

**ENTENTE FINALE ENTRE
HYDRO-QUÉBEC DISTRIBUTION (HQD)
ET TRANSCANADA ENERGY LTD (TCE)**

Version anglaise caviardée

**AGREEMENT RESPECTING THE TEMPORARY SUSPENSION OF
ELECTRICITY PRODUCTION AT THE BÉCANCOUR GENERATING STATION OF
TRANSCANADA ENERGY LTD. ENTERED INTO IN MONTRÉAL, PROVINCE OF
QUÉBEC, ON 30 NOVEMBER 2007**

BETWEEN: **TRANSCANADA ENERGY LTD.**, a company incorporated under the laws of Canada, having its head office at 450 – 1st Street SW, Calgary, Alberta, T2P 5H1, represented by William C. Taylor, Vice President, Eastern Power, and John Cashin, Assistant Secretary, who are duly authorized for the purposes hereof,

hereinafter called the “**Supplier**”;

AND: **HYDRO-QUÉBEC DISTRIBUTION**, a division of HYDRO-QUÉBEC, a company incorporated under the *Hydro-Québec Act*, (R.S.Q., c. H-5), having its head office at 75 René-Lévesque Boulevard West, Montreal, Québec, H2Z 1A4, represented by André Boulanger, President of Hydro-Québec Distribution, who is duly authorized for the purposes hereof,

hereinafter called the “**Distributor**”;

hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. On 10 June 2003, the Parties entered into an electricity supply contract (“**ESC**”) respecting the production of electricity by the Supplier from its electricity generation *power plant to be constructed in the Bécancour Industrial Park and the sale of capacity and energy primarily generated at the Supplier’s power plant to the Distributor, the whole pursuant to the Distributor’s Call for Tenders A/O 2002-01.*
- B. The ESC was approved by the Régie de l’énergie (“**Régie**”) by decision D-2003-159 of 19 August 2003.
- C. The *power plant* entered into service in September 2006.
- D. The Distributor has advised the Supplier that the electricity produced at the Supplier’s *power plant* will contribute, along with other supply contracts, to cause excess supply above the Distributor’s system requirements during calendar year 2008 and possibly calendar year 2009.

- E. The Distributor has advised the Supplier that, if the Distributor purchased the electricity produced at the *power plant* in 2008 in accordance with the terms of the ESC, the Distributor would have no option but to sell large quantities of electricity on the export market.
- F. The Distributor has therefore requested the Supplier to consent, subject to the approval of the Régie, to the temporary suspension of all electricity production at the *power plant* ("**Suspension**") during calendar year 2008 and possibly calendar year 2009 .
- G. The purpose of the Suspension is to assist the Distributor in achieving a more appropriate overall supply and demand balance in its portfolio during calendar year 2008 and possibly calendar year 2009.
- H. On 31 October 2007, the Parties concluded a Memorandum of Understanding respecting the Suspension ("**MOU**").
- I. The MOU provides for the conclusion of a formal agreement between the Parties respecting the Suspension and incorporating the terms of the MOU ("**Agreement**").
- J. The Distributor has applied to the Régie in file R-3649-2007 for approval of the MOU and of the Agreement.
- K. The Parties wish to proceed with the conclusion of the Agreement, subject to its approval by the Régie.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. INTERPRETATION

- 1. Italicized terms used in this Agreement have the meaning ascribed to them in the ESC. All references to dollar (\$) amounts are expressed in terms of Canadian currency.
- 2. Schedules 1 and 2 form an integral part of this Agreement.
- 3. In the event of any inconsistency between the provisions of this Agreement and those of the ESC, the provisions of this Agreement shall prevail to the extent required to resolve such inconsistency.

II. AGREEMENT

- 4. This Agreement suspends the application of certain provisions of the ESC during the Suspension Period (as defined hereinafter).

5. The entry into force of this Agreement shall be conditional upon its approval by the Régie. The Distributor has applied to the Régie for approval of this Agreement. The Distributor shall pay the legal fees and expenses associated with such application. The Parties acknowledge that the Supplier has been required to intervene in these regulatory proceedings; the Distributor shall pay the Supplier's legal fees and expenses in connection therewith.
6. If the Régie fails to approve this Agreement in its entirety by 7 December 2007, or approves this Agreement on terms not satisfactory to either Party, this Agreement shall be null and void and of no further effect.
7. The entry into force of this Agreement shall be conditional upon the receipt by the Supplier, not later than 31 December 2007, of either:
 - (a) an amendment by the ministère de Développement durable, de l'Environnement et des Parcs ("MDDEP") of the certificates of authorization issued under section 22 of the *Environment Quality Act* (Québec) in respect of the construction and operation of the *power plant* in order to permit the operation of the auxiliary boilers for the production of steam during the Suspension period, or;
 - (b) proper authorization from MDDEP permitting the Supplier to operate the auxiliary boilers for the production of steam during the Suspension period.

