being accounted for in the NPV analysis. ~~This is actually consistent with the treatment of the OGS plant and its NRR. We maintain that the value of the plant at the end of the contract term is speculative. The residual value of the OGS was not built into the NRR for the OGS. We see no reason whatsoever why we should crystallize this speculative value by building it into a certain cash flow stream from the NRR for the K-W plant. Our position is that, as with the~~We worked with our advisors to determine the appropriate NPV of the OGS contract, taking into account the applicable risks and appropriate discount rates and built this into the NRR in our proposal. As with OGS, the residual value of the K-W peaking facility ~~is~~would be to TCE's account. ~~TCE can make of it what it wishes and value~~

~~it as it wishes.~~ We think that a plant with peaking capability affords the system with a great deal of flexibility, which will continue to have real value in the future.

It is ~~hard~~impossible for us to ~~land on a~~specify TCE's NPV for the K-W plant without knowing how TCE values the residual value and what capital structure TCE proposes to use for the K-W plant, consequently our team stayed silent on any specific NPV for the K-W plant.

I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and ~~come to a settlement and wind up the OGS contract~~resolve the issues between us.

Sincerely,

Colin

Aleksandar Kojic

From: Michael Killeavy
Sent: April 4, 2011 4:28 PM
To: Colin Andersen; Brett Baker
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Subject: TCE Matter - Proposed Email Response to Alex Pourbaix ....
Attachments: Draft email to A Pourbaix 4 Apr 2011.doc

Importance: High

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Attached is the email which has counsel's comments included. I took a stab at a last paragraph to allow TCE to respond back with something.

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

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I believe that there is continued value in our two teams continuing to discuss the differences we have in the hope that we might successfully bridge the gaps and resolve the issues between us. To this end, it might be helpful if your team could tell us the aspects of our proposal that are giving you the most trouble.

Sincerely,

Colin

Aleksandar Kojic

From: Michael Killeavy
Sent: April 4, 2011 4:53 PM
To: 'ESmith@osler.com'
Cc: Deborah Langelaan; 'RSebastiano@osler.com'
Subject: Re: TCE Matter - Email Response to Alex Pourbaix ...

Thanks. I've forwarded the revised draft to Colin.

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

----- Original Message -----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: Monday, April 04, 2011 04:19 PM
To: Michael Killeavy
Cc: Deborah Langelaan; Sebastiano, Rocco <RSebastiano@osler.com>
Subject: RE: TCE Matter - Email Response to Alex Pourbaix ...

Michael,
Further to your request, please find attached a blackline showing our proposed revisions. If you have any questions about any of the changes, please let us know.

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

osler.com

-----Original Message-----
From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Monday, April 04, 2011 2:46 PM
To: Smith, Elliot
Cc: Deborah Langelaan

Subject: TCE Matter - Email Response to Alex Pourbaix ...

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

Colin wants to send the email. Can you suggest any edits?

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

Aleksandar Kojic

From: Colin Andersen
Sent: April 4, 2011 6:51 PM
To: JoAnne Butler; Michael Killeavy; Deborah Langelaan
Cc: Brett Baker
Subject: as sent

Minor tweaks to first and last para

Colin Andersen
Chief Executive Officer

Ontario Power Authority
120 Adelaide Street West, Suite 1600
Toronto, Ontario M5H 1T1
T. 416 969 6399
F. 416 969 6380
colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

From: Colin Andersen
Sent: Monday, April 04, 2011 6:50 PM
To: Alex Pourbaix (alex_pourbaix@transcanada.com)
Subject:

PRIVILEGED, CONFIDENTIAL AND WITHOUT PREJUDICE

Alex,

Thank you for taking the time to speak with me last Friday. I wish to reiterate that the OPA proposal was made in good faith and we are sorry to learn from you that it is unacceptable to TCE. During the conversation you raised a number of matters to which I said I would get back to you about today and would like to respond to directly.

With regard to the 500 MW contract capacity, I think it is important to point out that this is an annual average contract capacity. At a meeting held on 25 January 2011 where your team presented your CAPEX estimate to our team, TCE indicated a 540 MW ISO rating for the combustion turbines. We thought a 500 MW annual average contract capacity was achievable. We invited TCE to nominate seasonal capacities for the combustion turbines, and we would expect that the summer season contract capacity would be lower than the contract capacity in the winter season. There is an IESO requirement for 500 MW of capacity at 35 degrees Celsius, and we recognize that this may not be achievable using the current turbines. We are happy to contact the IESO to understand how much flexibility there is on this requirement.

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Happy to chat further,

Colin

Colin Andersen
Chief Executive Officer

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colin.andersen@powerauthority.on.ca
www.powerauthority.on.ca

Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 1:08 PM
To: Manuela Moellenkamp
Attachments: OGS_BOD_CM_20110406 v4.ppt

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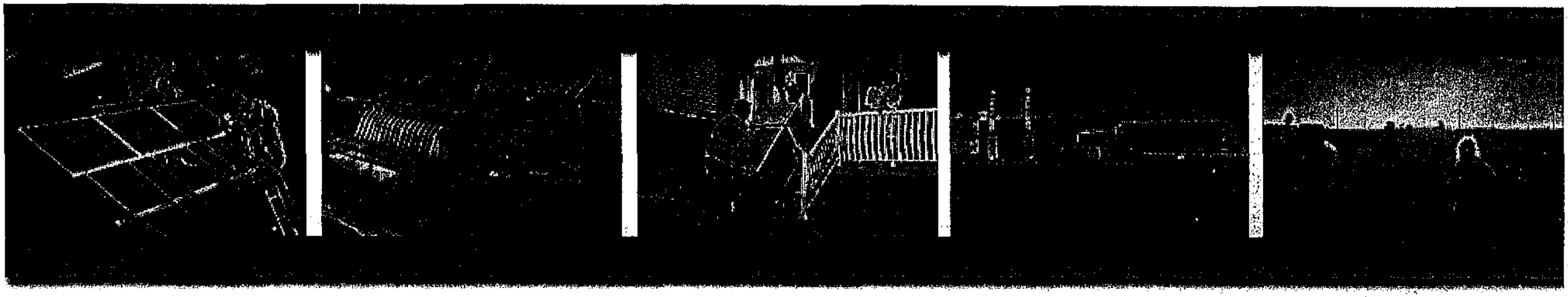
ONTARIO POWER AUTHORITY



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

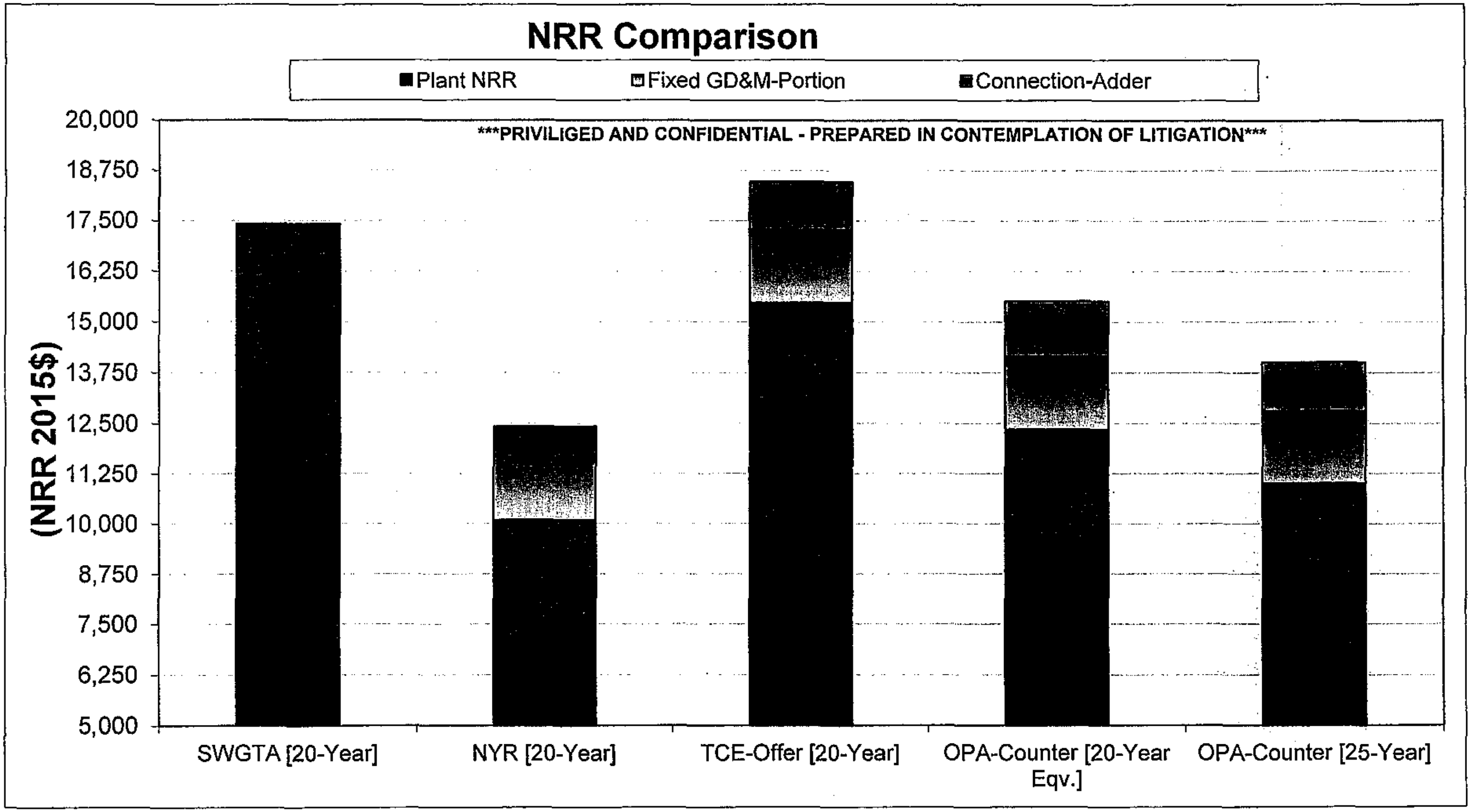
Summary

- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- We will wait for specific feedback from TCE.

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	16,900 MW/Month	12,500 MW/Month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a demand dispatch basis, this plant will operate under 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they rush order to increase NPV of project.
Contract Term	20 Years	25 Years	Portland Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in RWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Cut cheque for $37mm	Amortize over 25 years – no returns	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	We Pay	We Pay – precedent set at Portlands	Precedent – Portlands Energy Centre. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.
Capital Expenditures	540mm	400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on any CAPEX increase.
Operational Expenditures	No Visibility	Reasonable	TCE has given us limited insights into their operating expenses.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We could approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaker.

