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November 24, 2009

The Honourable John Gerretsen  
Minister of the Environment  
Ferguson Block  
11<sup>th</sup> Floor  
77 Wellesley St.W.  
Toronto, ON M7A 2T5

Dear Minister Gerretsen:

Re: **URGENT**

**TransCanada Energy Ltd.'s Proposed 900MW Natural Gas-Fired Electricity  
Generating Plant at Ford of Canada's Oakville Site (the "Proposed 900MW Plant")**

Our client, Citizens for Clean Air ("C4CA"), is a non-profit organization that consists of people in Oakville, Mississauga and beyond who are concerned about the development of the Proposed Electricity Plant to obtain additional electricity capacity in the Southwest Greater Toronto Area (the "SWGTA"). It is clear that this Proposed 900MW Plant, in particular owing to its size and location, is very different than other electricity-generating facilities that have been built in Ontario and beyond. There are many reasons why the Proposed 900MW Plant should not proceed at its proposed location. Our client believes the plant would create a negative legacy that the people of Ontario would regret for many decades because of serious short and long term negative environmental, socio-economic, community, health and safety impacts.

The Proposed 900MW Plant Defies Common Sense (and should not proceed, and at a minimum, an Individual EA is required)

Briefly, the proposed location violates the common sense planning principle that provides for land uses adjacent to one another that are compatible. In this case, the location criteria were heavily weighted to accommodate technical and system considerations. This resulted in the selection of a location on the fringe of an area that has been historically zoned industrial, even though this location is approximately 350 metres from a major, established residential area, with homes, schools and other community features (for example, the nearest school is approximately 320 metres away, and the nearest homes are approximately 400 metres away). It is clear that these established residential uses are not compatible with the Proposed 900MW Plant. The proposed location does not provide an appropriate buffer area, which means that there will be unacceptable, and likely unlawful, impacts

to the residential area that cannot be mitigated. This would likely result in residents being forced to take action to protect themselves from such impacts if the plant were constructed, and perhaps even before that, such as bringing nuisance and other actions. There is an opportunity to avoid creating such a situation, which would inevitably result in unnecessary conflicts and a legacy that would be regretted for decades to come. As you know, under current environmental regulations, even a wind turbine would not be allowed to be located at the current proposed location.

The Proposed 900MW Plant Would Cause Harm and Breach Charter Rights (and at a minimum, an Individual EA is required)

Further, if TransCanada is permitted to proceed with the Proposed 900MW Plant without conducting an individual environmental assessment ("EA") under Part II of the *Environmental Assessment Act* (the "Act") (an "Individual EA"), there would be significant prejudice to the people of Ontario, including the residents who are members of our client. This could very well include harm that would result from a breach of their right under section 7 of the Canadian Charter of Rights and Freedoms to life, liberty and security of the person, which they cannot be deprived of except in accordance with the principles of fundamental justice. This breach results from the process that is being followed, including in an expedited manner, despite the fact there is no need to do so. Let us explain this more fully.

Regulation 424/04 was made under the *Electricity Act, 1998* to provide for the development of the Integrated Power System Plan ("IPSP"). In order to proceed with the IPSP, approval needed to be obtained from the Minister of Environment under the Act, but such requirement was removed when Regulation 276/06 designated (which in our view was not necessary) and then more importantly exempted the IPSP from the requirements to obtain Ministerial approval under the Act and to complete an EA under Part II the Act for that purpose.

Regulation 424/04 described the process that had to be followed for the IPSP (and related plans) to obtain electricity capacity. It was quite surprising that the IPSP was exempt from requiring an EA, because an EA would have ensured there would be proper environmental planning as contemplated by the Act. Regulation 424/04 did contain requirements that afford some protections to ensure consideration of certain environmental factors. For example, paragraph 2(1)(8) of Regulation 424/04 requires the OPA to ensure that for each electricity project (recommended in the IPSP) *that meets the criteria set out in subsection 2(2)*, there must be (i) an analysis of the impact on the environment of the electricity project, and (ii) an analysis of the impact on the environment of a reasonable range of alternatives to the electricity project [emphasis added]. Paragraph 2(1)(8) at least imported some of the key factors that would have been included in an EA conducted under Part II of the Act, albeit without any of the safeguards contained in the Act, such as Ministerial consideration and approval of the terms of reference and the Individual EA itself.

However, it is critical to note that paragraph 2(1)(8) only applies to those projects for which an EA under Part II of the Act *is required*. The Proposed 900MW Plant does not *require* an environmental EA under Part II of the Act, because of the exemption under subsection 4(4) of Regulation 116/01 (Electricity Projects), which states:

"...an undertaking that is designated under this section as an undertaking to which the Act applies (which includes a generation facility that has a name plate capacity of five megawatts or more that uses biomass or natural gas as its primary power source) is exempt from Part II of the Act if the undertaking is carried out in accordance with the procedure set out in the Environmental Screening Process."