III. SUSPENSION

8. In consideration of the undertakings of the Distributor set forth herein, the Supplier hereby consents to the Suspension during the Suspension Period (as defined hereinafter), the whole on the terms and conditions set forth herein. The Supplier shall therefore temporarily suspend all electricity production at the *power plant* during the Suspension Period.

IV. TERM

9. The term of this Agreement ("Term") shall commence, subject to section 5, on the date of its execution and shall, subject to the provisions of this Agreement, expire on the expiry or termination of the ESC.

V. SUSPENSION PERIOD

10. Subject to section 11, the Suspension shall commence on 1 January 2008 and expire on 31 December 2008 ("**Suspension Period**").
11. The Suspension Period shall be extended to calendar year 2009, subject to the terms and conditions hereof, only if requested by the Distributor, provided that such request is received by the Supplier not later than 2 July 2008 at 10:00 a.m. (EDT). In such case, the Parties shall, subject to the approval of the Régie, extend

the Suspension Period for calendar year 2009. If the Suspension Period is extended to calendar year 2009, the term "Suspension Period", as used in this Agreement, shall include calendar years 2008 and 2009.

- 12. The Distributor shall, in such case, inform the Régie of such extension and the Distributor shall comply with the process that will be defined by the Régie regarding such extension of the Suspension Period for calendar year 2009. The Distributor shall pay the legal fees and expenses associated with such process. The Supplier may intervene in such regulatory process; the Distributor shall pay the Supplier's legal fees and expenses in connection therewith. If the Régie approves such extension on terms not acceptable to either Party, the Suspension Period shall not be extended to calendar year 2009, but shall expire on 31 December 2008.
- 13. It is expressly understood and agreed that the Suspension Period shall only cover the calendar year 2008 and possibly calendar year 2009. Any further suspension of energy deliveries from the *power plant* beyond calendar year 2009, if deemed necessary by the Distributor, shall be renegotiated between the Parties and shall expressly not be an extension of this Agreement or the Suspension Period. Any such further suspension shall be the object of a formal agreement to be concluded between the Parties and to be approved by the Régie. The Distributor shall comply with the process that will be defined by the Régie regarding the approval of any such formal agreement.

VI. COMMERCIAL TERMS

A. Continued Capacity Payment

- 14. During the Suspension Period, the Distributor shall continue to pay the Supplier on a monthly basis the amount for capacity set forth in section 16.1 of the ESC.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The amount for capacity for calendar year 2008 is approximately \$ [REDACTED] million. The amount for capacity for calendar year 2009, if applicable, is approximately \$ [REDACTED] million.

B. Energy Payment

15. During the Suspension Period, the Distributor shall pay the Supplier on a monthly basis an annual amount not to exceed \$ [REDACTED] million for calendar year 2008, to compensate the Supplier for its loss of earnings on the energy that would otherwise have been produced, delivered and sold from the *power plant* pursuant to the ESC during that calendar year (“**Energy Payment**”).
16. The Parties acknowledge that an independent expert has been retained by the Supplier to review the calculation of the Energy Payment. The purpose of this review is to provide the Distributor with comfort as to the merits and reasonableness of the Energy Payment, but not to provide the Distributor with the confidential and proprietary operating data of the Supplier or its steam customers. The Distributor shall reimburse the Supplier for the professional fees and expenses charged by the expert to the Supplier for the review. The service agreement for this expert, as well as any report or other work product prepared by this expert pursuant to this Agreement or such review, shall constitute “Confidential Information” for the purposes of sections 39 to 42.
17. If, pursuant to section 11, the Distributor exercises its option to extend the Suspension Period to calendar year 2009, the Supplier shall calculate the Energy Payment for calendar year 2009, using the same principles [REDACTED] as used for calendar year 2008 [REDACTED].

C. Replacement Steam Production

18. During the Suspension Period, steam production for the Supplier’s steam host will have to be replaced via the use of the *power plant*’s auxiliary boiler system. The Distributor shall pay to the Supplier, on a monthly basis, [REDACTED] costs associated with producing such replacement steam production using the auxiliary boilers.