Net Revenue Requirement



ONTARIO POWER AUTHORITY

Annual Payments Based on NRR

[NTD: Insert slide showing annual $ payments based on NRR and state assumptions]

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
***Planning Act* Approvals**, e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc.	Ministry of Municipal Affairs and Housing	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of he Act.
Development Charges Act charges levied	Ministry of Municipal Affairs and Housing	There is no power to exempt a developer, but regulation can be passed to influence the factors used. [NTD: How else to mitigate?]
Building Code Act Permits	Ministry of Municipal Affairs and Housing	Exempting regulation can be enacted under s. 34(19) of the Act.
Environmental Assessment Act Environmental Screening Process	Ministry of the Environment	Exempting regulation under Part IV of the Act.
Environmental Protection Act Certificates of Approval	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act

ONTARIO POWER AUTHORITY

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
Ontario Water Resources Act Approvals	Ministry of the Environment	Exempting regulation.
Ontario Energy Board Act Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.
Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
Municipal Act Municipal By-Laws e.g., PM2.5 enacted pursuant to s. 10 an s. 11 of the Act.	Ministry of Municipal Affairs and Housing/Ministry of the Environment	Section 451.1(1) allows for a regulation to impose limits on municipal powers, however, the regulation is deemed to be revoked after 18 months. Legislation might be required to permanently override a municipal by-law.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 1:10 PM
To: Deborah Langelaan; Ronak Mozayyan
Subject: TCE Matter - OPA Financial Model ...
Attachments: OPA Counter-Proposal NRR Model 1 Apr 2011 COUNTER-PROPOSAL v7.xls

Attached is version 7 of the model – I provided for index and non-index GD&M services. This was the model used to prepare the counter-proposal financial offering.

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Baseline NRR Calculation

CAPEX Spend:		$400,000,000	Yearly % Spend	
	2009	$18	3%	
	2010	$26	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539 million		

Capital Cost Allowance:

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

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

Fixed O&M	$5,500,000	(2009 $)
GD&M	$10,000,000	(2011 $)

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

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

TCE Cost of Capital	7.50%					
	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%
Yearly CAPEX Spend	$13,113,295	$19,061,747	$66,923,790	$80,519,192	$166,979,418	$53,402,559
Book Value of Capital	$13,113,295	$32,175,042	$99,098,832	$179,618,023	$346,597,441	$400,000,000
Non-Indexed NRR						
Indexed NRR						
Total NRR						
REVENUES = CSP						
OPEX						
GD&M - Non-Indexed						
GD&M - Indexed at	20%					
EBITDA						
Depreciation (Capital Cost Allowance)						
Taxes Payable						
Total Cash Flow	($13,113,295)	($19,061,747)	($66,923,790)	($80,519,192)	($166,979,418)	($53,402,559)

	1	2	3	4	5	6	7	8
	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18	01-Jul-19	01-Jul-20	01-Jul-21	01-Jul-22
Book Value of Capital	$382,580,000	$349,257,282	$318,836,973	$291,066,272	$265,714,400	$242,570,676	$221,442,770	$202,155,105
Non-Indexed NRR	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671
Indexed NRR	$2,418	$2,466	$2,515	$2,566	$2,617	$2,669	$2,723	$2,777
Total NRR	$12,089	$12,137	$12,186	$12,237	$12,288	$12,340	$12,394	$12,448
REVENUES = CSP	$72,531,296	$72,821,422	$73,117,349	$73,419,195	$73,727,079	$74,041,119	$74,361,441	$74,688,169
OPEX	$6,193,893	$6,317,771	$6,444,127	$6,573,009	$6,704,469	$6,838,559	$6,975,330	$7,114,836
GD&M - Non-Indexed	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	$2,164,864	$2,208,162	$2,252,325	$2,297,371	$2,343,319	$2,390,185	$2,437,989	$2,486,749
EBITDA	$55,513,081	$55,636,031	$55,761,440	$55,889,358	$56,019,833	$56,152,918	$56,288,665	$56,427,127
Depreciation (Capital Cost Allowance)	$17,420,000	$33,322,718	$30,420,309	$27,770,700	$25,351,872	$23,143,724	$21,127,906	$19,287,665
Taxes Payable	$9,523,270	$5,578,328	$6,335,283	$7,029,664	$7,666,990	$8,252,299	$8,790,190	$9,284,865
Total Cash Flow	$45,989,811	$50,057,703	$49,426,158	$48,859,693	$48,352,843	$47,900,620	$47,498,475	$47,142,261

	9	10	11	12	13	14	15	16
	01-Jul-23	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29	01-Jul-30
Book Value of Capital	$184,547,395	$168,473,317	$153,799,291	$140,403,373	$128,174,239	$117,010,263	$106,818,669	$97,514,763
Non-Indexed NRR	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671
Indexed NRR	$2,833	$2,889	$2,947	$3,006	$3,066	$3,128	$3,190	$3,254
Total NRR	$12,504	$12,560	$12,618	$12,677	$12,737	$12,798	$12,861	$12,925
REVENUES = CSP	$75,021,432	$75,361,360	$75,708,086	$76,061,747	$76,422,481	$76,790,430	$77,165,738	$77,548,552
OPEX	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711	$8,336,165
GD&M - Non-Indexed	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	$2,536,484	$2,587,213	$2,638,958	$2,691,737	$2,745,571	$2,800,483	$2,856,492	$2,913,622
EBITDA	$56,568,358	$56,712,413	$56,859,350	$57,009,225	$57,162,098	$57,318,029	$57,477,078	$57,639,308
Depreciation (Capital Cost Allowance)	$17,607,710	$16,074,078	$14,674,026	$13,395,918	$12,229,134	$11,163,976	$10,191,594	$9,303,906
Taxes Payable	$9,740,162	$10,159,584	$10,546,331	$10,903,327	$11,233,241	$11,538,513	$11,821,371	$12,083,850
Total Cash Flow	$46,828,196	$46,552,830	$46,313,019	$46,105,899	$45,928,857	$45,779,516	$45,655,707	$45,555,457

	17	18	19	20	21	22	23	24	25
	01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
Book Value of Capital	$89,021,227	$81,267,478	$74,189,081	$67,727,212	$61,828,172	$56,442,938	$51,526,758	$47,038,777	$42,941,700
Non-Indexed NRR	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671	$9,671
Indexed NRR	$3,319	$3,385	$3,453	$3,522	$3,593	$3,664	$3,738	$3,812	$3,889
Total NRR	$12,990	$13,056	$13,124	$13,193	$13,263	$13,335	$13,409	$13,483	$13,560
REVENUES = CSP	$77,939,022	$78,337,302	$78,743,547	$79,157,918	$79,580,575	$80,011,686	$80,451,419	$80,899,947	$81,357,445
OPEX	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
GD&M - Non-Indexed	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	$2,971,895	$3,031,333	$3,091,959	$3,153,799	$3,216,874	$3,281,212	$3,346,836	$3,413,773	$3,482,048
EBITDA	$57,804,782	$57,973,566	$58,145,726	$58,321,329	$58,500,444	$58,683,141	$58,869,492	$59,059,571	$59,253,450
Depreciation (Capital Cost Allowance)	$8,493,536	$7,753,749	$7,078,397	$6,461,869	$5,899,040	$5,385,234	$4,916,180	$4,487,981	$4,097,078
Taxes Payable	$12,327,812	$12,554,954	$12,766,832	$12,964,865	$13,150,351	$13,324,477	$13,488,328	$13,642,897	$13,789,093
Total Cash Flow	$45,476,971	$45,418,612	$45,378,894	$45,356,464	$45,350,093	$45,358,664	$45,381,164	$45,416,673	$45,464,357

$606,191,429

Residual

NRR	$12,089
OGS Sunk Cost Adder	$406
Total NRR (with OGS Sunk Cost)	$12,494
Target OGS NPV + Sunk Costs	[redacted]
XNPV for K-W Peaking Plant	$50,000,000
XNPV in 2012 plus spend	
Target IRR	[redacted]
XIRR	8.97%

[redacted]

GoalSeek NRR
for Target OGS

Target Costing Allocation of Actual CAPEX

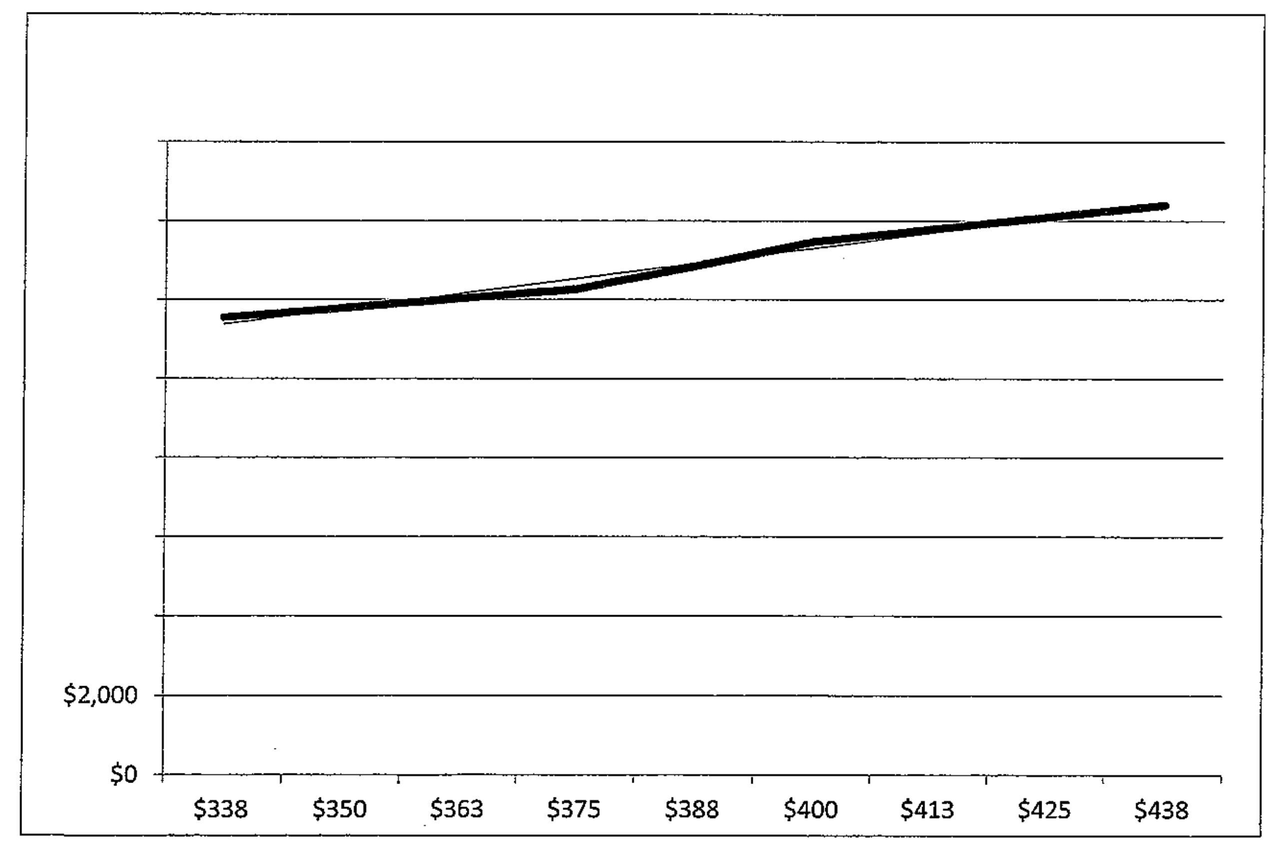
Target CAPEX = $400,000,000

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

FINAL CAPEX =	**$375,000,000**	
Overrun (Underrun) =	($25,000,000)	
OPA Share	**($12,500,000)**	
TCE Share	($12,500,000)	
Adjusted CAPEX =	**$387,500,000**	Target CAPEX + OPA Share
Initial NRR	$12,089	
Final NRR	**$12,786**	

m = 3.07093E-05
b = 1021.688889

ADJUSTED CAPEX		FINAL NRR	FITTED LINE
$337,500,000	$338	$11,554	$11,386
$350,000,000	$350	$11,795	$11,770
$362,500,000	$363	$12,037	$12,154
$375,000,000	$375	$12,278	$12,538
$387,500,000	$388	$12,860	$12,922
$400,000,000	$400	$13,472	$13,305
$412,500,000	$413	$13,790	$13,689
$425,000,000	$425	$14,099	$14,073
$437,500,000	$438	$14,409	$14,457