This arguably means that the IPSP could proceed with an electricity project without an analysis of the impact of the project on the environment, and more importantly, without an analysis of the impact on the environment of a reasonable range of alternatives to the project (which is not acceptable). It is only those projects that *require* approval under Part II of the Act, which are already subject to the requirements imposed by the Individual EA process, that require the OPA to consider the environmental impacts of the project and the alternatives to the project under paragraph 2(1)(8) of regulation 424/04. For projects that do not *require* an EA under Part II of the Act, including arguably the Proposed 900MW Plant, regulation 424/04 only requires the *consideration* of safety, environmental protection and environmental sustainability when preparing a plan. As such, it appears the Proposed 900MW Plant is proceeding without being subject to the requirements that are necessary to have a proper assessment of potential impacts.

As a result, although the government imposed protections that could at least potentially justify the exemption of the IPSP from an Individual EA, such as requiring the assessment of alternatives, these requirements do not apply to the Proposed 900MW Plant, and therefore our client's members are left without proper or adequate protection. This is not in accordance with principles of natural justice, including because the exemption of the IPSP from an EA is overreaching and has resulted in what we expect are unintended consequences; namely, that the development of the Proposed 900MW Plant could proceed without a proper environmental assessment in accordance with Part II of the Act. To put it another way, once the IPSP was exempt from an EA, which EA would have provided proper protection by requiring the consideration of potential impacts and alternatives, the public was then left without appropriate protection because this project does not meet the criteria that would provide such protection. And the reason for this is that the project is not required to complete an EA under Part II of the Act! We trust this is not what the government intended, and hope that you will understand why this unacceptable situation must be remedied.

Fortunately, Minister, there are several very simple steps that can be taken to remedy this, which we describe below. Even better, the steps would allow TransCanada to meet its stated corporate principles and objectives. Our client is pleased that TransCanada has strong publicly-stated corporate principles, which hopefully will cause it to do the right thing.

#### Electricity Supply and Demand

The other good news is that it has become clear, including based on the Ontario government's forecasts, that there is no need for the Proposed 900MW Plant, and certainly no need to proceed in an expedited manner. C4CA requests that the Ontario government not allow this project to proceed, which is currently being fast-tracked in an expedited manner.

### An Individual EA is Required

At a minimum, the Proposed 900MW Plant should not proceed without a proper environmental assessment being carried out, which must be an Individual EA that would include all of the matters described in Part II of the Act. This would be the best way for the Ontario government and TransCanada to fulfill their responsibilities to the people of Ontario (including most directly the residents of Mississauga, Oakville and Toronto), and to meet their stated principles and objectives. An environmental screening/review process is not adequate or appropriate for a project of this nature, given its proposed inappropriate location immediately next to the sensitive residential area (including homes, schools and natural areas).

### TransCanada's Principles and Commitments Require an Individual EA

Very importantly, this would be the way for TransCanada to meet its publicly-stated commitments that it will vigorously study impacts to people and the environment as part of the environmental review process; make community input a key component of the development; and meet the highest regulatory standards. Our client is very pleased and comforted by these statements, including statements on its website that TransCanada meets its commitments. In this case, that clearly would mean conducting an Individual EA, with provincial and federal government involvement, because *that* is the highest regulatory standard, and would be the appropriate way to ensure that community input would be included and there would be vigorous studies of impacts to people and the environment.

### Transparency and Consultation Require an Individual EA

We have already seen examples of how the expedited process without an Individual EA is proceeding in a manner that will not meet the principles and objectives of Ontario and TransCanada. We expect that this is unintentional, given that TransCanada has clearly stated that public consultation is key, and trust that you and TransCanada will remedy the situation immediately, before any further harm or prejudice is caused.

Transparency and consultation are two fundamental principles of an Individual EA. This is contrasted to the more closed, self-assessment that occurs in a screening/environmental review process completed under Regulation 116, which includes limited consultation that is at the proponent's direction and control. Our client does not have the information it needs to properly understand and assess the Proposed 900MW Plant, and information has not been forthcoming from the Manufacturing Energy and Infrastructure ("MEI"), the OPA or TransCanada. We are attempting to obtain such information, which would clearly be made available in an Individual EA.

In terms of consultation, although there are hundreds, if not thousands, of people who want to obtain information about the project and to engage in consultation, there has been almost no such activity since the OPA awarded a contract to TransCanada approximately 6 weeks ago. An Individual EA would provide for consultation from the beginning, including during the development of the terms of reference ("TOR"), which themselves provide direction as to what consultation must be conducted.