19. [REDACTED]

20. As of 30 November 2007, the costs associated with auxiliary boiler operation are estimated by the Supplier to be \$ [REDACTED] million for calendar year 2008. The Supplier shall provide each month to the Distributor detailed invoices and back-up cost data associated with the auxiliary boiler operations and back-feed electricity.
21. This estimate of \$ [REDACTED] million is based on the anticipated volume of steam sold and on the gas forward price. Should the actual volume of steam and actual gas price differ from the current estimate, the Distributor shall bear the risk associated with these variations. Thus, if the [REDACTED] cost differs from \$ [REDACTED] million, the Distributor shall pay any excess or benefit from any savings.
22. At the Distributor's option, the Supplier shall provide the Distributor the option of executing a fixed price gas swap agreement in order to allow the Distributor to manage the expected cost associated with the estimated fuel use for auxiliary boiler operation. Notwithstanding the possible use of such option by the Distributor, [REDACTED] costs for auxiliary boiler operation as noted herein shall continue to be paid by the Distributor. Therefore such gas swap agreement, if executed between the Supplier and the Distributor, shall operate independently of this Agreement.

D. Natural Gas

23. During the Suspension Period, the Distributor shall pay the Supplier, on a monthly basis, the value of the fixed component of the GMI distribution tariff and the fixed component of the TCPL transport tariff from Dawn to GMI EDA.
24. During the Suspension Period, the Supplier shall grant a credit in favour of the Distributor in respect of the market value of unutilized firm transportation on the TCPL system that is held by the Supplier in regards to the *power plant*. The amount of this credit is definitively established as of the date of execution of this Agreement at \$ [REDACTED] million. The Supplier shall assume the risk of fixing this credit amount. The credit shall be applied monthly, using one-twelfth of the total amount for each month.
25. Should the GMI distribution tariff applicable to the Supplier in respect of the *power plant* be modified or increased in a manner reasonably attributable to the Suspension ("**GMI Rate Change**"), the Distributor shall indemnify the Supplier for any future increase, resulting from a GMI Rate Change and applicable as of or after 1 January 2008, in the total annual natural gas distribution tariff costs payable by the Supplier to GMI in respect of consumption of natural gas at the *power plant* over the distribution tariffs in place and applicable to the Supplier as of the date hereof. For further clarity, a GMI Rate Change may include, without limitation, any reallocation of costs between the commodity and fixed components, any increase of either such component and any modification in rate of return. This indemnification shall apply during the entire period of application of the GMI Rate Change, whether during or after the Suspension Period.

26. Any indemnity amounts payable under section 25 in respect of a GMI Rate Change shall be paid [REDACTED] in the final month of each year during the Suspension Period and thereafter in the final month of each *contract year* under the ESC.
27. The provisions of sections 16.1, Amount for capacity, and 16.2, Price for eligible energy, of the ESC shall be subject to sections 25 and 26 of this Agreement.

E. Substitution Rights

28. As compensation for the Supplier's loss of existing substitution rights under Section 7.5 of the ESC during the Suspension Period, the Supplier shall have the right, from the resumption of electricity generation at the *power plant* and for a period of three (3) years for each year of the Suspension Period (the "**Incremental Substitution Period**"), to increase the substitution of the generation at the *power plant* from another source, by an incremental amount equal to 0.339 TWh per year. For further clarity, if the Suspension Period is limited to calendar year 2008 only, then the Incremental Substitution Period shall be three years, and if the Suspension Period includes calendar year 2009, then the Incremental Substitution Period shall be six years.
29. To take account of the fact that the Supplier's ability to substitute will be affected by the increased volumes noted in section 28, the Supplier shall be permitted to substitute energy from outside Quebec under Section 7.5 of the ESC upon resumption of energy production at the *power plant*, but only to a limited extent and only during the Incremental Substitution Period. In order to protect the Distributor's access to interconnection facilities, the Supplier's substituted electricity generated from outside Quebec shall not exceed a rate of [REDACTED] per hour during the summer period (April through November) and [REDACTED] per hour during the winter period (December through March) during the Incremental Substitution Period.
30. Any power delivered by the Supplier to the Distributor as substituted energy under section 7.5 of the ESC from outside Quebec, as provided for in section 29, shall not be subject to incremental transmission expenses levied by the Distributor or by Hydro-Québec TransÉnergie ("**HQT**"). For further clarity, if such energy is delivered by the Supplier to the interconnection of the HQT system with an adjacent control area, then such energy shall be deemed to be *net delivered energy* and such interconnection shall be deemed to be the *delivery point* for the purposes of the ESC.
31. The provisions of sections 7.5, third paragraph, and 13 of the ESC shall be subject to sections 28 to 30 of this Agreement.