Baseline NRR Calculation

Adjusted CAPEX Spend:		$387,500,000	Yearly % Spend	
	2009	$18	3%	
	2010	$25	5%	
	2011	$90	17%	
	2012	$109	20%	
	2013	$225	42%	
	2014	$72	13%	100%
		$539		
Capital Cost Allowance:				
			CCA Rate	
CapEx to Class 1		33%	4%	
CapEx to Class 17		38%	8%	
CapEx to Class 48		29%	15%	
		100%		
Inflation Factor	(IFy)		2%	
NRR Index Factor	(NRRIF)		20%	
Statutory Tax Rate			25%	
Plant Capacity	(AACC)		500 MW	

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

Assume $29 million/year in non-fuel op | $5,500,000 (2009 $)
GD&M | $10,000,000 (2011 $)
Calculate EBITDA
EBITDA = Plant Revenues - Operating Costs ($29 million/year)
Calculate CCA by allocating CAPEX to appropriate pools
Determine tax payable = (EBITDA - CCA)*(statutory tax rate)
Total cash flows = EBITDA - Taxes - CapEx

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

TCE Cost of Capital	8.00%						1	2	3	4	5
	01-Aug-09	01-Jul-10	01-Jul-11	01-Jul-12	01-Jul-13	01-Jul-14	01-Jul-15	01-Jul-16	01-Jul-17	01-Jul-18	01-Jul-19
% CAPEX Allocation to year	3%	5%	17%	20%	42%	13%					
Yearly CAPEX Spend	$12,703,505	$18,466,067	$64,832,422	$78,002,967	$161,761,311	$51,733,729					
Book Value of Capital	$12,703,505	$31,169,572	$96,001,993	$174,004,960	$335,766,271	$387,500,000	$370,624,375	$338,342,992	$308,873,317	$281,970,451	$257,410,825
Non-Indexed NRR							$9,904	$9,904	$9,904	$9,904	$9,904
Indexed NRR							$2,476	$2,526	$2,576	$2,628	$2,680
Total NRR							$12,381	$12,430	$12,481	$12,532	$12,585
REVENUES = CSP							$74,283,172	$74,580,305	$74,883,380	$75,192,517	$75,507,837
OPEX							$6,193,893	$6,317,771	$6,444,127	$6,573,009	$6,704,469
GD&M - Non-Indexed							$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	20%						$2,164,864	$2,208,162	$2,252,325	$2,297,371	$2,343,319
EBITDA							$57,264,957	$57,394,915	$57,527,472	$57,662,679	$57,800,591
Depreciation (Capital Cost Allowance)							$16,875,625	$32,281,383	$29,469,675	$26,902,866	$24,559,626
Taxes Payable							$10,097,333	$6,278,383	$7,014,449	$7,689,953	$8,310,241
Total Cash Flow	($12,703,505)	($18,466,067)	($64,832,422)	($78,002,967)	($161,761,311)	($51,733,729)	$47,167,624	$51,116,532	$50,513,022	$49,972,726	$49,490,350

	6	7	8	9	10	11	12	13	14	15
	01-Jul-20	01-Jul-21	01-Jul-22	01-Jul-23	01-Jul-24	01-Jul-25	01-Jul-26	01-Jul-27	01-Jul-28	01-Jul-29
Book Value of Capital	$234,990,342	$214,522,683	$195,837,758	$178,780,289	$163,208,526	$148,993,063	$136,015,767	$124,168,794	$113,353,692	$103,480,586
Non-Indexed NRR	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904
Indexed NRR	$2,734	$2,788	$2,844	$2,901	$2,959	$3,018	$3,079	$3,140	$3,203	$3,267
Total NRR	$12,638	$12,693	$12,749	$12,806	$12,864	$12,923	$12,983	$13,045	$13,108	$13,172
REVENUES = CSP	$75,829,463	$76,157,521	$76,492,141	$76,833,453	$77,181,591	$77,536,692	$77,898,895	$78,268,343	$78,645,179	$79,029,551
OPEX	$6,838,559	$6,975,330	$7,114,836	$7,257,133	$7,402,276	$7,550,321	$7,701,328	$7,855,354	$8,012,461	$8,172,711
GD&M - Non-Indexed	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	$2,390,185	$2,437,989	$2,486,749	$2,536,484	$2,587,213	$2,638,958	$2,691,737	$2,745,571	$2,800,483	$2,856,492
EBITDA	$57,941,262	$58,084,745	$58,231,098	$58,380,379	$58,532,645	$58,687,956	$58,846,374	$59,007,959	$59,172,777	$59,340,891
Depreciation (Capital Cost Allowance)	$22,420,483	$20,467,659	$18,684,926	$17,057,469	$15,571,763	$14,215,463	$12,977,296	$11,846,973	$10,815,102	$9,873,107
Taxes Payable	$8,880,195	$9,404,272	$9,886,543	$10,330,728	$10,740,220	$11,118,123	$11,467,269	$11,790,247	$12,089,419	$12,366,946
Total Cash Flow	$49,061,067	$48,680,474	$48,344,555	$48,049,651	$47,792,424	$47,569,833	$47,379,104	$47,217,713	$47,083,358	$46,973,945

	16	17	18	19	20	21	22	23	24	25
	01-Jul-30	01-Jul-31	01-Jul-32	01-Jul-33	01-Jul-34	01-Jul-35	01-Jul-36	01-Jul-37	01-Jul-38	01-Jul-39
Book Value of Capital	$94,467,427	$86,239,314	$78,727,869	$71,870,672	$65,610,736	$59,896,041	$54,679,096	$49,916,547	$45,568,816	$41,599,772
Non-Indexed NRR	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904	$9,904
Indexed NRR	$3,333	$3,399	$3,467	$3,536	$3,607	$3,679	$3,753	$3,828	$3,905	$3,983
Total NRR	$13,237	$13,304	$13,372	$13,441	$13,512	$13,584	$13,657	$13,732	$13,809	$13,887
REVENUES = CSP	$79,421,612	$79,821,513	$80,229,413	$80,645,470	$81,069,849	$81,502,715	$81,944,239	$82,394,593	$82,853,954	$83,322,502
OPEX	$8,336,165	$8,502,888	$8,672,946	$8,846,405	$9,023,333	$9,203,800	$9,387,876	$9,575,633	$9,767,146	$9,962,489
GD&M - Non-Indexed	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457	$8,659,457
GD&M - Indexed at	$2,913,622	$2,971,895	$3,031,333	$3,091,959	$3,153,799	$3,216,874	$3,281,212	$3,346,836	$3,413,773	$3,482,048
EBITDA	$59,512,367	$59,687,273	$59,865,677	$60,047,649	$60,233,260	$60,422,584	$60,615,694	$60,812,666	$61,013,578	$61,218,508
Depreciation (Capital Cost Allowance)	$9,013,159	$8,228,113	$7,511,444	$6,857,197	$6,259,936	$5,714,695	$5,216,945	$4,762,549	$4,347,731	$3,969,044
Taxes Payable	$12,624,802	$12,864,790	$13,088,558	$13,297,613	$13,493,331	$13,676,972	$13,849,687	$14,012,529	$14,166,462	$14,312,366
Total Cash Flow	$46,887,565	$46,822,483	$46,777,119	$46,750,036	$46,739,929	$46,745,612	$46,766,007	$46,800,137	$46,847,116	$46,906,142

Final NRR	$12,381
OGS Sunk Cost Adder	$405
Final NRR (with OGS Sunk Cost)	$12,786
Target OGS NPV + Sunk Costs	$50,000,000
XNPV for K-W Peaking Plant	$50,000,000

GoalSeek K-W NPV Based on Adj. CAPEX and

XNPV in 2012 plus spend	
Target IRR	9%
XIRR	9.57%

OGS Sunk Cost Analysis

OGS Sunk Costs	$37,000,000		$247
TCE Borrowing Cost	5.68%	Based on Average YTM of LT Debt	
After-tax Cost of Borrowing	4.26%		
Contract Term	25	years	
Amortization of OGS Sunk Costs	$2,433,974	/year	
NRR Sunk Cost Adder	$406	allocation per MW-month	

Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 3:01 PM
To: John Zych
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Subject: BOD Presentation - TCE Matter Status Update ....
Attachments: OGS_BOD_CM_20110406 v5.ppt

John,

Here is the proposed Board presentation for tomorrow.

Michael

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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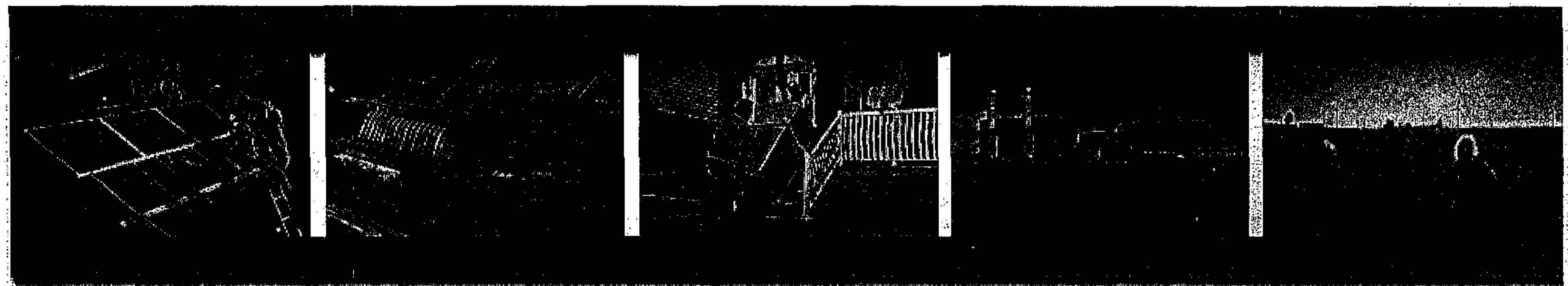
ONTARIO
POWER AUTHORITY