The process that TransCanada is undertaking does not provide for this. This project would have profound negative impacts on the residents of this area, and beyond, and as such, they are entitled to proper consultation. This has been acknowledged by TransCanada itself, which has confirmed that public consultation is key. However, instead of engaging in consultation with the public at this very important time, TransCanada appears to be taking the position that consultation will occur after it releases an environmental review report. That itself highlights the need to have an Individual EA. Without the requirements that are included in an Individual EA, proper consultation about this massive fossil-fuel plant that will have significant impacts and an assessment of alternative, will not occur. Instead, TransCanada is able to completely control consultation, including arranging closed-door sessions, such as a meeting it has scheduled for November 24 (which we understand even representatives of the Town of Oakville were unaware of, and our client only found out about by happenstance). This meeting, which we understand can only be attended by invited persons from local residents' associations, is the subject of strict "ground rules" that an attendee must literally sign up for. TransCanada has mandated that there will be a maximum of two people from an organization, and that each speaker will only be entitled to speak for a maximum of two minutes. This, despite the fact that there are many people in this area who are desperate to obtain unfiltered information and to be consulted as soon as possible, particularly since it has now been almost two months since the decision was announced to award a contract to TransCanada.

TransCanada may suggest that the November 24 meeting is simply "pre-consultation", or that it simply wants to meet with local residents' associations to get some initial feedback, and that consultation will occur after it releases an environmental review report. We expect you will agree that this would not constitute appropriate consultation. It is not appropriate to defer public consultation to a brief period of time after the release of an environmental review report (it appears that TransCanada is preparing to have an open house in January 2010), "to answer questions about the new power plant", according to an open letter by the OPA. Of course, by then, it would be too late to have any real or meaningful consultation. Such a process may very well be acceptable for a "green energy" project, such as a wind or solar project or even a small plant, but it is fundamentally unacceptable and inappropriate for a 900MW gas plant that would be located approximately 320 metres from a residential neighbourhood. Extensive public consultation should be underway now, including the provision of information about the Proposed 900MW Plant in an open and transparent manner, as would be the case in an Individual EA. This would, and should, include consultation to determine what consultation will occur.

TransCanada may point to the open houses that it held earlier this year as part of the consultation process, but those were held at a time when several proposals were being considered, and it was reasonable for people to expect that a site that is 320 metres away from an established residential neighbourhood would not be selected, because it would not make any sense.

For the process currently being followed by TransCanada, there is no independent or governmental oversight or control of the consultation process, which is completely directed and controlled by TransCanada. If our client were not to attend the November 24 session that is being carefully controlled by TransCanada, our client (and any other organization that did not attend) may be perceived as being disinterested in consultation. Nothing could be farther from the truth. However,

if our client were to attend, it would be participating in, and condoning, consultation that is not appropriate or fair, and which is not open to the public, who are desperate for this to occur. Either way, there would not be proper consultation, and our client and the general public would lose out.

When our client requested that TransCanada open the November 24 meeting to the public, TransCanada refused. As such, our client, and others, are left in the dark, without access to information, except in a manner that is carefully controlled by TransCanada, without any oversight.

This would not happen in an Individual EA, where you, Minister, would be able to consider and impose proper consultation requirements in the TOR, which themselves would be the subject of consultation.

Screening/Review Process is Not Acceptable or Appropriate (and thus an Individual EA is required)

A screening/environmental review process under Regulation 116 would not include some of the most important matters that must be assessed in relation to the Proposed 900 MW Plant, such as the alternative methods of carrying out the project and the rationale for same, as well as the alternatives to the project and the rationale for same. In order to ensure that a proper assessment is conducted, we expect you will appreciate why it is important that alternatives be considered, including other sites and other ways to generate electricity. It is important that these matters be done properly, particularly given the enormous impacts and the fact that such a large project would be around for many decades. Getting this wrong is not a viable option, and rushing this project and assessment through is the best way to get it wrong. The process that is being followed does not include the requirement to consult with stakeholders to develop and implement terms of reference for the conduct of the assessment, which importantly needs to include review and approval by you, Minister, for it to be done properly (given the size of the Proposed 900MW Plant and its proposed location). This can and would be addressed in an Individual EA.

A screening/environmental review process would not include a review by the Ministry of Environment, or a decision by you, Minister, as to whether the proposal should and can proceed, including with changes and conditions that may be imposed by you. This can and would be addressed in an Individual EA.

An environmental review process under Regulation 116 may be appropriate for "green energy" projects, such as wind, solar and biogas, and perhaps for small electricity facilities, but certainly is not appropriate for such a large fossil fuel-fired electricity plant that is being proposed in such close proximity to a residential area, as well as important transportation infrastructure, natural areas and Lake Ontario. Consider that the development of even a wind turbine cannot proceed if the nearest receptor is less than 550 metres away. It defies common sense to allow the Proposed 900MW Plant to proceed without, at a minimum, an individual EA, particularly given the plant would be only approximately 320 metres from houses and schools.

For the process that TransCanada is currently undertaking, it can simply retain consultants to assess the proposal by applying screening criteria to identify potential negative effects. TransCanada would then be able to determine what public consultation would occur, which may be limited to a

brief period after a report is released, and it would then be able to unilaterally assess the potential negative effects and decided whether to proceed. All of this would be completed without the involvement of any independent, objective party, such as you, Minister, or a tribunal. We expect that TransCanada may indicate that the consultants it retains are independent, but the fact is that TransCanada controls the screening/environmental review process, which by its nature is not acceptable for such a massive project that would be so close to an established residential area. Again, this simply does not make sense.

