

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is made as of September 24, 2012.

BETWEEN:

TRANSCANADA ENERGY LTD., a corporation incorporated under the laws of Canada, (“**TCE**”),

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Energy, (the “**Province**”),

- and -

ONTARIO POWER AUTHORITY, a corporation without share capital existing under the *Electricity Act, 1998* (Ontario), (the “**OPA**”),

(each a “**Party**” and together the “**Parties**”).

WHEREAS the OPA and TCE executed the Southwest GTA Clean Energy Supply (CES) Contract (the “**Original Contract**”) dated October 9, 2009 for a combined cycle, gas-fired power generation facility to be built and operated by TCE in Oakville, Ontario (the “**OGS Facility**”);

AND WHEREAS TCE entered into contracts and expended funds to develop the OGS Facility;

AND WHEREAS by letter dated October 7, 2010, the OPA advised TCE that it would not proceed with the Original Contract, directed TCE to cease all further work and activities in connection with the OGS Facility and acknowledged that TCE was entitled to its reasonable damages, including the anticipated financial value of the Original Contract;

AND WHEREAS the Province, the OPA and TCE agreed to resolve by way of binding arbitration the quantum of such damages and for that purpose entered into an Arbitration Agreement dated August 5, 2011 (as amended and restated on February 10, 2012, and as may be further amended from time to time, the “**Arbitration Agreement**”) and commenced the arbitration in accordance with the terms of the Arbitration Agreement (the “**Arbitration**”);

AND WHEREAS the Province, the OPA and TCE have engaged, at various times, in discussions with respect to the resolution of the damages claimed by TCE in the Arbitration and the possibility of TCE and Ontario Power Generation (“**OPG**”) formally entering into an agreement to construct and operate in Ontario an alternative project on a commercial basis;

AND WHEREAS the Parties have identified certain of the Lennox Generating Station lands as a suitable location for such an alternative project (the “**Site**”);

AND WHEREAS such alternative project would consist of an approximately 900 megawatt combined cycle, natural gas-fired power generation facility located on the Site and using equipment purchased for the OGS Facility (the “**Alternative Project**”);

AND WHEREAS the Parties wish to investigate the feasibility of the Alternative Project and, if determined to be feasible, to negotiate and execute the agreements required to implement the Alternative Project, and for that purpose have delayed the Arbitration;

AND WHEREAS the Province, Ontario Infrastructure and Lands Corporation, the OPA, and TCE entered into a letter agreement dated September 12, 2012 regarding the possible resolution of the Arbitration and setting forth the confidentiality obligations among such parties (as may be amended from time to time, the “**Letter Agreement**”);

AND WHEREAS the Parties have agreed to enter into this MOU to set out the process for investigating and implementing the Alternative Project and, if determined to be feasible and subject to the entering into of certain definitive agreements, further suspending the Arbitration;

NOW THEREFORE, in consideration of the agreements, premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

ARTICLE 1 TERM

- 1.1 Unless extended by mutual agreement of the Parties, and subject to earlier termination as set forth in Section 1.2, the term of this MOU (the “**Term**”) shall be from the date set out above until the earlier of: (i) 5:00 p.m. (Toronto time) on December 14, 2012, and (ii) the execution and delivery of the Definitive Agreements (as defined below) by the applicable parties thereto.
- 1.2 This MOU may be terminated at any time by mutual agreement of the Parties and will automatically terminate concurrently with the termination of the OPG MOU (as defined herein).
- 1.3 Notwithstanding the termination of this MOU by the passage of time or as otherwise provided herein, the provisions of Articles 4 and 5 shall survive if the Definitive Agreements are not executed and delivered by the Parties.

ARTICLE 2 ALTERNATIVE PROJECT

- 2.1 TCE will work diligently to determine the feasibility of developing, constructing and operating the Alternative Project at the Site. In connection therewith, the Parties acknowledge that:
 - (a) the OPA, TCE and OPG have entered into, contemporaneously with the execution and delivery of this MOU, a memorandum of understanding (the “**OPG MOU**”); and
 - (b) in order for TCE to perform its obligations under this Section 2.1, TCE will rely upon OPG to provide to TCE reasonable access to the Site and such information that is in OPG’s possession or control relating to the Site and to the feasibility of developing, constructing and operating the Alternative Project thereon as TCE may reasonably request.
- 2.2 Subject to TCE, acting reasonably, determining that the Alternative Project is feasible:

- (a) in accordance with the provisions of the OPG MOU, TCE will, subject to Section 2.3, use commercially reasonable efforts to enter into, on or before December 14, 2012, one or more agreements (the “**OPG Agreements**”) related to the Alternative Project on terms and conditions satisfactory to TCE;
- (b) the OPA and TCE will negotiate in good faith and, subject to Section 2.3, use commercially reasonable efforts to enter into, on or before December 14, 2012 a Clean Energy Supply Contract (CES) Contract or an amended and restated Original Contract (the “**New CES Contract**”) for the Alternative Project in accordance with the terms set out in Schedule A; and
- (c) the OPA, TCE and the Province will negotiate in good faith and, subject to Section 2.3, use commercially reasonable efforts to enter into, on or before December 14, 2012, an agreement (the “**Reimbursement Agreement**”) providing for the reimbursement of certain costs to TCE in accordance with the terms set out in Schedule B.

(The OPG Agreements, the New CES Contract and the Reimbursement Agreement are referred to collectively herein as the “**Definitive Agreements**”).

- 2.3 If the Parties reach agreement to execute and deliver the Definitive Agreements to which they are party, and OPG agrees to execute and deliver the OPG Agreements, in each case as provided in Section 2.2, the Definitive Agreements will be executed and delivered by the Parties party thereto contemporaneously on December 14, 2012 or such earlier date agreed to by the Parties provided that the OPG Agreements are contemporaneously executed and delivered by OPG.
- 2.4 If the Definitive Agreements are executed and delivered in accordance with the provisions of Section 2.2 and Section 2.3, (i) the New CES Contract will provide that the OPA will support the development and construction of the Alternative Project, which support will include assistance to TCE in connection with obtaining necessary permits, consents and approvals for the Alternative Project in a timely manner; (ii) the Reimbursement Agreement will provide that the Province will agree not to take any steps or actions that could reasonably be expected to interfere with TCE’s efforts to perform its obligations under the New CES Contract; and (iii) the New CES Contract will provide that the OPA will assist where reasonably able with the prioritization of the Alternative Project in respect of its receipt of necessary permits, consents and approvals. For purposes of this provision “interfere” will not mean the general application of new or existing laws.

ARTICLE 3 SUSPENSION OF ARBITRATION

- 3.1 The Province, TCE and the OPA agree that the Arbitration is suspended for the Term; provided, however, if this MOU is terminated pursuant to Section 1.2 the Arbitration will resume forthwith. Within two days of the execution hereof, TCE, the OPA and the Province will enter into a new letter agreement modifying the milestone dates for the Arbitration based upon a restart date of January 7, 2013.
- 3.2 If the Definitive Agreements are executed and delivered in accordance with Sections 2.2 and 2.3, then contemporaneously with the delivery of the Definitive Agreements, the Province, TCE and the OPA will amend the Arbitration Agreement in accordance with the terms set out in Schedule B.

**ARTICLE 4
CONFIDENTIALITY AND ANNOUNCEMENTS**

- 4.1 The Parties acknowledge that this MOU and the negotiations and documents exchanged hereunder are confidential and are subject to the provisions of the Letter Agreement.
- 4.2 Any press release, public statement, announcement or other public disclosure (a “**Public Statement**”) with respect to this MOU, the Definitive Agreements or the transactions contemplated in this MOU may be made by any Party (other than the Province) only with the prior written consent and joint approval of the other Parties except as may be required by any applicable law, order, regulation or ruling. Where a Public Statement is required by any applicable law, order, regulation or ruling, the Party (other than the Province) required to make the Public Statement will use commercially reasonable effort to obtain the approval of the other Parties hereto as to the form, nature and extent of the disclosure.
- 4.3 Notwithstanding anything to the contrary in the Letter Agreement or this MOU, the Province may, without consultation with the other Parties, make a Public Statement with respect to this MOU, the Definitive Agreements or the transactions contemplated in this MOU or publicly disclose this MOU.