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

Privileged and Confidential – Prepared in Contemplation of Litigation

Status

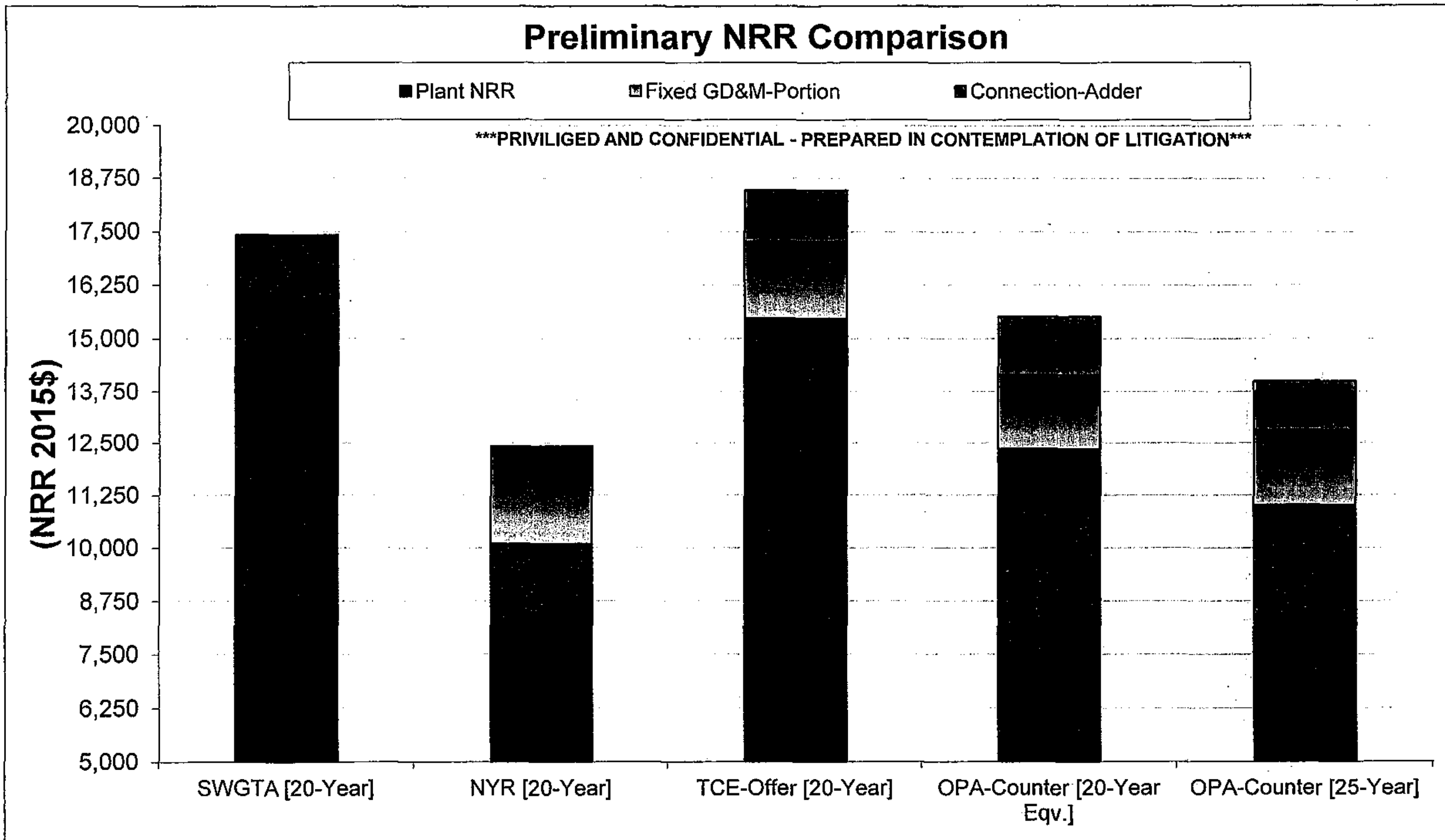
- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- We will wait for specific feedback from TCE.

ONTARIO POWER AUTHORITY

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
Financing Assumptions	Unknown	Assumed 7.5% Cost of Equity, all equity project.	TCE can finance/leverage how they want to increase NPV of project.
Contract Term	20 Years	25 Years	Precedent - Portland Energy Centre has option for additional five years on the 20-year term.
Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on any CAPEX increase.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

Net Revenue Requirement



ONTARIO POWER AUTHORITY

Annual Payments Based on NRR

[NTD: Insert bar chart showing PV of OPA payments for these plants]

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
***Planning Act* Approvals**, e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc.	Ministry of Municipal Affairs and Housing	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of he Act.
Development Charges Act charges levied	Ministry of Municipal Affairs and Housing	There is no power to exempt a developer, but regulation can be passed to influence the factors used.
Building Code Act Permits	Ministry of Municipal Affairs and Housing	Exempting regulation can be enacted under s. 34(19) of the Act.
Environmental Assessment Act Environmental Screening Process	Ministry of the Environment	Exempting regulation under Part IV of the Act.
Environmental Protection Act Certificates of Approval	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
Ontario Water Resources Act Approvals	Ministry of the Environment	Exempting regulation.
Ontario Energy Board Act Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.
Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
Municipal Act Municipal By-Laws e.g., PM2.5 enacted pursuant to s. 10 an s. 11 of the Act. US EPA will not regulate PM2.5 until at least 2013/2014. MOE has no intention of regulating in Ontario.	Ministry of Municipal Affairs and Housing/Ministry of the Environment	Section 451.1(1) allows for a regulation to impose limits on municipal powers, however, the regulation is deemed to be revoked after 18 months. Legislation might be required to permanently override a municipal by-law.

Possible Outcomes

OPA Counter-Proposal

TCE Responds Back to the OPA → Response is Acceptable With/Without Negotiation → Parties Settle and KWCG Peaking Plant Development Begins

TCE Does Not Respond → TCE Commences Litigation → Parties May Continue Settlement Discussions

Aleksandar Kojic

From: Deborah Langelaan
Sent: April 5, 2011 3:02 PM
To: Michael Killeavy
Subject: FW: ***Privileged and Confidential***
Attachments: NRR-Comparison-OPA-Presentation-OPA_Mar_29-Rev1.xls

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

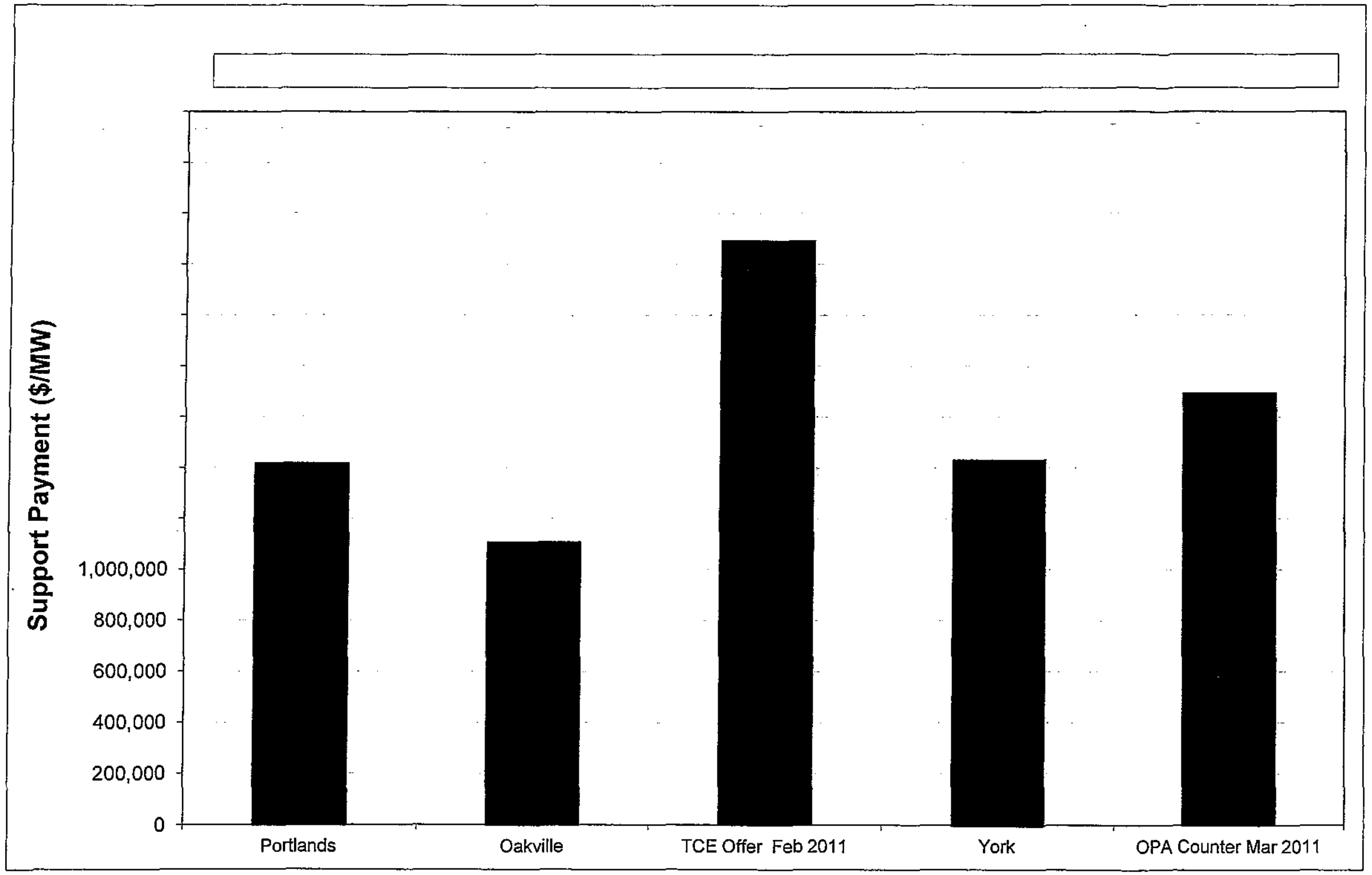
-----Original Message-----
From: Safouh Soufi [mailto:safouh@smsenergy-engineering.com]
Sent: April 5, 2011 3:02 PM
To: Deborah Langelaan
Subject: ***Privileged and Confidential***

Hello Deborah:

Please review the attached and let's discuss if you have any questions.

Thanks,
Safouh

	Portlands	Oakville	TCE Offer Feb 2011	York	OPA Counter Mar 2011
1. Evaluated Cost (COD$/MW)	1,417,737	1,108,887	2,294,577	1,431,435	1,695,030
3. Evaluated Additional Cost (COD$/MW)	67,830	0	204,906	-17,812	197,120
	1,485,567	1,108,887	2,499,483	1,413,623	1,892,150



Notes:
1. Support Payment: OPA Contingency Support Payment expressed in Contract COD$.
2. NRR - Bsse: Plant NRR as per Exibit B of Contract excluding, if applicable, incremental GD&M and lumpsum connection costs (gas and/or electriclity) paid by OPA.
3. NRR - CAPEX Adjustment: Applicable to TCE offer and OPA counter only and accounts for the OPA extra CAPEX exposure (potential) resulting from Schedule B of Implemenation Agreement.
4. NRR - 20 Year Adjustment: Applicable to OPA counter offer only to adjust NRR from 25-Year to 20-Year equivalent. Adjustment is based on CAPEX plus CAPEX Adjustment.
5. NRR - GD&M Adjustment: For York it accounts for the 65% of the GD&M portion paid by OPA. For Portlands there is an adjustment for GD&M but its value hasn't been significant over thNot applicable
6. Lumpsum Connection Cost: If applicable, this cost is paid by cheque issued by OPA to proponent on or around COD. The NRR is not adjusted to account for this cost. This cost is not recoverable from the IESO market and is treated as an adder to project evaluated cost at COD.
7. Connection Cost: For Portlands; the actual connection cost (gas) paid by the OPA was used. For York there was a small payment to OPA (negative cost) but not shown in the chart. This payment would effectively, allbeit marginally, reduce York's evaluated costand. For TCE offer and OPA counter, the connection cost (gas and electricity) estimated by TCE was used and is shown in the chart as the "red" portion.
8. Evaluated Cost of Portlands and Oakville are based on SWGTA evaluation cost model. All other others are based on NYR evaluation cost model.