In addition to lacking common sense, proceeding without an Individual EA would be a clear indication that the government and TransCanada are being driven by a desire to have a fossil fuel-fired electricity plant built as quickly as possible, without taking the necessary time and completing the required steps to properly assess the potential impacts, as well as alternatives. It is also critical that you, Minister, or a tribunal, have the appropriate oversight and decision-making authority, including to determine whether the Proposed 900MW Plant should proceed, rather than allowing TransCanada to make this decision on its own. Further, an individual EA would ensure there is truly appropriate public consultation, which you could require, including, for example, in the terms of reference.

We trust that when TransCanada considers these matters, including in light of its stated principles and objectives, that it will do the right thing and agree to undertake an Individual EA. Consider, for example, the following statement that is posted on TransCanada's website, which again provides great comfort to our client:

*"Corporate responsibility at TransCanada is, in fact, nothing less than values put into action by our dedicated employees. The result is a company that you can rely upon to meet society's strategic energy needs with conviction, ingenuity and integrity."* Hal Kvisle, President and CEO

For such a huge fossil fuel plant that would be located immediately adjacent to so many homes, schools and important transportation corridors, the only way that TransCanada could meet its own stated objective, and for the people of Ontario to be able to rely on it "to meet [the] energy needs with conviction, ingenuity and integrity", would be to ensure that an individual EA is completed. This is particularly important given the very significant issues that are more fully described below, as well as statements that we understand have been made by TransCanada's representative that may result in the perception that this project is going to proceed, no matter what.

The Project Appears to be Proceeding No Matter What (and thus an Individual EA is required to ensure that is not the case)

Based on statements that we understand have been made by TransCanada or its representatives, our client has received the message that the Proposed 900MW Plant is going to proceed no matter what. That may not have been TransCanada's intention, but if you consider the statements, some of which are described below, we expect you will see why one is left with the impression that the EA being conducted is irrelevant, because the proposal is proceeding no matter what. This position also appears to be supported by the OPA, based on statements we have seen by it. For example, in an open letter to Oakville Residents dated November 20, 2009, the OPA stated that

"In September 2009, we announced that TransCanada Corporation *will* build and operate a 900-megawatt gas-fired power plant in Oakville... [emphasis added].

If our client has misunderstood these statements, or has attributed statements to TransCanada that it has not made, we would appreciate knowing this. But we have been provided with several examples of why it appears that TransCanada and at least two significant contractors are of the view that the Proposed 900MW Plant is proceeding, period.

There is one reference we saw by TransCanada that indicates "if approved, the new facility would meet or exceed all environmental regulatory requirements based on scientific evaluation of potential health and environmental impacts". TransCanada also indicated that it will ensure there are no significant human health or environmental impacts by "adherence to Provincial, Federal and North American standards" and by "obtaining necessary approvals from government agencies charged with the protection of the environment and people prior to construction". However, at the same time, TransCanada is *not* proceeding with an Individual EA, which is the only appropriate EA for the Proposed 900MW Plant that is so close to a large, established residential area. Further, the environmental review being conducted would mean that the project would not be subject to your approval, or approval by any government agency at the critical EA planning stage. It is very important, given the location of the Proposed 900MW Plant, that there be a robust, transparent EA process that includes oversight, review and approval-making authority by you, Minister, and your Ministry. To make matters even worse, if TransCanada were to simply conduct an environmental review, it could then proceed, based on the environmental review report, to apply for and obtain air, water and waste approvals, without requiring public involvement, because it would argue that an EA was completed! This, despite the fact that the EA process would have been a self-assessment by TransCanada. We expect you will appreciate why this is not acceptable in the circumstances. These issues can and would be addressed in an Individual EA.

We understand that TransCanada has indicated that it is acceptable for the Proposed 900MW Plant to be built at the Ford site because the land is zoned industrial, which suggests there is no need for more separation between the plant and the residential area (i.e, the homes and schools). The proposed site has historically been zoned industrial, but to suggest that means the land is appropriate for the Proposed 900MW Plant truly misses the point, and does not take into account the fact that the proposed site is so close to such a large residential neighbourhood. This is at least one reason that the Town of Oakville has taken steps to assess the proper use of this land, including by passing an interim control by-law. These issues can and would be addressed in an Individual EA.