**ARTICLE 5
MISCELLANEOUS**

- 5.1 Any notice, direction or other communication (each a “**Notice**”) given regarding the matters contemplated by this MOU must be in writing, sent by personal delivery, courier or facsimile, along with a copy by electronic mail, and addressed:

- (a) to the Province at:

Ministry of Energy
800 Bay Street
6th Floor
Toronto, ON M7A 2C1

Attention: Rick Jennings, Assistant Deputy Minister, Electricity, Supply,
Transmission and Policy Division

Telephone: (416) 314-6190
e-mail: rick.jennings@ontario.ca

- (b) to TCE at:

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

Attention: Terry Bennett, Vice-President, Power Generation Development

Telephone: 416-869-2133
Facsimile: 416-869-2056
e-mail: terry_bennett@transcanada.com

(c) to OPA at:

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

Attention: Michael Lyle, General Counsel

Telephone: (416) 969-6035
Facsimile: (416) 967-1947
e-mail: michael.lyle@powerauthority.on.ca

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (ii) if sent by same-day courier service, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. The failure to send a copy of a Notice by electronic mail does not invalidate delivery of that Notice to a Party. For the purposes of this Section, "**Business Day**" means any day of the year other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

- 5.2 Time is of the essence in this MOU.
- 5.3 The Parties intend that this MOU will not benefit or create any right or cause of action in favour of any person or entity, other than the Parties. The Parties acknowledge and agree that at the conclusion of good faith negotiations of the Definitive Agreements, the approval of TCE's and the OPA's respective boards of directors (in such boards' sole discretion) will be required for execution and delivery of such agreements.
- 5.4 Except as otherwise expressly provided in this MOU, each Party will be responsible for its own costs and expenses incurred in connection with the negotiation, execution and performance of this MOU and the Definitive Agreements.
- 5.5 This MOU may only be amended, supplemented or otherwise modified by written agreement executed by the Parties.
- 5.6 No waiver of any of the provisions of this MOU will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this MOU will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right it may have.

- 5.7 This MOU will enure to the benefit of and be binding upon the Parties and their respective permitted successors and permitted assigns. No Party may assign its rights or obligations hereunder without the consent of the other Parties.
- 5.8 If any provision of this MOU is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this MOU and the remaining provisions will remain in full force and effect. The Parties shall engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the effect of which substantially reflects that of the illegal, invalid or unenforceable provision it replaces.
- 5.9 In this MOU, words importing the singular number only will include the plural and vice versa; words importing the masculine gender will include the feminine and neuter genders and vice versa; the terms “this MOU”, “hereof”, “hereunder” and similar expressions refer to this MOU and not to any particular section or other portion hereof and include any agreement supplemental hereto; “including” or “includes” will be without limitation; “Section”, “Article” or “Schedule” followed by a number or a letter refers to the correspondingly numbered or lettered section or article hereof or schedule attached hereto; “person” will be interpreted broadly and includes an individual, partnership, association, trust, body corporate or other entity.
- 5.10 This MOU will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 5.11 This MOU may be executed in any number of counterparts (including counterparts by electronic mail) and all such counterparts taken together will be deemed to constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this MOU.

TRANSCANADA ENERGY LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by THE MINISTER
OF ENERGY**

By: _____
Name:
Title:

ONTARIO POWER AUTHORITY

By: _____
Name:
Title:

**SCHEDULE A
OPA AGREEMENT**

1. The New CES Contract will be in the form contemplated by this Schedule A.
2. The New CES Contract will be on the same terms as the Original Contract, with only such modifications thereto as are necessary to reflect:
 - (a) changes in Exhibit A – Project Description to reflect the different project name, Site, and characteristics of the Alternative Project;
 - (b) changes in Exhibit B – Contract Capacity, Net Revenue Requirement, and Other Stated Variables to reflect the following Contract Heat Rates resulting from the use of fast start gas turbines:

Season 1	7.355 MMBTU/MWh (HHV),
Season 2	7.384 MMBTU/MWh (HHV),
Season 3	7.443 MMBTU/MWh (HHV), and
Season 4	7.397 MMBTU/MWh (HHV);
 - (c) changes in Exhibit F to reflect new and appropriate agreed Milestone Dates (as defined in the Original Contract) for the Alternative Project;
 - (d) changes to Section 8.1 to permit the Province to make certain disclosures relating to the details of the New CES Contract and the Alternative Project;
 - (e) changes to Section 2.2 to reflect the provisions of Section 2.4 of the MOU;
 - (f) the addition of a new Exhibit X – Gas Delivery and Management Services which shall be based on Exhibit S of GTA West Trafalgar Clean Energy Supply (CES) Contract dated as of November 14, 2006 between TCE and the OPA with necessary amendments to provide for the full reimbursement (on a flow-through basis and without an adjustment to the Net Revenue Requirement) by the OPA of Gas Delivery and Management Services costs required for the operation of the Alternative Project during the term in accordance with the terms of the New CES Contract;
 - (g) the addition of a mechanism to compensate the Supplier for capital cost contributions relating to any gas pipeline capacity upgrades or gas connection costs required for the operation of the Alternative Project. TCE will take reasonable steps to minimize such costs;
 - (h) the addition of a mechanism to compensate TCE for all costs related to the connection of the Alternative Project to the point of interconnection on Hydro One’s 500 kV transmission system from the high side of the Alternative Project’s step-up transformers. TCE will take reasonable steps to minimize such costs;

- (i) the addition of a mechanism to compensate TCE for all amounts, if any, that TCE pays OPG in respect of the aggregate of Capital Costs and Purchase Price (as such terms are defined in the OPG MOU) in excess of \$25,000,000; and
 - (j) termination of the New CES Contract in the circumstances contemplated in Schedule B.
3. The "Net Revenue Requirement" for the New CES Contract will be \$15,200/MW-month which shall be adjusted in accordance with the terms of the New CES Contract from and after the Commercial Operation Date.

SCHEDULE B
REIMBURSEMENT AGREEMENT

1. The Reimbursement Agreement will be between TCE, the OPA and the Province.
2. Within ten (10) Business Days following the execution of the Reimbursement Agreement and in accordance with the terms thereof, the following payments shall be made to TCE by the OPA:
 - (a) \$210,000,000 in respect of TCE's costs relating to the acquisition of gas turbines for the OGS Facility and all contracts related thereto, including transportation, carrying, storage, foreign currency hedging, procurement, design and engineering costs and the initial spare parts; and
 - (b) \$40,000,000 in respect of TCE's costs relating to the OGS Facility (other than those included in the foregoing clause (a) and costs relating to work product that TCE can re-use for the Alternative Project), costs relating to TCE's mitigation efforts in respect of the cancellation of the OGS Facility, and carrying costs of the foregoing;

in each of the foregoing cases only to the extent that TCE provides the following documentation to verify such costs:

- (c) an opinion from an independent auditor confirming that such costs have been paid or committed to be paid by TCE in respect of costs contemplated by Sections 2(a) or 2(b) of this Schedule B; and
- (d) an officer's certificate from TCE confirming that such costs have been incurred in respect of costs contemplated by Sections 2(a) or 2(b) of this Schedule B and in accordance with TCE's cost accounting procedures.

The Reimbursement Agreement shall provide that in consideration of such payments, the OPA and the Province shall be released from any and all claims, damages and costs incurred by TCE arising from the cancellation of the OGS Facility other than those claims and damages addressed in Section 4 of this Schedule B.

3. The Reimbursement Agreement will provide that it shall be an "**Infeasibility Determination Event**" if:
 - (a) the Province cancels, or requires the OPA to cancel, the Alternative Project, the Province expropriates the Alternative Project, the New CES Contract, or any property related thereto, the loss of which property would result in TCE's inability to perform its material obligations under the New CES Contract, or the OPA terminates, disclaims or repudiates the New CES Contract other than as a result of Supplier Event of Default (as defined in the New CES Contract); or
 - (b) as a result of the occurrence of an event of Force Majeure (as defined in the Original Contract) set out in Section 11.3(h) of the Original Contract, the Alternative Project has not received all material permits, consents and approvals necessary for the construction and operation of the Alternative Project by the original Milestone Date for obtaining all pre-construction approvals and permits set out in Exhibit F of the New CES Contract; or

- (c) as a result of the occurrence of an event of Force Majeure, the Alternative Project is unable to achieve Commercial Operation on or before the date which is 365 days after the original Milestone Date for attaining Commercial Operation set out in Exhibit F of the New CES Contract.

For greater certainty, the provisions of Article 11 of the Original Contract shall be incorporated into the terms of the Reimbursement Agreement as they relate to the foregoing Sections 3(b) and 3(c) of this Schedule B.