Under the deck calculations		Portlands	Oakville	TCE Offer Feb 2011	York	OPA Counter Mar 2011
COD Year		2009	2013	2015	2012	2015
NRR - Base	(COD$)	$17,500	$17,417	$16,900	$9,998	$12,500
NRR - CAPEX Adjustment	(COD$)	$0	$0	$377	$0	$317
NRR - 20 Year Adjustment	(COD$)	$0	$0	$0	$0	$1,338
NRR - GD&M Adjustment	(COD$)	$0	$0	$0	$2,320	$0
NRR - Total		$17,500	$17,417	$17,277	$12,318	$14,155
Average Contract Capacity		550	900	481	393	500
Lumpsum Connection Cost	(COD$)	37,306,338	-	98,560,000	-7,000,000	98,560,000

Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 3:15 PM
To: John Zych
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Attachments: OGS_BOD_CM_20110406 v5 R2.ppt

We just got the missing graph and I inserted it. I also corrected a minor typographical error.

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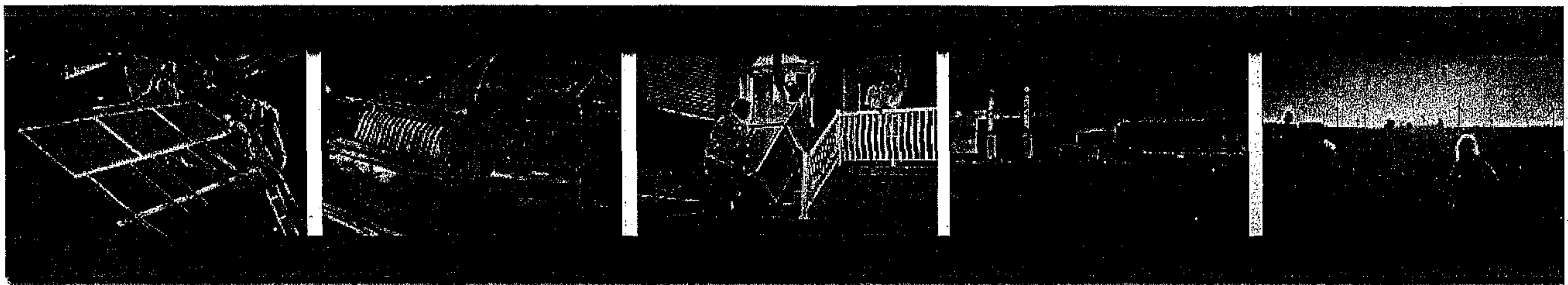

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Privileged and Confidential – Prepared in Contemplation of Litigation

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- OPA has made a counter-proposal to the TCE proposal of 10 March 2011.
- Colin and Alex Pourbaix of TCE spoke on the telephone on 1 April. TCE rejected the OPA counter-proposal.
- Colin sent Alex a follow up email asking for TCE to specifically describe the issues it has with the OPA counter-proposal.
- We will wait for specific feedback from TCE.

OPA Counter-Proposal

	TCE Proposal	OPA Counter-Proposal	Comments
NRR Net Revenue Requirement	$16,900/MW-month	$12,500/MW-month	NRR covers capital costs, financing working capital, returns, fixed monthly payment over life of contract. Energy paid on a deemed dispatch basis, this plant will operate less than 10% of the time.
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Contract Capacity	450 MW	500 MW	LTEP indicates need for peaking generation in KWCG; need at least 450 MW of summer peaking capacity, average of 500 MW provides additional system flexibility and reduces NRR on per MW basis.
Sunk Cost Treatment	Lump Sum Payment of $37mm	Amortize over 25 years – no returns	$37mm currently being audited by Ministry of Finance for substantiation and reasonableness.
Gas/Electrical Interconnections	Payment in addition to the NRR	Payment in addition to the NRR	Precedent – Portlands Energy Centre and NYR Peaking Plant. Paid on a cost recovery basis, i.e. no opportunity to charge an additional risk premium on top of active costs. TCE estimate is $100mm, ± 20%.
Capital Expenditures (CAPEX)	$540mm	$400mm	Our CAPEX based on independent review by our Technical Expert and published information on other similar generation facilities; had proposed a target cost on any CAPEX increase.
Operational Expenditures (OPEX)	Little Visibility	Reasonable	TCE has given us limited insights into their operating expenses. We have used advice from our technical consultant on reasonable OPEX estimates.
Other	Assistance/Protection from mitigating Planning Act approvals risk	We would approach Government to provide Planning Act approvals exemption.	Precedent – NYR Peaking Plant regulation enacted by the province.

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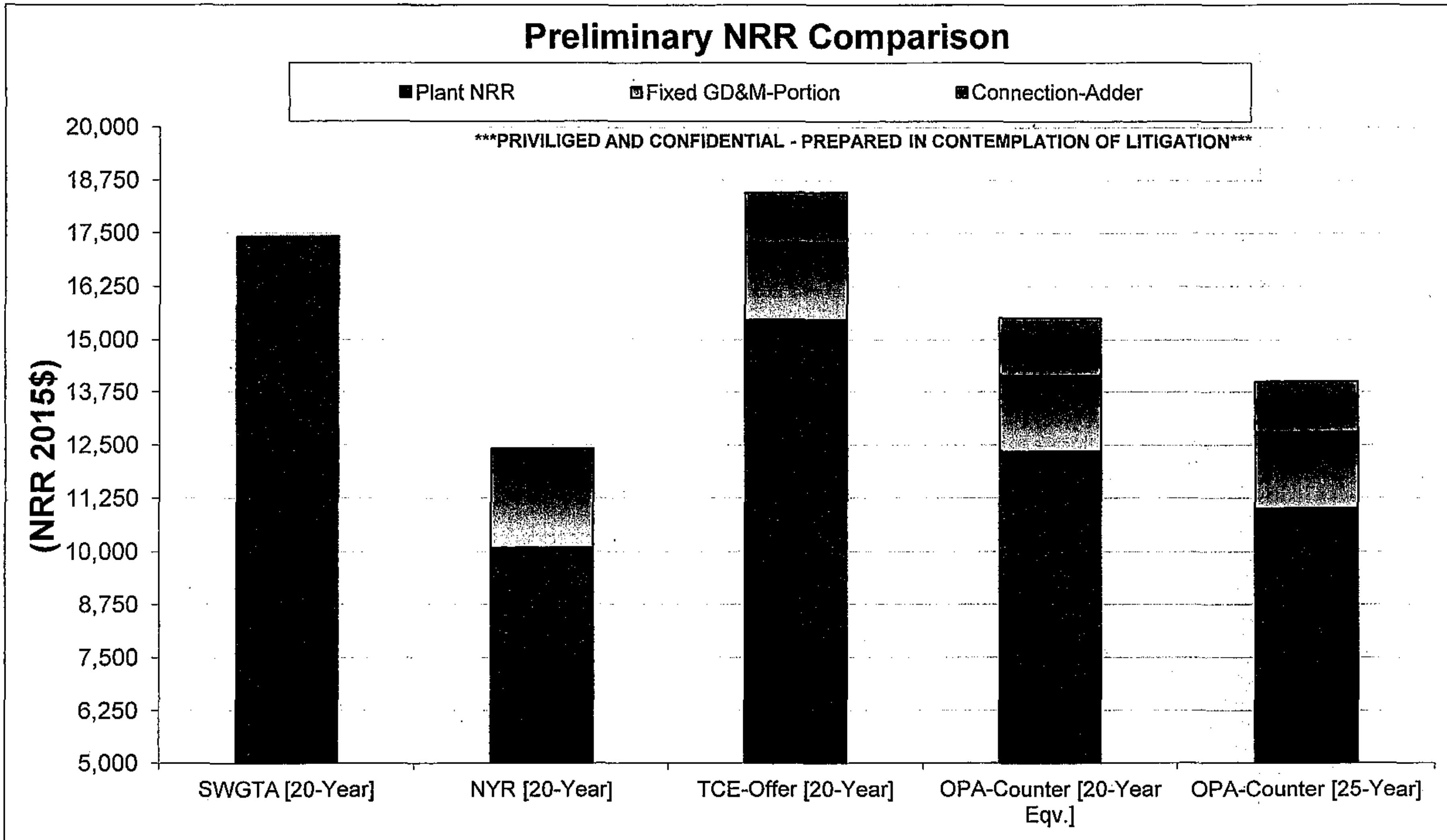
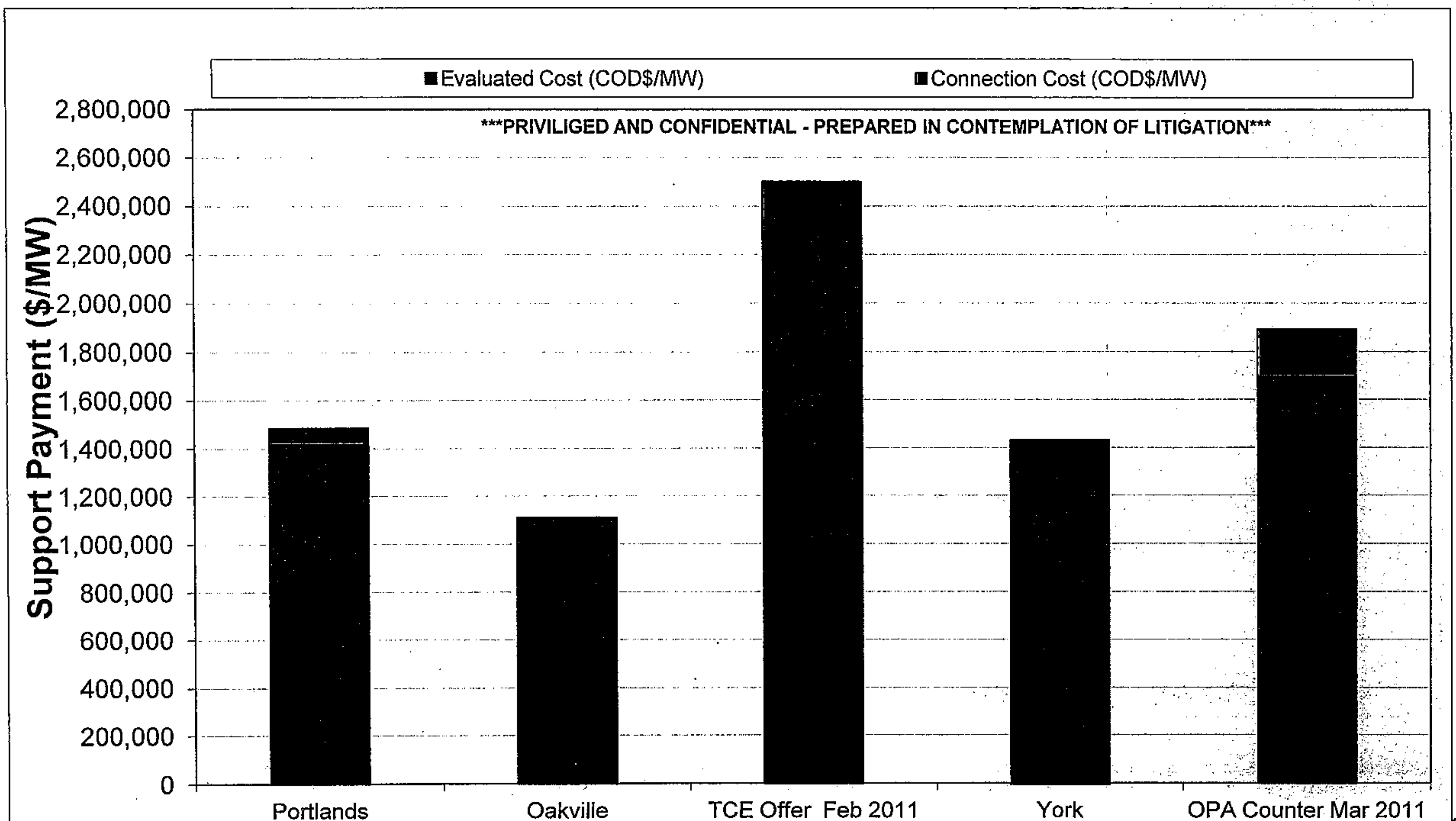
ONTARIO POWER AUTHORITY

Net Revenue Requirement



Annual Payments Based on NRR



ONTARIO POWER AUTHORITY

Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
***Planning Act* Approvals**, e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc.	Ministry of Municipal Affairs and Housing	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of the Act.
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Possible Outcomes

OPA Counter-Proposal → TCE Responds Back to the OPA → Response is Acceptable With/Without Negotiation → Parties Settle and KWCG Peaking Plant Development Begins

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Aleksandar Kojic

From: John Zych
Sent: April 5, 2011 3:20 PM
To: 'James Hinds'
Cc: Colin Andersen; JoAnne Butler; Michael Killeavy
Subject: BOD Presentation - TCE Matter Status Update
Attachments: OGS_BOD_CM_20110406 v5 R2.ppt

Management feels that it will be useful to brief the Board on this matter this week. There is no opening to do so on Thursday, but on Wednesday, after the Board stakeholders meeting ends at about 5:00 p.m. we can fit it in. Electricity Resources has prepared a slide deck on this topic.