Consider also TransCanada's statement in its document entitled "Frequently Asked Questions About TransCanada's Proposed Oakville Generating Station", in which TransCanada state that the proposed site is "approximately 15 acres in size, making it an extremely efficient use of available industrial land". TransCanada also states that "As the proposed site is currently zoned for industrial use, it is not anticipated to have any impact on local property value". TransCanada indicates that the proposed site is near existing gas and electrical infrastructure. These statements drive home one of the key problems and issues here. TransCanada is so focused on the infrastructure that is available at the proposed site that it has ignored or lost sight of the real issue, which is that the location is

approximately 320 metres from a large, established residential neighbourhood with schools and houses. Efficient or not, the proposed site for such a huge fossil fuel plant would likely cause significant impacts on the members of our client, and others, including impacts that are described in more detail below. We respectfully request that you not allow TransCanada to "ignore the elephant in the room" (i.e., the large residential area immediately adjacent to the Proposed 900MW Plant), and instead require that the blinders be removed from the analysis of the proposed use of the Ford site. This requires a proper assessment with your direct involvement. This can and would be addressed in an Individual EA.

TransCanada's documents related to the Proposed 900MW Plant refer to other sites that it suggests are similar, including the Halton Hills facility (which is located in the "401 industrial corridor", as described by TransCanada) and the Portlands Energy facility (which is located in the industrial port lands, adjacent to the decommissioned Hearn generating station). Minister, although all three sites have historically been zoned industrial, we expect you will immediately realize that there is simply no comparison between the two industrial sites and the location for the Proposed 900MW Plant. Not only is the Proposed 900MW Plant significantly larger than the other two sites, there is certainly no established residential area, with so many schools and homes, that is close to either of Halton Hills or the Portlands facilities.

TransCanada also refers to its operation of the Ravenswood facility in Queens, New York, which it says is approximately 250 metres away from apartments and 300 metres from the largest public housing complex in the U.S. Minister, we encourage you to look into this plant, which was originally constructed in 1965. The unique circumstances that resulted in this plant being built should not, in the 21<sup>st</sup> Century, be used as the basis to construct a facility that would result in a negative legacy in Ontario for many decades to come. We suggest that if TransCanada believes that a massive fossil fuel plant can and should be constructed immediately next to a large, established residential area, with many schools and thousands of homes, it should have no difficulty ensuring that this is tested and properly assessed as part of an independent environmental assessment that has your direct involvement, oversight and decision-making authority. An Individual EA can and would address this.

We understand there may have been suggestions that since this neighbourhood is already suffering from the many industrial and automobile emissions in the area, the addition of a fossil fuel plant is not an issue. If the area is at, or above, capacity, and the Proposed 900MW Plant would cause significant impacts, the project should not be built. This can and would be addressed in an Individual EA.

We understand that TransCanada has indicated that the plant will be safe and appropriate, which has also led to our client's perception that TransCanada has concluded that since it believes the plant is safe and appropriate, it will obtain all required assessments and approvals and proceed accordingly. Unfortunately, the assessment it refers to is a self-assessment process, without the necessary direction, oversight and decision-making authority by you, which is only available in an Individual EA. If the proposal were allowed to proceed with just an environmental review, there would then be limited ability by the public to intervene when air, water and waste approvals were applied for and

obtained, based on an argument that an EA, with public consultation, has already been completed, despite that fact that the EA would be a self-assessment by TransCanada. This does not appear to be in keeping with TransCanada's stated corporate principles, but an Individual EA would address this.

These concerns are further highlighted by significant statements that are made in TransCanada's 3<sup>rd</sup> Quarter 2009 Report, which we expect would not be made without careful consideration, given this is such an important public document. In this report, TransCanada stated: "On September 30, 2009 the Ontario Power Authority (OPA) awarded TransCanada a 20-year clean energy supply contract to build, own and operate the 900 MW Oakville Generating Station in Oakville, Ontario. A contract has now been finalized with the OPA. TransCanada expects to invest approximately \$1.2 billion in the natural gas-fired, combined-cycle plant, scheduled to start producing power by the end of 2013". This report does not appear to mention that this project is conditional, including on an EA (other than, perhaps, a generic reference to "regulatory processes and decisions" under a section entitled "Forward-Looking Information", which applies to all of the matters in the report. Indeed, under the section entitled "Recent Developments", TransCanada indicated that it expects the plant *will* "deliver an after-tax unlevered rate of return of nine per cent" [emphasis added]. This report leaves the reader with the perception that this project *will* be built by 2013.

We also request that you consider other statements that suggest that an EA, and in particular the results of the environmental review, are a foregone conclusion and the plant is going to proceed. Consider, for example, the following posting that is on the website of Aker Solutions ([http://www.akersolutions.com/Internet/MediaCentre/PressReleases/Group/AKPressRelease\\_1353813.htm](http://www.akersolutions.com/Internet/MediaCentre/PressReleases/Group/AKPressRelease_1353813.htm)):

**10 November, 2009 - Aker Solutions has been awarded a notice to proceed by TransCanada Corporation (TransCanada) for the construction of a 900 megawatt (MW) natural gas-fired combined cycle power plant in Oakville, Ontario, Canada. Under a joint venture, Aker Construction Canada Ltd, a subsidiary of Aker Solutions ASA, and HDR Corporation will execute engineering, procurement and construction (EPC) work on the project in cooperation with TransCanada. The contract value to Aker Solutions is approximately CAD \$400 million.**

TransCanada will build, own and operate the 900 MW Oakville Generating Station, having secured a 20-year Clean Energy supply contract with the Ontario Power Authority (OPA). TransCanada expects to invest approximately CAD \$1.2 billion in the natural gas-fired combined cycle power station. The project commences immediately and is scheduled to start producing power by the end of 2013.