F. Lay-Up and Resumption

32. Within thirty (30) days of the end of each year of the Suspension Period, the Distributor shall pay to the Supplier, a fixed amount of \$■ million, as compensation for certain lay-up and return to service costs at the *power plant*.
33. The availability and scheduling provisions of the ESC (i.e. Part IV, sections 7 to 12) shall be suspended during the first 30 days after the resumption of electricity production at the *power plant* following the end of the Suspension Period. During this 30-day period, all energy produced shall be “as available”, but shall be paid for as *eligible energy* using the price for *eligible energy* set forth in section 16.2 of the ESC.
34. The provisions of Part IV, sections 7 to 12, of the ESC shall be subject to section 33 of this Agreement.

VII. ESC**A. During Suspension Period**

35. During the Suspension Period, the ESC shall remain in full force and effect, subject to section 36.
36. During the Suspension Period, the application of the provisions of the ESC set forth in **Schedule 1** shall be suspended.

B. After Suspension Period

37. After the Suspension Period, the ESC shall remain in full force and effect, subject to section 38.
38. After the Suspension Period, the provisions of the ESC set forth in **Schedule 2** shall be adjusted as provided for therein. If required, the Parties shall conclude an amendment of the ESC in respect of such adjustments and the Distributor shall submit the amendment to the Régie for approval. The Supplier may intervene and participate in such proceedings, and the Distributor shall pay the Supplier's legal fees and expenses in connection therewith.

VIII. GENERAL**A. Confidentiality**

39. Neither of the Parties, without the consent of the other Party, shall divulge or communicate to any person or entity or use for any purpose whatsoever any Confidential Information disclosed to it by another Party or any Confidential Information obtained or produced in relation to the *power plant*, the MOU, this Agreement or the ESC.

40. "Confidential Information" means any information ordered not to be disclosed by the Régie in its decisions D-2003-146 and D-2007-127 as well as all information, written or oral, furnished by a Party, directly or indirectly, to the receiving Party, including but not limited to all contracts, electricity capacity and energy payments and quantities, natural gas volumes and prices, financial information, engineering reports, environmental reports, technical and economic data, marketing terms and arrangements, knowledge, know-how and related information such as plans, maps, drawings, field notes, sketches, photographs, computer records or software, specifications, models, or other information which is or may be either applicable to or related in any way to the assets, business or affairs of the disclosing Party, the *power plant*, the MOU, this Agreement or the ESC.
41. Such prohibition does not prevent the disclosure of Confidential Information to officers or employees engaged by any of the Parties in connection with the foregoing or disclosure which is ordered or required by any applicable law or competent judicial, governmental or other authority or in accordance with the requirements of any recognized stock exchange.
42. Confidential Information shall not include information that is already known to the receiving Party on a non-confidential basis from a source that is entitled to disclose the information, or that is or becomes generally available to the public other than as a result of any act or omission of the receiving Party or its officers, employees or advisers, or that is received by the receiving Party from a third party which is not prohibited from disclosing it.

B. Publicity

43. The content and timing of any press releases and announcements regarding any of the matters provided for in this Agreement shall require the prior written approval of each of the Parties, provided that this shall not prevent any Party making any announcement which it is required to make by any applicable law or competent judicial, governmental or other authority or in accordance with the requirements of any recognized stock exchange.

C. Notice

44. Any notice, demand or other communication required or permitted to be given to any Party shall be in writing and shall be personally delivered to such Party or sent by facsimile to the address of such Party:

(a) in the case of the Distributor to:

Address: HYDRO-QUÉBEC DISTRIBUTION
22th Floor, 75 boul. René-Lévesque Ouest
Montréal, QC
H2Z 1A4

Fax: (514) 289-7355
Telephone: (514) 289-4237

For the attention of: Daniel Richard, Director, Electricity Supply

(b) in the case of the Supplier to:

Address: TRANSCANADA ENERGY LTD.
8th Floor, 55 Yonge Street
Toronto, ON
M5E 1J4

Fax: (416) 869-2056
Telephone: (416) 869-2162

For the attention of: William C. Taylor, Vice President Eastern Power

and shall be deemed to have been received by such Party on the earliest of the date of delivery in the case of personal delivery, and the day following the date of communication by facsimile. Any Party may give written notice to the other Parties of a change of address to some other address, in which event any communication shall thereafter be given to such Party as hereinbefore provided at the last such changed address of which the Party communicating has received written notice.