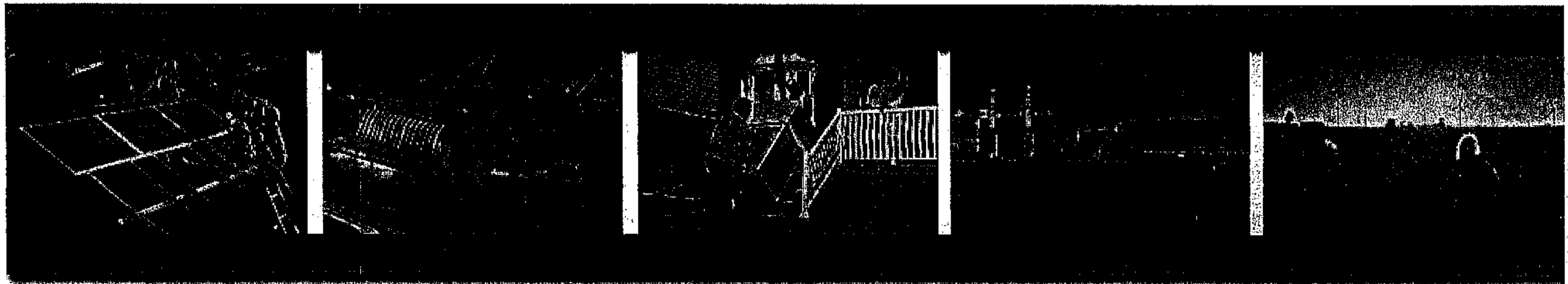
Colin asks whether you agree to add this matter to the Board agenda after the Board stakeholders meeting ends at about 5:00 p.m. (about 30 minutes is needed) and whether you have any comments on the slide deck.

The dinner for John Beck commences at 6:00 p.m.

As for sending this material to the Board members, we can send it via e-mail today or hand it out to the Board members at the beginning of the Board stakeholders meeting tomorrow, which will leave them time to review it.

Please advise.

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



Winding Up of the Oakville Generating Station (OGS) Contract

Board of Directors – For Information

April 6, 2011

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ONTARIO POWER AUTHORITY

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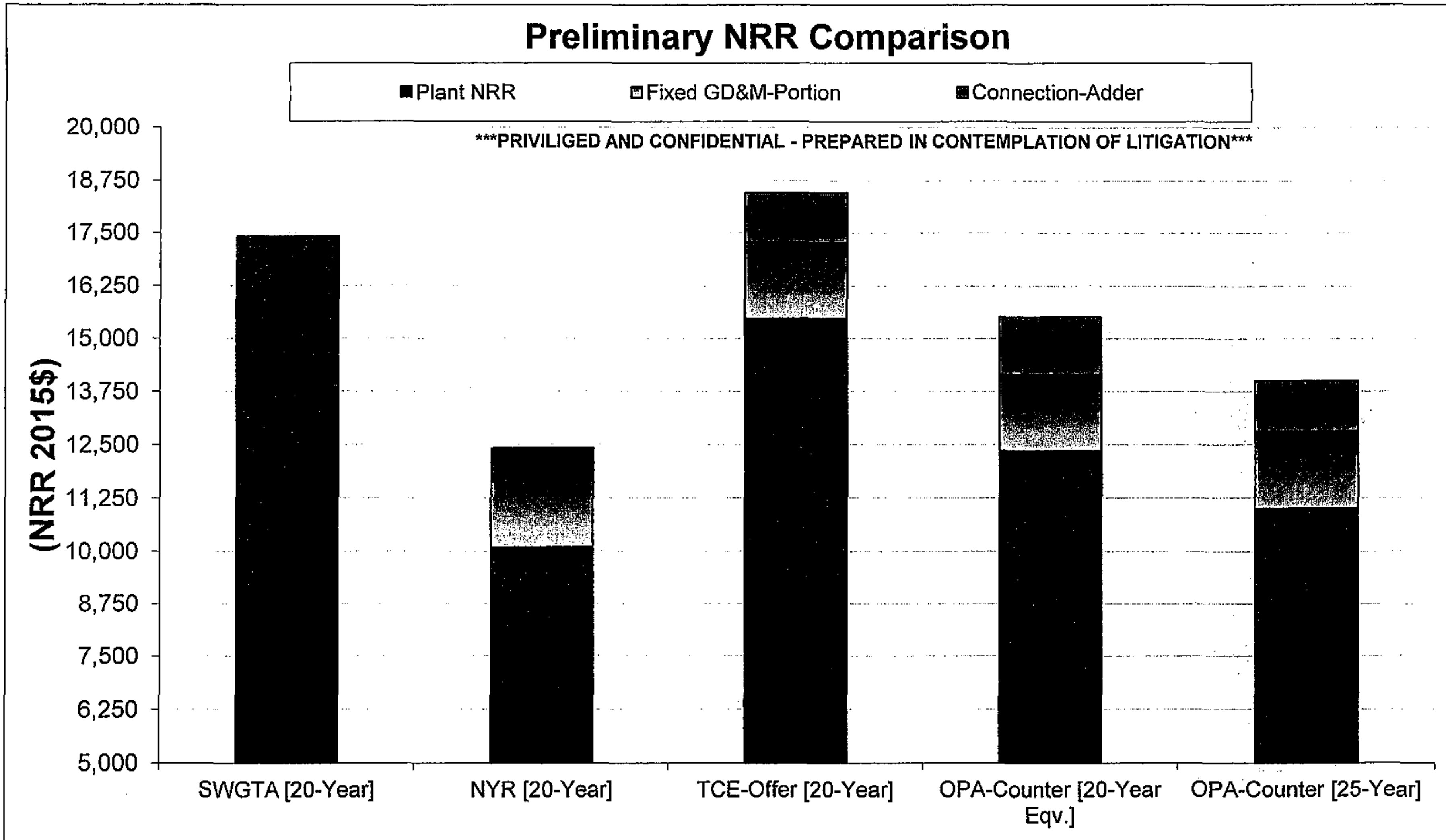

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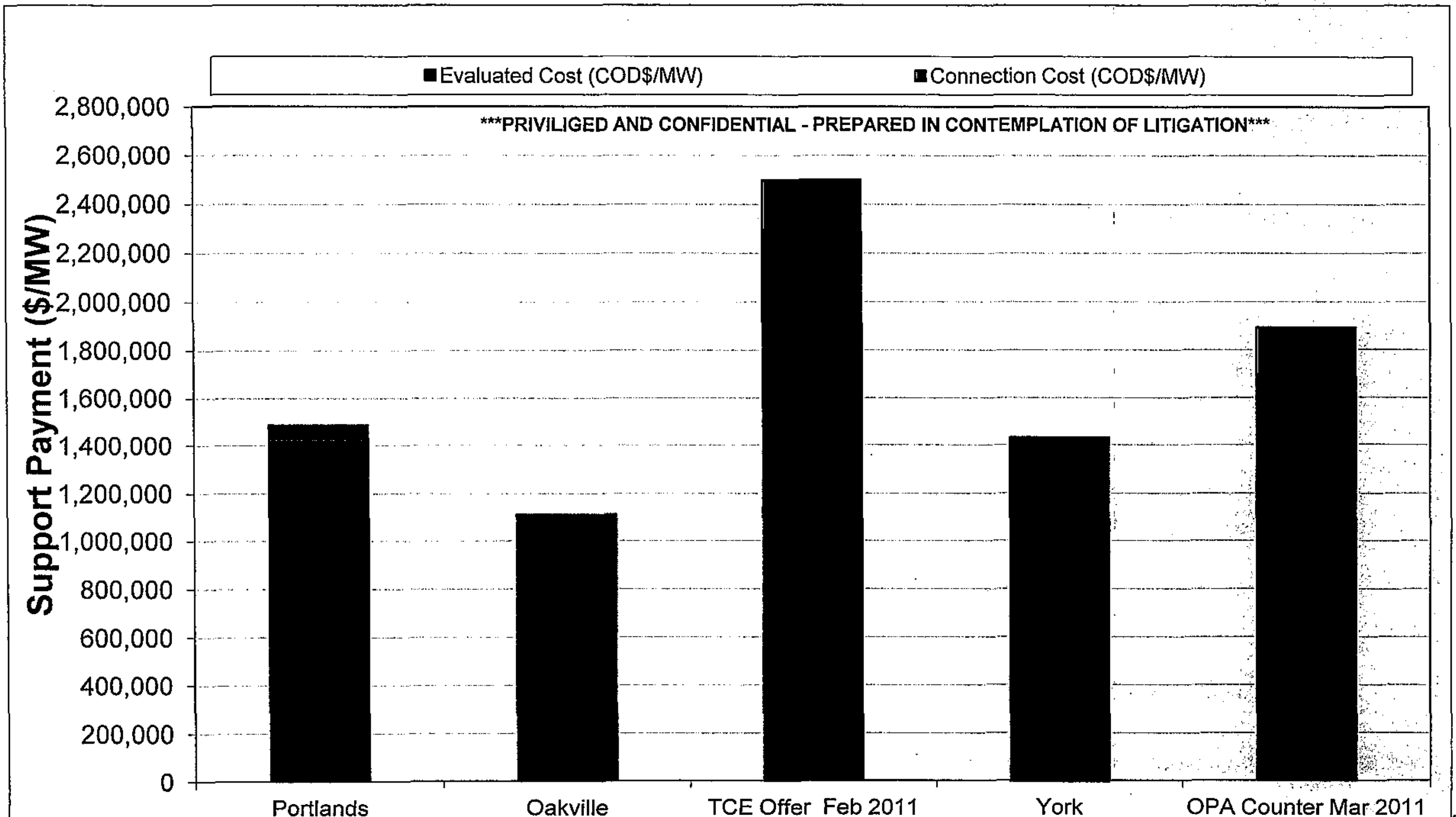

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ONTARIO POWER AUTHORITY

Aleksandar Kojic

From: Leonard Griffiths [GriffithsL@bennettjones.com]
Sent: April 5, 2011 4:06 PM
To: Michael Killeavy
Cc: Leonard Griffiths
Subject: RE: TCE Matter - BOD Presentation for 6 April 2011 - privileged and confidential
Attachments: OPA Permitting Risks and Mitigation.DOCX

As discussed, we have considered the 3 slides related to potential approvals risk and mitigation strategies. Our questions/suggestions/advice is included in track changes, attached.