- 4. The occurrence of an Infeasibility Determination Event will be declared by written notice of TCE to the OPA and the Province and:
 - (a) if the Infeasibility Determination Event has occurred pursuant to Section 3(a) or 3(b) of this Schedule B, the Province will within 30 days of the determination that such Infeasibility Determination Event has occurred pay to TCE \$50,000,000 as a payment in respect of the Arbitration;
 - (b) TCE will take reasonable action to wind-down construction in accordance with the terms of its contracts and, in a reasonable fashion, fully demobilize and safely secure the Site, and use commercially reasonable efforts to mitigate costs and expenses incurred following the provision by TCE of such notice;
 - (c) the Arbitration will recommence in accordance with the terms of the Arbitration Agreement and the Parties will amend the Arbitration Agreement to provide that the amounts which have been paid pursuant to Section 2 and 4(e) of this Schedule B have been received in full satisfaction of the amounts referred to in subsection 4.3(c)(ii)(B) of the Arbitration Agreement;
 - (d) TCE shall be paid the positive difference, if any, between: (i) the amounts determined by the Arbitrator as owing under the provisions of the Arbitration Agreement; and (ii) the amount received by TCE pursuant to Section 4(a) of this Schedule B;
 - (e) the OPA shall pay to TCE the positive difference, if any, between (i) the aggregate amount of costs confirmed by the opinion of an independent auditor to have been paid by TCE in respect of costs contemplated by Sections 2(a) and (b) of this Schedule B and (ii) the amount paid by the OPA to TCE in accordance with the provisions of Sections 2(a) and (b) of this Schedule B; or TCE shall pay to the OPA the positive difference, if any, between (i) the amount paid by the OPA to TCE in accordance with the provisions of Sections 2(a) and (b) of this Schedule B, and (ii) the aggregate amount of costs confirmed by the opinion of an independent auditor to have been paid by TCE in respect of costs contemplated by Sections 2(a) and (b) of this Schedule B;
 - (f) if the Infeasibility Determination Event has occurred pursuant to Section 3(a) of this Schedule B, the OPA, or such other entity as directed by the OPA, will purchase from TCE, free and clear of any encumbrances or liens (including, for greater certainty, any obligations of TCE to make any further payments to MPS under the terms of the MPS turbine supply agreement), the Alternative Project, including all property, whether tangible or intangible, related thereto, including the turbines, lands, agreements, consents, permits, approvals, entitlements, designs and benefits related thereto. The "Purchase Price" will be an amount equal to all costs incurred by TCE (including the cost of the gas

turbines) relating to the development, design, engineering and construction of the Alternative Project together with interest at a rate of prime plus 2% per annum compounded monthly from the date such costs were incurred until the date of payment. For greater certainty, any costs relating to the gas turbines for which TCE was paid in accordance with the provisions of Section 2(a) of this Schedule B shall be deducted from the Purchase Price;

- (g) if the Infeasibility Determination Event has occurred pursuant to Section 3(b) or 3(c) of this Schedule B, the OPA, or such other entity as directed by the OPA, will have the option, subject to customary due diligence, to acquire from TCE at fair market value, free and clear of any encumbrances or liens (including, for greater certainty, any obligations of TCE to make any further payments to MPS under the terms of the MPS turbine supply agreement), the Alternative Project, including all property, whether tangible or intangible, related thereto, including the turbines, lands, agreements, consents, permits, approvals, entitlements, designs and benefits related thereto. For greater certainty, any costs relating to the gas turbine for which TCE was paid in accordance with the provisions of Section 2(a) of this Schedule B shall be deducted from the amount payable under this Section 3(g);
- (h) if the Infeasibility Determination Event has occurred pursuant to Section 3(b) or 3(c) of this Schedule B and the OPA has not exercised the option set forth in Section 3(g) of this Schedule B, TCE shall transfer title to the MPS turbines and assign the benefits (but not the obligations of TCE) of the MPS turbine supply agreement and the MPS long term service agreement to the OPA or such other entity as directed by the OPA, free and clear of any encumbrances or liens (including, for greater certainty, any obligations of TCE to make any further payments to MPS under the terms of the MPS turbine supply agreement); and
- (i) upon such payments, the New CES Contract will be terminated without further cost and without penalty and TCE, the Province and the OPA shall release each other from all claims, damages and costs arising in connection with the Original Contract and the New CES Contract.