D. Entire Agreement

45. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings, correspondence or memoranda of understanding between the Parties.
46. Notwithstanding section 45, sections 32 to 36 of the MOU shall remain in force.

E. Counterparts and French Version

47. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement. The Parties agree that a French version of the Agreement will be signed by the Parties as soon as possible.

F. No Partnership

48. Nothing contained herein shall be construed as creating any partnership, agency or joint and several liability between the Parties.

G. Taxes

49. All amounts payable under this Agreement are exclusive of all applicable taxes, including the Goods and Services Tax ("GST") and the Québec Sales Tax ("QST"). The Distributor undertakes to pay to the Supplier any taxes applicable in respect of amounts payable under this Agreement (other than income taxes), and the Supplier shall remit any such taxes received from the Distributor to the relevant tax authorities.

H. Governing Law and Jurisdiction

50. This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec. The Parties irrevocably attorn to the jurisdiction of the courts of the district of Montréal, Province of Québec.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED AT THE PLACE AND ON THE DATE FIRST ABOVE MENTIONED.

TRANSCANADA ENERGY LTD.

HYDRO-QUÉBEC

**Through its division Hydro-Québec
Distribution**

William C. Taylor
Vice President, Eastern Power
(S) William C. Taylor

André Boulanger
President
(S) André Boulanger

John Cashin
Assistant Secretary
(S) John Cashin

SCHEDULE 1

ESC PROVISIONS SUSPENDED DURING SUSPENSION PERIOD

(Ref. s. 36)

Note: Unless otherwise mentioned, where a section number appears in the following list, all provisions of that section are suspended.

PART IV - CONDITIONS FOR DELIVERY OF ELECTRICITY

- 7. *CONTRACT QUANTITIES***
- 8. REFUSAL OR INABILITY TO TAKE DELIVERY**
- 9. REVISION OF CONTRACT QUANTITIES**
- 10. ELECTRICITY DURING TESTING**
- 11. DELIVERY PRIORITY**
- 12. DELIVERY SCHEDULES**
- 13. *POWER PLANT'S DELIVERY POINT***
- 14. ELECTRICAL LOSSES**
- 15. ELECTRICITY METERING**

PART V - PRICING, BILLING AND PAYMENT

- 16. PRICE OF ELECTRICITY**

All provisions of section 16 are suspended, save for section 16.1, Amount for Capacity, which is maintained in force.

PART VI - DESIGN, CONSTRUCTION AND OPERATION

- 23. MAINTENANCE SCHEDULE AND UNAVAILABILITY LOG**

Fourth paragraph only is suspended

PART VIII - RELATED CONTRACTS AND OTHER UNDERTAKINGS

- 26. RELATED CONTRACTS AND OTHER UNDERTAKINGS**

- 26.3 Natural gas supply contracts**
Suspended with respect to natural gas supply contracts only.

PART X – INSURANCE

- 28.3 Machinery breakdown insurance is suspended.**
- 28.4 Business interruption insurance is suspended.**

PART XII - DAMAGES AND PENALTIES

- 32. DAMAGES IN THE EVENT OF FAILURE TO TAKE OR DELIVER ENERGY**
- 33. DAMAGES IN THE EVENT OF A REVISION OF *CONTRACT QUANTITIES***
- 36. FORCE MAJEURE**

PART XIII - TERMINATION AND RIGHT TO OPERATE

- 37. TERMINATION**
 - 37.2 Termination for default after commencement date of delivery**
Only paragraphs (g), (h) and (i) are suspended.
- 38. RIGHT OF DISTRIBUTOR TO OPERATE**

SCHEDULE 2

ESC PROVISIONS TO BE ADJUSTED AFTER SUSPENSION PERIOD

(Ref. s. 37)

1. If the Suspension Period is for calendar year 2008 only, the words “*contract years #6, 12 and 18*” in sections 7.2(i), 7.3(i), 7.4(i), 7.5(iii)(a) and 23, third paragraph, of the ESC shall be replaced by the words “*contract years #7, 13 and 19*”.
2. If the Suspension Period is extended for calendar year 2009 in accordance with sections 11 and 12, the words “*contract years #6, 12 and 18*” in sections 7.2(i), 7.3(i), 7.4(i), 7.5(iii)(a) and 23, third paragraph, of the ESC shall be replaced by the words “*contract years #8, 14 and 20*”.