We have not involved "pure" municipal counsel for this, which would be needed to dig deeper into the municipal issues.

We have not addressed First Nations issues, which would arise under any environmental assessment, as well as pursuant to the governments' consultation obligations that may arise.

Our strong advice is to work as much as possible, as early and often as possible, with key stakeholders to get ahead of any issues. It is essential to be proactive, and ensure that we can provide politicians and regulators with the support and evidence they need to prevent any successful challenge to the approvals process, whether at the EA stage or for the technical approvals (air, waste, water). Pre consultation and consultation will be critical, with municipal officials, Ontario agencies, First Nations, and local communities. It is inevitable that there will be some opposition regardless of which site or sites are being considered.

Need to discuss strategy with respect to the EA process- whether to use environmental review, and whether to include more than one potential site. Or whether to voluntarily conduct an individual EA. Much depends on timing, costs and level of support/opposition.

Happy to discuss these matters, at your convenience. I have not copied this to others at the OPA, such as Mike Lyle, Ziyaad Mia, Susan Kennedy and Deborah Langelaan, which I leave for you. thx. len.

Len Griffiths

Bennett Jones LLP

T 416 777 7473 / F 416 863 1716 / E griffithsl@bennettjones.com
Suite 3400, 1 First Canadian Place / P.O. Box 130 / Toronto, Ontario M5X 1A4

From: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: 03 April 2011 8:21 PM
To: Leonard Griffiths
Subject: Re: TCE Matter - BOD Presentation for 6 April 2011 ...

Great! Thanks.

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: Michael Killeavy [mailto:Michael.Killeavy@powerauthority.on.ca]
Sent: Saturday, April 02, 2011 10:50 AM
To: Leonard Griffiths
Cc: Susan Kennedy <Susan.Kennedy@powerauthority.on.ca>; Deborah Langelaan <Deborah.Langelaan@powerauthority.on.ca>
Subject: TCE Matter - BOD Presentation for 6 April 2011 ...

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

Len,

Attached is a presentation that we have prepared to inform our Board of the ongoing discussions with TransCanada Energy about the cancellation of the Oakville GS. Towards the end of the presentation I have a few tables that set out the permitting and approvals risks. Could you please review the presentation with a view to advising on whether the tables capture and explain how to mitigate the various risks? I will make my self available Monday to discuss this with you if you wish.

Thank you,
Michael

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

The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. Like other forms of communication, e-mail communications may be vulnerable to interception by unauthorized parties. If you do not wish us to communicate with you by e-mail, please notify us at your earliest convenience. In the absence of such

notification, your consent is assumed. Should you choose to allow us to communicate by e-mail, we will not take any additional security measures (such as encryption) unless specifically requested.

- TCE had proposed to the OPA that it be protected from all permitting and approvals risk.
- ~~This~~ Approvals are typically obtained by the developer, and as such are typically part of the business risk that a developer assumes.
- If the OPA were to take on this risk, it would basically puts the OPA in the developer role, ~~a role in which we are not comfortable~~which has ramifications, including:
  - The OPA would assume all risks related to obtaining acceptable approvals, and as such would need to be heavily involved in the approvals process to manage the risks.
  - in addition to increasing the OPA's costs, this would expose the OPA to all risks should the project not receive all necessary approvals in an acceptable form **[NOTE- on the business side, this may be necessary and acceptable in order to address the OGS situation, and to alleviate concerns that TCE may have; however, if the OPA were to take on this risk, this should result in a decreased project cost, including because there would be decreased costs and risks for TCE, which would have needed to expend considerably more to obtain approvals for the OGS, without any guarantee of success].**
- The OPA ordinarily would not conduct an environmental assessment of a project, including because it is not designated as a "public body" under the EA legislation, and a project would be undertaken by a developer, not the OPA or the Province; in this case, the OPA would likely need to conduct the EA, including to manage the risk, which would require the OPA to take a very public developer role in the process.
- The OPA would need to "enter the arena" in a manner that is typically undertaken by developers, which would likely result in the OPA losing its ability (or at least be perceived to lose its ability) to be an objective overseer of the process and the project; this could erode public trust, and increase the likelihood that the Minister of the Environment could elevate an EA for the project from a screening to an individual EA **[NOTE- it may be appropriate to conduct an individual EA, anyway, as discussed in the mitigation strategies below]**

- As a compromise, we proposed to approach the government to have it provide a *Planning Act* approvals exemption, similar to what had been done for the York Energy centre project. This has political ramifications, and the risks increase with each required regulatory intervention.

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Risk Description	Owner	Mitigation Strategies [NTD- legislative only?]
***Planning Act* Approvals**, e.g., Interim Control By-Law, Official Plan Amendment, Zoning By-Law Amendment, etc. Municipality passes an official plan amendment or by-law, or refuses to amend same, which means the property could not be used for the project based on the official plan and zoning designation.	Ministry of Municipal Affairs and Housing Ministry of the Environment	Exempting regulation similar to that which was done for YEC using s. 62.01(1) of the Planning Act. **[NTD- this may be too deep into the weeds- may prefer to indicate that "In addition, may result in requirement to complete an individual EA or to get an exempting regulation under the EA Act]** [The exempting regulation would likely require meeting one of the conditions in clause 62.01(1) (a) of the Planning Act: (i) obtaining approval under Part II (Individual EA) or II.1 (Class EA- not applicable) of the EA Act; in short, the Screening Process exempts a project from Part II, which arguably means that it is not approved under Part II; (ii) a harmonization order under s. 3.1 (not applicable) or a declaration under s. 3.2 (Cabinet approval required to declare the legislation does not apply to a matter); or (iii) an exempting regulation under the EA Act. [Minister's Zoning Order?]

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Development Charges Act charges levied [Cambridge by-law 90-09] Unreasonable/excessive charges are levied.	Ministry of Municipal Affairs and Housing	There is no power to exempt a developer, but regulation can be passed to influence the factors used. [NTD: How else to mitigate? Without seeking regulation to qualify the charges that can be levied- provide reasonable reserve to satisfy development charge]
Building Code Act Permits to Demolish or Construct (s. 8 of the Building Code Act) Municipality (Chief Building Official) refuses to issue a demolition or building permit.	Ministry of Municipal Affairs and Housing Municipal Chief Building Official	Exempting regulation can be enacted under s. 34(1~~9~~) 19. of the Building Code Act. [Without seeking exemption: Meet all requirements, and as such, the Act expressly provides that a permit ***must*** be issued unless there will be contravention of law, provided the application is complete and properly completed by qualified individuals. If the municipality refuses to issue a permit, application can be made for mandamus, to have the court order the municipality to issue the permit.]
Environmental Assessment Act Ontario Environmental Screening Process Screening EA (or Environmental Review) is conducted, and is successfully challenged, which results in elevation to an Individual EA. Individual EA is not approved by the Minister of Environment.	Ministry of the Environment	Exempting regulation under Part ~~IV~~ VI of the EA Act (exempt person or undertaking from the EA Act or the regulations, and impose conditions). Without seeking exemption: Conduct Environmental Review, and ensure the relevant provincial agencies are involved and "on side" to prevent a challenge.

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Federal If require any federal approval, such as permit under the Fisheries Act (in short, to interfere with fish or fish habitat), Environmental Assessment, Comprensive Study would be needed	Federal Department of Fisheries and Oceans Environment Canada	Consider conducting a "focused" Individual EA, on a voluntary basis. Key issue will be approval of terms of reference, which would need to exclude the need to consider alternative sites (beyond that being proposed) and alternative methods. Very limited ability to make an exempting regulation. Without seeking an exemption, consider harmonizing provincial and federal EA processes.
Environmental Protection Act Certificates of Approval – emissions to atmosphere (air) (s. 9); potentially waste management (Part V)	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act Without seeking an exemption, complete EA and work with MOE to ensure no issues for "technical" approvals.

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Ontario Water Resources Act Approvals-sewage works (s. 53), potentially water taking (s. 34)	Ministry of the Environment	Sewage works- exceptions for draining into municipal sanitary works or system that is subject to the Building Code Act. Potential for ~~E~~exempting regulation.
Ontario Energy Board Act Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.

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Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
Municipal Act Municipal By-Laws e.g., PM2.5/PM 10, or other similar by-law that is considered necessary or desirable for the public, including a by-law that addresses the economic, social and environmental well-being of the municipality or the health, safety and well-being of persons, enacted pursuant to s. 10 and s. 11 of the Act. Municipality passes a by-law that imposes restrictions or conditions that would delay or prevent the project from proceeding.	Ministry of Municipal Affairs and Housing /Ministry of the Environment Ministry of Health	Section 451.1(1) allows for a regulation, where it is necessary or desirable in the provincial interest, to impose limits on municipal powers; however, the regulation is deemed to be revoked after 18 months, and it cannot be extended or renewed, or replaced with a regulation of similar effect. ~~Legislation~~ A statutory amendment might be required to permanently override a municipal by-law. Without seeking legislative changes, work with municipality to get comfort that such a by-law would not be imposed. If it were proposed or passed, would need to challenge any by-law that is intended to delay or stop the project.

Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 4:13 PM
To: Kristin Jenkins
Subject: RE:
Attachments: OGS_BOD_CM_20110406 v5 R2.ppt

Any better now?

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: Kristin Jenkins
Sent: April 5, 2011 3:21 PM
To: Michael Killeavy
Subject: RE:

You have two blues and green in the key, no yellow. Is the yellow a gradation of the green?

From: Michael Killeavy
Sent: April 5, 2011 3:15 PM
To: John Zych
Cc: JoAnne Butler; Deborah Langelaan; Ronak Mozayyan; Kristin Jenkins
Subject:

We just got the missing graph and I inserted it. I also corrected a minor typographical error.