"We are very pleased with the confidence that TransCanada placed in us with the award of this important project. The current progress being made by our Aker Construction Canada Ltd on the nearby Halton Hills Generating Station for TransCanada demonstrates our strong execution capability," says Simen Lieungh, President & CEO of Aker Solutions.

Aker Construction Canada Ltd will perform construction, construction management and certain procurement for the project. The project is expected to create approximately 600 construction jobs during the anticipated construction period of approximately 28 months. HDR Corporation will complete project design, procure engineered equipment and provide technical assistance for construction and startup.

This Generating Station is part of the OPA initiative to help meet the critical energy and stability needs of the southwest greater Toronto area. The station will provide reliability to support Ontario's growing renewable energy electricity production from wind and solar, whilst contributing towards replacing coal-fired power generation.

There is no indication that the proposed project is conditional. Instead, this document indicates that the project *will* proceed, not *would* proceed depending on the outcome of an EA. Aker Solutions has a disclaimer section on its website, but this does not appear to qualify the statements that Aker Construction Canada Ltd. *will* perform work and the station *will* provide reliability. Aker's disclaimer appears to qualify matters such as, for example, the *expectation* as to how many jobs may be created.

Consider also the following release, which was posted on Mitsubishi Heavy Industries, Ltd.'s website (<http://www.mhi.co.jp/en/news/story/0911191322.html>).

November 19, 2009 No.1322

### **MHI Receives Order for Two Sets of Gas Turbines and Generators For GTCC Power Generation Plant in Ontario**

Tokyo, November 19, 2009 - Mitsubishi Heavy Industries, Ltd. (MHI) has received an order for two sets of gas turbines and generators (GTG) from North American energy infrastructure company TransCanada. The GTG sets on order will be core components of TransCanada's 900 megawatt (MW) gas turbine combined cycle (GTCC) power generation plant - the Oakville Generating Station (OGS) - to be built in Ontario. The GTG sets are slated for delivery in mid 2011. OGS is planned to be in-service by the end of 2013 and supplying electricity to the Ontario Power Authority (OPA).

MHI received the order through MPS Canada, Inc. MPS Canada, located in Ontario, is a Canadian subsidiary of Mitsubishi Power Systems Americas, Inc. (MPSA), a wholly owned U.S. subsidiary of MHI. The company handles MPSA's power generation equipment business in Canada.

The OGS, a natural gas-fired power plant which TransCanada will build, own and operate based on a 20-year clean energy supply contract with OPA, will be located in Oakville, a city situated approximately 30 kilometers southwest of Toronto on the shores of Lake Ontario. The new power plant will help OPA secure electricity supply and meet increasing energy demands in Southwest Greater Toronto Area (GTA) where the population and economy are rapidly expanding. As part of numerous measures taken to reduce greenhouse gas emissions and fight climate change, Ontario is set to eliminate coal-fired generation by the end of 2014. In line with this Ontario initiative, the OPA has been conducting a program to increase natural gas-fired GTCC power generation, replacing existing coal-fired plants.

In general, GTCC power generation plants consist primarily of gas turbine, steam turbine, heat recovery steam generator and generator. MHI will provide two M501GAC gas turbines and Mitsubishi Electric Corporation will supply two generators. The M501GAC gas turbine is an advanced model that adopts air-cooling to cool the combustor instead of the existing steam-cooling method. This Canadian order represents the first order for the M501GAC.

With GTCC type power generation, gas and steam turbines are used in combination to generate electricity in two stages, utilizing high-temperature exhaust gas from the gas turbine. This configuration enables GTCC power plants to achieve a higher thermal efficiency than non-GTCC plants such as conventional boiler steam turbine plants. Higher efficiency means that GTCC plants reduce fuel consumption relative to electricity output and emit less carbon dioxide (CO<sub>2</sub>), thus making them friendlier to the environment. Specifically, CO<sub>2</sub> emissions generated by combustion turbines are considerably reduced, when compared with coal-fired power generation.

MHI has delivered numerous GTCC power generation systems in Japan and abroad, and in the process has gained widespread trust in the market for its proprietary technologies and prompt delivery record. On the strength of the latest order, going forward MHI intends to further strengthen its marketing activities of highly efficient GTCC power generation systems and gas turbines that contribute to efficient use of energy and reduction of environmental burdens.