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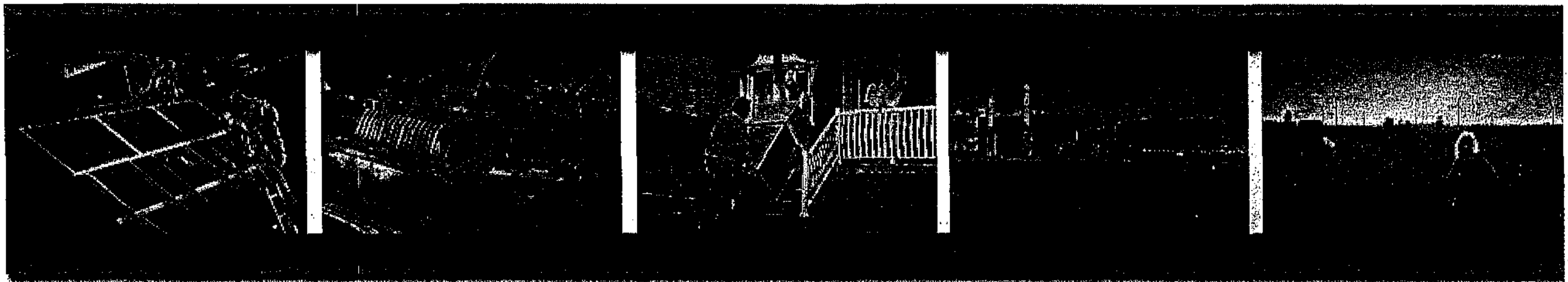

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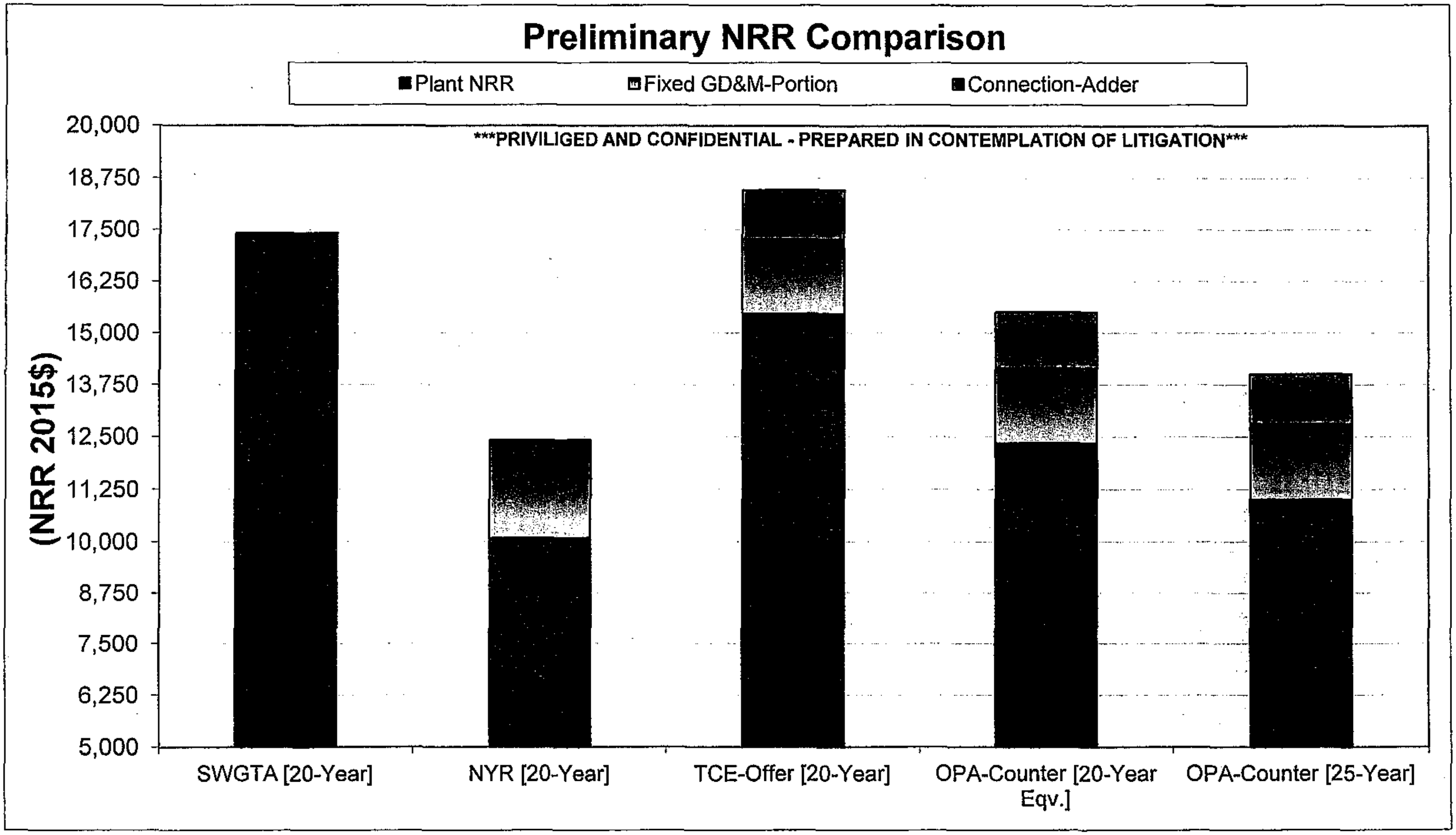

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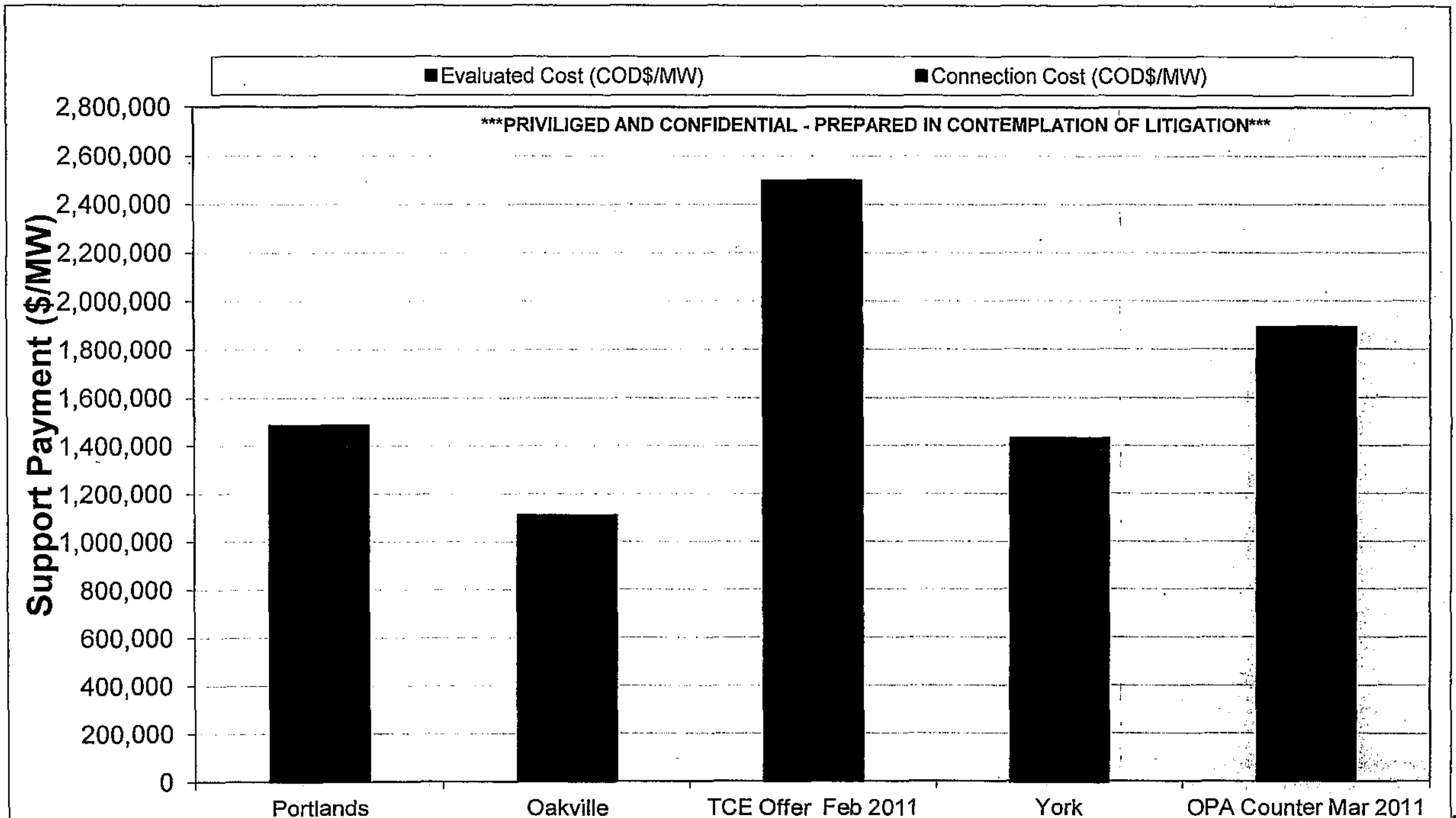

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Building Code Act Permits	Ministry of Municipal Affairs and Housing	Exempting regulation can be enacted under s. 34(19) of the Act.
Environmental Assessment Act Environmental Screening Process	Ministry of the Environment	Exempting regulation under Part IV of the Act.
Environmental Protection Act Certificates of Approval	Ministry of the Environment	Exempting regulation under s. 175.1(a) of the Act and/or a regulation to issue a C of A under s. 175.1(f) of the Act

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Approvals and Permitting Risk Mitigation

Risk Description	Owner	Mitigation Strategies
Ontario Water Resources Act Approvals	Ministry of the Environment	Exempting regulation.
Ontario Energy Board Act Approvals, e.g., leave to construct for a gas line or an electricity transmission line	Ontario Energy Board	Exempting regulation under s. 127(1)(f) of the Act can exempt a party from any provisions of the Act.
Property Rights		There is no express statutory authority to expropriate land for a generation facility. Section 8(4) of the Ministry of Government Services Act provides for expropriation for a government-related agency. A regulation under s. 20(d) of that same Act would be required to make the OPA a government-related agency
Municipal Act Municipal By-Laws e.g., PM2.5 enacted pursuant to s. 10 an s. 11 of the Act. US EPA will not regulate PM2.5 until at least 2013/2014. MOE has no intention of regulating in Ontario.	Ministry of Municipal Affairs and Housing/Ministry of the Environment	Section 451.1(1) allows for a regulation to impose limits on municipal powers, however, the regulation is deemed to be revoked after 18 months. Legislation might be required to permanently override a municipal by-law.

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Possible Outcomes

OPA Counter-Proposal

TCE Responds Back to the OPA → Response is Acceptable With/Without Negotiation → Parties Settle and KWCG Peaking Plant Development Begins

TCE Does Not Respond → TCE Commences Litigation → Parties May Continue Settlement Discussions

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Aleksandar Kojic

From: Michael Killeavy
Sent: April 5, 2011 4:31 PM
To: 'Leonard Griffiths'
Subject: RE: TCE Matter - BOD Presentation for 6 April 2011 - privileged and confidential

Thanks Len. I appreciate the quick turnaround.

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From: Leonard Griffiths [mailto:GriffithsL@bennettjones.com]
Sent: April 5, 2011 4:06 PM
To: Michael Killeavy
Cc: Leonard Griffiths
Subject: RE: TCE Matter - BOD Presentation for 6 April 2011 - privileged and confidential

As discussed, we have considered the 3 slides related to potential approvals risk and mitigation strategies. Our questions/suggestions/advice is included in track changes, attached.

We have not involved "pure" municipal counsel for this, which would be needed to dig deeper into the municipal issues.

We have not addressed First Nations issues, which would arise under any environmental assessment, as well as pursuant to the governments' consultation obligations that may arise.

Our strong advice is to work as much as possible, as early and often as possible, with key stakeholders to get ahead of any issues. It is essential to be proactive, and ensure that we can provide politicians and regulators with the support and evidence they need to prevent any successful challenge to the approvals process, whether at the EA stage or for the technical approvals (air, waste, water). Pre consultation and consultation will be critical, with municipal officials, Ontario agencies, First Nations, and local communities. It is inevitable that there will be some opposition regardless of which site or sites are being considered.

Need to discuss strategy with respect to the EA process- whether to use environmental review, and whether to include more than one potential site. Or whether to voluntarily conduct an individual EA. Much depends on timing, costs and level of support/opposition.

Happy to discuss these matters, at your convenience. I have not copied this to others at the OPA, such as Mike Lyle, Ziyaad Mia, Susan Kennedy and Deborah Langelaan, which I leave for you. thx. len.

Len Griffiths