Again, MHI has a disclaimer on its website, but the message is the same as the statements from TransCanada and Akers- the Proposed 900MW Plant is going to proceed. Even if one were to suggest that the statements by TransCanada, Aker Solutions and MHI may be the result of the

inadvertent or unintentional use of words (which is doubtful, given how important these public documents and statements are), or that the statements are taken out of context (which does not appear to be the case), they demonstrate that an EA is not considered to be important for the project to proceed (which is likely the case because of the nature of the screening/environmental review being undertaken by TransCanada). Indeed, if an EA were important, one would expect that it would at least be mentioned in these statements. At a minimum, the perception has been created that this project will not be slowed down by any EA. This must be rectified, including by ensuring that an Individual EA is conducted. Anything less will undermine the IPSP and EA processes.

Again, all of this demonstrates that TransCanada is on an expedited schedule to proceed with the Proposed 900MW Plant as soon as possible, and that it is attempting to do this in the fastest time, using the most expeditious process, despite the fact that this does not meet its own stated corporate principles and would not allow for the proper assessment of its proposal. This is not an acceptable process for such a huge fossil fuel plant that would have enormous health and safety impacts, which must be subject to a proper assessment. This can and would be addressed in an Individual EA.

#### Practical and Technical Issues and Concerns Require an Individual EA

In addition to all of the very important reasons described above, there are many practical and technical reasons for ensuring that the Proposed 900MW Plant not proceed, or at a minimum be subject to an Individual EA, including:

- the Proposed 900MW Plant would be located on the fringe of a site that has been historically zoned industrial, which is immediately adjacent to a well-established residential neighbourhood, and would be approximately 320 metres from schools and homes; the proposed location is not an industrial site where there are no immediate residents, such as the sites where the Halton Hills and Portlands plants were built;
- Regulation 116, which would require a screening/environmental review of a 5MW natural gas-fired plant, is not the appropriate mechanism to assess the potential impacts of a plant that would be 180 times that size, particularly given it would be so close to a large residential neighbourhood;
- the Proposed 900MW Plant would be one of the largest gas-fired electricity plants in the world, with hundreds of tonnes of known toxic substances being discharged into the air. Included in these emissions would be ultra-fine particulate matter (PM<sub>2.5</sub>), a cancer causing substance, that would be inhaled into the lungs of Ontarians and beyond, including in the United States;
- the air shed in the area near the Proposed 900MW Plant is already recognized as being overly-polluted, and the additional significant emissions would further deteriorate the air quality in the community that already suffers from high levels of respiratory health problems, and beyond;

- the Proposed 900MW Plant would emit very significant noise and vibrations, and given the extreme proximity to a major established residential area, this would create serious negative impacts to health and the quality of life;
- the Proposed 900MW Plant would use enormous quantities of water, and would discharge huge quantities of sewage (as defined in the *Ontario Water Resources Act*), which we expect would ultimately discharge into Lake Ontario;
- the Proposed 900MW Plant would likely create very large water plumes and vapour clouds, which would be visible for kilometres, including because of its use of a cooling tower. Given the proximity to a major residential area and critical rail and road infrastructure, these clouds would result in icing and fogging, which would likely result in significant and serious negative impacts. These impacts would be a serious threat to the environment, and to the health and safety of people, wildlife and to the safety and efficiency of nearby critically important rail and road transit infrastructure. We understand that at least one other bidder in the OPA's RFP process had considered using a cooling tower, but apparently decided not to use this technology, presumable because of the significant negative effects that would result. This is a very significant and serious concern for our client. We don't have enough information about TransCanada's plans, but an Individual EA would ensure this is properly assessed; and
- the Proposed 900MW Plant would be located next to critical railway lines, and would create added risks in the event of a train derailment.

The development of the Proposed 900MW Plant is being fast-tracked, despite these very serious concerns and issues, and the fact that the demand for electricity in Ontario has decreased such that there is certainly no rush to proceed with the Proposed 900 MW Plant.

#### The Required Individual EA Can be Completed

Minister, we are pleased to indicate that despite the above, there are several ways that a proper Individual EA can be completed for the Proposed Electricity Plant. In addition to allowing the Ontario government and TransCanada to meet their stated principles and objectives, an Individual EA would also be the only way for the Ontario government to respect and meet the stated wishes of the elected officials in the Town of Oakville, the Region of Halton, as well as the local provincial MPPs and federal MPs, all of whom we understand have unanimously and publicly requested that an Individual EA be completed.

We also note that the OPA's publicly-stated guiding principles include commitments to transparency, accountability, collaboration and flexibility, which would not be met unless an Individual EA is completed. Our client notes the OPA's publicly-stated commitments, principles and objectives, which include a commitment to alter its course when and where needed. This is such a time, and although we have not been able to obtain a copy of the agreement that we understand has been entered into between the OPA and TransCanada, the OPA's "Southwest GTA Clean Energy Supply (CES) Contract" itself contemplates the completion of an Individual EA. For example, paragraph

2.1(f) of that document states that the Supplier (in this case, TransCanada) must incorporate "into the Environmental Review Report *or the completed environmental assessment* for the Facility", certain emission limits [emphasis added]. This clearly shows that the OPA contemplated the completion of an Individual EA, and not simply an environmental screening/review.

#### Agreement to Conduct an Individual EA

In order to have an Individual EA completed, you, Minister, could enter into an agreement with TransCanada to have the Act apply to the Proposed 900MW Plant, pursuant section 3.0.1 of the Act. As indicated above, TransCanada has indicated its desire to do the right thing, including by confirming that it is "committed to meeting the highest regulatory standards and managing the environmental footprint of its facilities"; the environmental assessment of the Proposed 900MW Plant "will involve extensive consultations, environmental study and analysis", "all aspects of the facility will be evaluated for potential impacts, including but not limited to noise, air, human health and the natural environment", and "top priority [will be] given to the safety of the public and employees and the protection of the environment".

We trust you will agree that an individual EA is necessary and appropriate, and we also trust that TransCanada will recognize this and enter into an agreement with you to ensure this is completed. This was done by the proponent of a significant energy project in 2007, even though in that case there was no requirement at all to conduct a provincial EA under the Act. In that regard, you may wish to consider the March 7, 2007 agreement under which the MOE and Shell Canada Products agreed that the Act applied to the undertaking that was being proposed.

#### Elevation to Require an Individual EA

If TransCanada is not prepared to conduct an Individual EA, we respectfully request that you require an Individual EA be completed for TransCanada's Proposed 900MW Plant, including for the reasons described above. This proposed plant is so different than other fossil-fueled plants that have been developed, and is certainly is well beyond the 5 MW threshold that would trigger an environmental screening or review under Regulation 116 for a natural gas-fired plant.

#### In Closing

Minister, in closing, we ask that you consider what would happen if someone were to attempt to develop a residential area this close to any existing fossil fuel-fired electricity plant, let alone one of this size. In our view, it is reasonable to expect that any such proposal would be rejected outright, for obvious reasons. This includes the incompatibility of a residential area and a fossil fuel plant. This is confirmed, for example, by the Ministry of the Environment's own land use compatibility guidelines (the "MOE Guidelines").

Although one may argue that since the proposed site is zoned industrial, there is no proposed change of use, that argument misses the point. First, the Proposed 900MW Plant does represent a change of use of the proposed site, because the proposed site is not being used for heavy industrial purposes, such as this large electricity-generating plant. Instead, the proposed site has been on the fringe of

land that has been zoned industrial, and it has not caused impacts to schools and homes that are immediately adjacent to it.

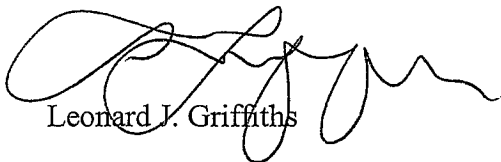
In any event, the MOE's Guidelines indicate they apply when a new facility is proposed when an existing sensitive land use would be within the facility's influence area or potential influence area. Despite this, one may suggest that the MOE Guidelines should not be used where the existing zoning is not being changed, but this also misses the point. The MOE Guidelines clearly state that the objective is to minimize or prevent, through the use of buffers, the exposure of any person, property, plant or animal life to adverse effects associated with the operation of certain facilities. This, of course, is based on common sense and good planning. As such, the MOE Guidelines clearly are relevant for the purpose of considering the change of use of the proposed site for the development of such a large industrial plant that would have so many impacts on the immediately adjacent schools and homes. An Individual EA would allow these issues to be properly considered.

Consider the situation if the shoe were on the other foot. If the electricity plant were present today, it would likely be impossible to develop a residential area within 1000 metres of such a plant, and particularly one of this size, given the nature of its heavy industrial use and potential influence area. Again, given its stated principles and objectives, our client expects that TransCanada will respect the MOE Guidelines, in both letter and spirit, and not construct the Proposed 900MW Plant within 1000 metres of established schools and homes.

If you have any questions or would like to discuss this matter further with us, please feel free to contact the undersigned at your earliest convenience. We will be following up with your office to ensure this important and urgent matter is being addressed as quickly as possible. Thank you for your consideration and anticipated assistance.

Yours truly,

**BENNETT JONES LLP**



Leonard J. Griffiths

LJG/sdh

cc: The Honourable Dalton McGuinty  
The Honourable Gerry Phillips  
The Honourable Donna Cansfield  
The Honourable Deborah Matthews  
Kevin Flynn, MPP  
His Worship Mayor Rob Burton, Town of Oakville  
Emil Kolb, Regional Chair, Regional Municipality of Halton  
Her Worship Mayor Hazel McCallion, City of Mississauga  
Gary Carr, Regional Chair, Regional Municipality of Peel

November 24, 2009

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Terence Young, MP  
The Honourable Lisa Raitt  
The Honourable Jim Prentice  
The Honourable Gail Shea  
The Honourable Leona Aglukkaq  
The Ontario Power Authority  
TransCanada Corporation  
Ford Motor Company of Canada, Limited

